Streamline Carports – Terms & Conditions of Trade

1. Definitions

1.1 "**Contract**" means the terms and conditions contained herein, together with any proposal, quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.

1.2 "**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 Customer does not wish to allow Cookies to operate in the background when using the Seller's website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.

1.3 "**Customer**" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Seller to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:

(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
(c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Customer's executors, administrators, successors and permitted assigns.

1.4 "**Goods**" means all Goods or Services supplied by the Seller 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 "**Price**" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between the Seller and the Customer in accordance with clause 6 below. Unless otherwise specified and agreed, all Price are payable in New Zealand dollars.

1.6 "**Seller**" means A'Line Group Limited T/A Streamline Carports, its successors and assigns.

2. Acceptance

2.1 These terms of trade are incorporated into every Contract between the Seller and the Customer, unless specifically excluded in writing.

2.2 The parties acknowledge and agree that:

(a) they have read and understood the terms and conditions contained in this Contract; and
(b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.

2.3 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.

2.4 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.

2.5 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with the Seller and it has been approved with a credit limit established for the account.

2.6 In the event that the supply of Goods requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, the Seller reserves the right to refuse delivery.

2.7 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 Seller reserves the right to substitute comparable Goods (or components of the Goods) and vary the Price as per clause 6.2. In all such cases the Seller will notify the Customer in advance of any such substitution, and also reserves the right to place the Customer's order and/or Goods on hold until such time as the Seller and the Customer agree to such changes.

2.8 Any advice, recommendation, information, assistance or service provided by the Seller in relation to Goods or Services supplied is given in good faith to the Customer or the Customer's agent and is based on the Seller's own knowledge and experience and shall be accepted without liability on the part of the Seller. Where such advice or recommendations are not acted upon then the Seller shall require the Customer or their agent to authorise commencement of the Services in writing. The Seller shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.

2.9 All descriptive specifications, illustrations, drawings, data, dimensions, ratings, and weights stated in the Seller's or the manufacturer'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 Seller.

2.10 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

3.1 The Customer acknowledges and accepts that the Seller 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 the Seller 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 the Seller in respect of the Services.

3.2 If 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 Seller; the Customer:

(a) shall not be entitled to treat this Contract as repudiated nor render it invalid; but
(b) shall not be responsible for any additional costs incurred by the Seller arising from the error or omission.

4. Change in Control

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

5. Credit Card Information

5.1 The Seller will:

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(a) keep the Customer's personal details, including credit card details for only as long as is deemed necessary by the Seller;
(b) not disclose the Customer's credit card details to any third party; and
(c) not unnecessarily disclose any of the Customer's personal information, except is accordance with the Privacy Act (clause 21) or where required by law.

5.2 The Customer expressly agrees that, if pursuant to this Contract, there are any unpaid charges, other amounts due and outstanding by the Customer, the Seller is entitled to immediately charge the Customer's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Customer pursuant to the terms of this Contract.

6. Price, Payment and Variations

6.1 Unless specified otherwise, the Price and all other amounts payable under this Contract are payable in New Zealand dollars. At the Seller's sole discretion the Price shall be either:
(a) as indicated on any invoice provided by the Seller to the Customer; or
(b) the Price as at the date of Delivery of the Goods according to the Seller's current price list; or
(c) the Seller'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 Seller 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 a variation to the Seller's quotation is requested or required (including as to the nature or quantity of the Goods (including size and weight), nature and location of the collection and/or delivery address, distance from the collection address to the delivery address, facilities available for loading or unloading, weather conditions or delays beyond the control of the Seller, delivery times or dates, or otherwise, etc.); or
(d) in the event of increases to the Seller in the cost of labour or materials (including, but not limited to, any variation as a result of fluctuations in currency exchange rates, taxes, levies, freight and insurance charges or delays in shipment etc.) which are beyond the Seller's control.

6.3 Variations will be charged for on the basis of the Seller's quotation, and will be detailed in writing, and shown as variations on the Seller's invoice. The Customer shall be required to respond to any variation submitted by the Seller within ten (10) working days. Failure to do so will entitle the Seller 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 Seller's sole discretion a reasonable non-refundable 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 Seller, which may be:
(a) before delivery of the Goods;
(b) by way of instalments/progress payments in accordance with the Seller's payment schedule;
(c) for certain approved Customers, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
(d) the date specified on any invoice or other form as being the date for payment; or
(e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Seller.
(f) If the Customer intends to withhold payment, it must provide a payment schedule within five (5) days after the date that the payment claim is served on the Customer.

