

Best Property Services Group Ltd T/A BEST Property Services – Terms & Conditions of Trade

1.	Definitions	7.2.	The Agent has not and will not assume any obligation as the Client's agent or otherwise as may be imposed on the Client from time to time pursuant to the Act arising out of any performance of the Services.	(c)	In respect of all claims the Agent 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.
1.1.	"Agent" shall mean Best Property Services Group Ltd T/A BEST Property Services its successors and assigns or any person acting on behalf of and with the authority of Best Property Services Group Ltd T/A BEST Property Services.	7.3.	The agent shall carry out day to day activities in strict accordance with the standards set out in the Health and Safety Manual. The Client acknowledges and agrees that where any work situation fails to meet those standards, work may be suspended until such time as it can be completed without breaching the Health and Safety standards.	14.	Consumer Guarantees Act 1993
1.2.	"Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Agent to the Client.	8.	Title The Agent and Client agree that ownership of the Services shall not pass until: (a) the Client has paid the Agent all amounts owing for the particular Services; and (b) the Client has met all other obligations due by the Client to the Agent in respect of all contracts between the Agent and the Client.	14.1.	If the Client is acquiring Services 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 Services by the Agent to the Client.
1.3.	"Guarantor" shall mean that person (or persons) who agrees to be liable for the debts of the Client on a principal debtor basis.	8.1.		15.	Intellectual Property
1.4.	"Services" shall mean all Services supplied by the Agent to the Client (and includes any advice or recommendations) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Agent to the Client.	8.2.	Receipt by the Agent 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 and until then the Agent's ownership or rights in respect of the Services shall continue.	15.1.	Where the Agent has designed, drawn or written Services for the Client, then the copyright in those designs and drawings and documents shall remain vested in the Agent, and shall only be used by the Client at the Agent's discretion.
1.5.	"Price" shall mean the price payable for the Services as agreed between the Agent and the Client in accordance with clause 3 of this contract.	9.	It is further agreed that: (a) until such time as ownership of the Services shall pass from the Agent to the Client the Agent may give notice in writing to the Client to return the Services or any of them to the Agent. Upon such notice being given the rights of the Client to obtain ownership or any other interest in the Services shall cease; and (b) if the Client fails to return the Services to the Agent then the Agent or the Agent's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Services are situated and take possession of the Services, and the Agent will not be liable for any reasonable loss or damage suffered as a result of any action by the Agent under this clause.	15.2.	The Client warrants that all designs or instructions to the Agent will not cause the Agent to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Agent against any action taken by a third party against the Agent in respect of any such infringement.
2.	Acceptance	9.1.	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 PPSPA; and (b) a security interest is taken in all Services previously supplied by the Agent to the Client (if any) and all Services that will be supplied in the future by the Agent to the Client.	15.3.	The Client agrees that the Agent may use any documents, designs, drawings or goods created by the Agent for the purposes of advertising, marketing, or entry into any competition.
2.1.	Any instructions received by the Agent from the Client for the supply of Services and/or the Client's acceptance of Services supplied by the Agent shall constitute acceptance of the terms and conditions contained herein.	9.2.	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 Agent 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 Agent for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Services charged thereby; (c) not register a financing change statement or a change demand without the prior written consent of the Agent; and (d) immediately advise the Agent of any material change in its business practices of selling the Services which would result in a change in the nature of proceeds derived from such sales.	16.	Default & Consequences of Default
2.2.	Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.	9.3.	Unless otherwise agreed to in writing by the Agent, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSPA.	16.1.	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 Agent's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
2.3.	Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Agent.	9.4.	The Client shall unconditionally ratify any actions taken by the Agent under clauses 9.1 to 9.5.	16.2.	In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by the Agent.
2.4.	The Client shall give the Agent not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Agent as a result of the Client's failure to comply with this clause.	9.5.		16.3.	If the Client defaults in payment of any invoice when due, the Client shall indemnify the Agent from and against all costs and disbursements incurred by the Agent in pursuing the debt including legal costs on a solicitor and own client basis and the Agent's collection agency costs.
2.5.	Services are supplied by the Agent only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.	9.6.		16.4.	Without prejudice to any other remedies the Agent may have, if at any time the Client is in breach of any obligation (including those relating to payment) the Agent may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. The Agent will not be liable to the Client for any loss or damage the Client suffers because the Agent has exercised its rights under this clause.
3.	Price And Payment	9.7.		16.5.	If any amount remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
3.1.	At the Agent's sole discretion the Price shall be either: (a) as indicated on invoices provided by the Agent to the Client in respect of Services supplied; or (b) the Agent's quoted Price (subject to clause 3.2) which shall be binding upon the Agent provided that the Client shall accept the Agent's quotation in writing within thirty (30) days.	9.8.		16.6.	Without prejudice to the Agent's other remedies at law the Agent shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Agent shall, whether or not due for payment, become immediately payable in the event that: (a) any money payable to the Agent becomes overdue, or in the Agent's opinion the Client will be unable to meet its payments as they fall due; or (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.
3.2.	The Agent reserves the right to change the Price in the event of a variation to the Agent's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties or as a result of increases to the Agent in the cost of materials and labour) will be charged for on the basis of the Agent's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.	9.9.		17.	Cancellation
3.3.	The Agent will disclose all applicable current rates of remuneration and terms of employment to the Client, seven (7) days prior to the date of the quotation. In the event that the rates of remuneration or other benefits are increased, then the Agent reserves the right to add these costs on to the quotation.	9.10.		17.1.	The Agent may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice the Agent shall repay to the Client any sums paid in respect of the Price. The Agent shall not be liable for any loss or damage whatsoever arising from such cancellation.
3.4.	The Agent may submit a detailed payment claim at intervals not less than monthly for work performed up to the end of each month. The value of work so performed shall include the reasonable value of authorized variations and the value of materials delivered to the site but not yet installed.	9.11.		17.2.	In the event that the Client cancels delivery of the Services the Client shall be liable for any loss incurred by the Agent (including, but not limited to, any loss of profits) up to the time of cancellation.
3.5.	At the Agent's sole discretion: (a) payment shall be due on delivery/completion of the Services; or (b) payment for approved Clients shall be 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.	10.	Security And Charge	18.	Privacy Act 1993
3.6.	Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.	10.1.	Despite anything to the contrary contained herein or any other rights which the Agent may have howsoever: (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Agent or the Agent's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Agent (or the Agent's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met. (b) should the Agent elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Agent from and against all the Agent's costs and disbursements including legal costs on a solicitor and own client basis. (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Agent or the Agent's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 10.1.	18.1.	The Client and the Guarantor/s (if separate to the Client) authorises the Agent to: (a) collect, retain and use any information about the Client and/or Guarantors, for the purpose of assessing the Client's and/or Guarantors creditworthiness or marketing products and services to the Client and/or Guarantors; and (b) disclose information about the Client and/or Guarantors, whether collected by the Agent from the Client and/or Guarantors directly or obtained by the Agent 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 and/or Guarantors.
3.7.	Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and the Agent.	11.	Client's Disclaimer	18.2.	Where the Client and/or Guarantors are an individual the authorities under clause 18.1 are authorities or consents for the purposes of the Privacy Act 1993.
3.8.	GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.	11.1.	The Client hereby disclaims any right to rescind, or cancel any contract with the Agent or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Agent and the Client acknowledges that the Services are bought relying solely upon the Client's skill and judgment.	18.3.	The Client and/or Guarantors shall have the right to request the Agent for a copy of the information about the Client and/or Guarantors retained by the Agent and the right to request the Agent to correct any incorrect information about the Client and/or Guarantors held by the Agent.
4.	Delivery Of Services	12.	Error and Omissions	19.	Unpaid Agent's Rights
4.1.	At the Agent's sole discretion delivery of the Services shall take place when the Client takes possession of the Services at the Client's nominated address.	12.1.	The Client shall inspect the Services on delivery and shall within seven (7) days of delivery notify the Agent of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford the Agent an opportunity to inspect the Services within a reasonable time following delivery if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.	19.1.	Where the Client has left any item with the Agent for repair, modification, exchange or for the Agent to perform any other Service in relation to the item and the Agent has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Agent shall have: (a) a lien on the item; (b) the right to retain the item for the Price while the Agent is in possession of the item; (c) a right to sell the item; and (d) the right to retain all or part of the proceeds of the sale of the item in payment of the Price and any interest due to the Agent and any costs associated with such sale.