6.6 Payment may be made by 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 Seller.

6.7 The Seller may in its discretion allocate any payment received from the Customer towards any invoice that the Seller determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Seller may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Seller, payment will be deemed to be allocated in such manner as preserves the maximum value of the Seller's Purchase Money Security Interest (as defined in the PPSA) in the Goods.

6.8 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 Seller nor to withhold payment of any invoice because part of that invoice is in dispute.

6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other contract 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 Seller (or the Seller's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.

7.2 The cost of Delivery is either included in the Price or is in addition to the Price as agreed between the parties.

7.3 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.

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 Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

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8.3 If the Customer requests the Seller to leave Goods outside the Seller'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 The Customer acknowledges that any Goods supplied may:

(a) exhibit variations in shade, colour, texture, surface, and finish, and may fade or change colour over time. The Seller 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;

(b) expand, contract, or distort as a result of exposure to heat, cold, weather;

(c) mark or stain if exposed to certain substances; and

(d) be damaged or disfigured by impact or scratching.

9. Access

9.1 The Customer shall ensure that the Seller has clear and free access to effect Delivery of the Goods. The Seller shall not be liable for any loss or damage to the delivery site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Seller.

10. Compliance with Laws

10.1 These terms and conditions will be interpreted in accordance with and governed by the laws of New Zealand and the New Zealand Courts will have exclusive jurisdiction over any dispute in relation to the Goods and Services.

10.2 The Customer and the Seller 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.

11. Title

11.1 The Seller and the Customer agree that ownership of the Goods shall not pass until:

(a) the Customer has paid the Seller all amounts owing to the Seller; and

(b) the Customer has met all of its other obligations to the Seller.

11.2 Receipt by the Seller 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 until ownership of the Goods passes to the Customer in accordance with clause 11.1:

(a) the Customer is only a bailee of the Goods and must return the Goods to the Seller on request;

(b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Seller and must pay to the Seller 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 Seller and must pay or deliver the proceeds to the Seller 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 Seller and must sell, dispose of or return the resulting product to the Seller as it so directs;

(e) the Customer irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods;

(f) the Seller 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 Seller; and

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

12. Personal Property Securities Act 1999 ("PPSA")

12.1 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 that have previously been supplied and that will be supplied in the future by the Seller to the Customer, and the proceeds from such Goods as listed by the Seller to the Customer in invoices rendered from time to time.

12.2 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 Seller 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 Seller 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 or the proceeds of such Goods in favour of a third party without the prior written consent of the Seller; and

(d) immediately advise the Seller 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 Unless otherwise agreed to in writing by the Seller, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

12.4 The Customer shall unconditionally ratify any actions taken by the Seller under clauses 12.1 to 12.3.

12.5 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

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13. Security and Charge

13.1 In consideration of the Seller 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, and the Customer grants a security interest in all of its present and after-acquired property, 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). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.

13.2 The Customer indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.

13.3 The Customer irrevocably appoints the Seller and each director of the Seller as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Customer's behalf.

14. Defects

14.1 The Customer shall inspect the Goods on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Seller 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 fails to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Customer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods.

14.2 Subject to clause 14.1, non-stocklist items or Goods made to the Customer's specifications are not acceptable for credit or return.

15. Refund Policy

15.1 Subject to clause 14.1, if the Goods are deemed defective and the Seller is unable to either repair or replace the Goods within a reasonable time, the Customer may request a refund.

15.2 Refunds will only be issued for Goods that have been inspected and agreed upon in writing by the Seller as defective. The refund will be limited to the Price paid for the Goods, excluding any delivery or incidental costs, unless otherwise required by law. Goods that are non-stocklist items or made to the Customer's specifications are not eligible for a refund unless otherwise agreed in writing by the Seller.

16. Warranty

16.1 The warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller 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 and the Fair Trading Act 1986

17.1 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 **("CGA")** do not apply to the supply of Goods by the Seller to the Customer.

17.2 The Seller agrees to abide by the provisions of the Fair Trading Act **("FTA")**.

18. Intellectual Property

18.1 Where the Seller has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Seller. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Seller.

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

18.3 The Customer agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Seller has created for 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 Seller'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 Seller any money the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's collection agency costs, and bank dishonour fees).

19.3 Further to any other rights or remedies the Seller may have under this Contract, if a Customer has made payment to the Seller, 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 Seller under this clause 19 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 Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:

(a) any money payable to the Seller becomes overdue, or in the Seller'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 Seller;

(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.

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20. Cancellation

20.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions the other party may suspend or terminate the supply of Services or purchase of Goods to the other party. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.

20.2 If the Seller, due to reasons beyond the Seller's reasonable control, is unable to the deliver any Goods and/or Services to the Customer, the Seller may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods and/or Services at any time before the Goods and/or Services are delivered by giving written notice to the Customer. On giving such notice the Seller shall repay to the Customer any money paid by the Customer for the Goods and/or Services. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.

20.3 The Customer may cancel Delivery of the Goods and/or Services by written notice served within twenty-four (24) hours of placement of the order. Failure by the Customer to otherwise accept Delivery of the Goods and/or Services shall place the Customer in breach of this Contract.

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. Privacy Policy

21.1 All emails, documents, images or other recorded information held or used by the Seller is "**Personal Information**" as defined and referred to in clause 21.3 and therefore considered confidential. The Seller acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines as set out in the Act. The Seller acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by the Seller that may result in serious harm to the Customer, the Seller will notify the Customer in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Customer by written consent, unless subject to an operation of law.

21.2 Notwithstanding clause 21.1, privacy limitations will extend to the Seller in respect of Cookies where the Customer utilises the Seller's website to make enquiries. The Seller 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 Customer's:

(a) IP address, browser, email client type and other similar details;
(b) tracking website usage and traffic; and
(c) reports are available to the Seller when the Seller sends an email to the Customer, so the Seller may collect and review that information ("collectively Personal Information")

If the Customer consents to the Seller's use of Cookies on the Seller's website and later wishes to withdraw that consent, the Customer may manage and control the Seller's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

21.3 The Customer authorises the Seller or the Seller's agent to:

(a) access, collect, retain and use any information about the Customer;
    (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 Customer's creditworthiness; or
    (ii) for the purpose of marketing products and services to the Customer.
(b) disclose information about the Customer, whether collected by the Seller from the Customer directly or obtained by the Seller from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.

21.4 Where the Customer is an individual the authorities under clause 21.3 are authorities or consents for the purposes of the Privacy Act 2020.

21.5 The Customer shall have the right to request (by e-mail) from the Seller, a copy of the Personal Information about the Customer retained by the Seller and the right to request that the Seller correct any incorrect Personal Information.

21.6 The Seller will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.

21.7 The Customer can make a privacy complaint by contacting the Seller via e-mail. The Seller will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Privacy Commissioner at http://www.privacy.org.nz.

22. Service of Notices

22.1 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.

22.2 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.

23. Trusts

23.1 If the Customer at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not the Seller may have notice of the Trust, the Customer covenants with the Seller as follows:

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(a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust, the trustees and the trust fund;
(b) the Customer has full and complete power and authority under the Trust or from the Trustees of the Trust as the case maybe 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 Customer against the Trust, the trustees and the trust fund. The Customer 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 Customer will not during the term of the Contract without consent in writing of the Seller (the Seller will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    (i) the removal, replacement or retirement of the Customer 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 fund or trust property.

24. Force Majeure

24.1 Neither party shall be liable for any default, including failure or delay, due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc., ("Force Majeure") or other event beyond the reasonable control of either party.

25. General

25.1 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.

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 courts of Palmerston North, New Zealand.

25.3 Subject to the CGA, the liability of the Seller and the Customer under this Contract shall be limited to the Price.

25.4 The Seller may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent provided the assignment does not cause detriment to the Customer.

25.5 The Customer cannot licence or assign without the written approval of the Seller.

25.6 The Seller 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 Seller's sub-contractors without the authority of the Seller.

25.7 The Customer agrees that the Seller 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 Seller to provide Goods and/or Services to the Customer.

25.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make any payment due to the Seller, following cessation of a Force Majeure.

25.9 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.

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