4.2.	At the Agent's sole discretion the costs of delivery is included in the Price.	12.2.	For defective Services, which the Agent has agreed in writing that the Client is entitled to reject, the Agent's liability is limited to either (at the Agent's discretion) replacing the Services or rectifying the Services provided that the Client has complied with the provisions of clause 12.1.	19.2.	The lien of the Agent shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.
4.3.	It is the Client's responsibility to organise (and where applicable be liable for payment of): (a) water availability for use by the Agent; and (b) all joinery, flashings, exterior cladding, wall to floor substances (internal and external) are sealed against water entry; and (c) all electronic components (which includes but is not limited to wall and ceiling sockets, switches, electronic alarms, sensors and automatic garage door openers are isolated against water ingress).	13.	Warranty	20.	Construction Contract Act 2002
4.4.	The Client shall meet all costs and expenses associated with the disconnection and reconnection of any mains power entering the building.	13.1.	Subject to the conditions of warranty set out in Clause 13.2 the Agent warrants that if any defect in any workmanship of the Agent becomes apparent and is reported to the Agent within two (2) years for Roofs and seven (7) days for the house itself, of the date of delivery (time being of the essence) then the Agent will either (at the Agent's sole discretion) replace or remedy the workmanship. The conditions applicable to the warranty given by Clause 13.1 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 Services; or (ii) failure on the part of the Client to follow any instructions or guidelines provided by the Agent; or (iii) any use of any Services otherwise than for any application specified on a quote or order form; or (iv) the continued use of any Services 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 Agent shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Agent's consent.	20.1.	The Client hereby expressly acknowledges that: (a) the Agent 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 Agent by a particular date; and the Agent 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 Agent 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 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.
4.5.	The Client shall make all arrangements necessary to take delivery of the Services whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Services as arranged then the Agent shall be entitled to charge a reasonable fee for redelivery.	13.2.		20.1.	
4.6.	Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.	13.3.			
4.7.	The failure of the Agent to deliver shall not entitle either party to treat this contract as repudiated.				
4.8.	The Agent shall not be liable for any loss or damage whatsoever due to failure by the Agent to deliver the Services (or any of them) promptly or at all, where due to circumstances beyond the control of the Agent.				
5.	Risk				
5.1.	If the Agent retains ownership of the Services nonetheless, all risk for the Services passes to the Client on delivery.				
5.2.	Should scaffolding be necessary, the supply and erection of such scaffolding or planking suitable to the Agent's requirements and conforming with the Construction Act 1959 and Construction Regulations 1961 and Health and Safety in Employment Act 1992 will be the responsibility of the Client if not allowed for in the Agent's quotation.				
6.	Access				
6.1.	The Agent's quotation is based on the assumption that clear access to the site (for motor truck or trailer) will be provided and that there will be clear access within/around the building so that work may proceed without hindrance.				
6.2.	Any costs incurred by the Agent due to delays or hindrance for which it has not been responsible will be charged as an extra.				
7.	Health & Safety Legislation				
7.1.	The Client must provide safe working conditions for the Agent and shall comply with all statutory and other obligations that are applicable pursuant to New Zealand (including, but not limited to the Health & Safety in Employment Act 1992 (the "Act")).				

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(c) if the Agent 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 Agent 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 Agent suspending work under this provision.

21. General

- 21.1. 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.
- 21.2. 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 New Zealand.
- 21.3. The Agent 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 Agent of these terms and conditions.
- 21.4. In the event of any breach of this contract by the Agent the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Services.
- 21.5. 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 Agent nor to withhold payment of any invoice because part of that invoice is in dispute.
- 21.6. The Agent may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 21.7. The Agent reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Agent notifies the Client of such change.
- 21.8. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 21.9. The failure by the Agent to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Agent's right to subsequently enforce that provision.