

Surefoot (NZ) Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 "Contract" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "Surefoot" means Surefoot (NZ) Limited, its successors and assigns or any person acting on behalf of and with the authority of Surefoot (NZ) Limited.
- 1.3 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Surefoot to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.4 "Works" means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by Surefoot to the Client at the Client's request from time to time (where the context so permits the terms "Works" or "Materials" shall be interchangeable for the other).
- 1.5 "Site" means the address nominated by the Client at which the Works are to be undertaken by Surefoot.
- 1.6 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as, name, address, D.O.B, occupation, driver's license details, electronic contact (email, facebook or Twitter) details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history and pricing details.
- 1.7 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Works via the website.**
- 1.8 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Works as agreed between Surefoot and the Client in accordance with clause 5.1 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 any Works.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges and accepts that:
- (a) the supply of Works on credit shall not take effect until the Client has completed a credit application with Surefoot and it has been approved with a credit limit established for the account;
 - (b) in the event that the supply of Works requested exceeds the Client's credit limit and/or the account exceeds the payment terms, Surefoot reserves the right to refuse delivery; and
 - (c) the supply of Materials for completed orders may be subject to availability and if, for any reason, Materials are not or cease to be available, Surefoot reserves the right to substitute comparable Materials (or components of the Materials) and vary the Price as per clause 6.2. In all such cases Surefoot will notify the Client in advance of any such substitution, and also reserves the right to place the Client's order and/or Works on hold, as per clause 8.4 until such time as Surefoot and the Client agree to such changes; and
 - (d) where the Client is a tenant (and therefore not the owner of the land and premises where Materials are to be installed) then the Client warrants that the Client has obtained the full consent of the owner for Surefoot to install the Materials on the owners land and premises. The Client acknowledges and agrees that they shall be personally liable for full payment of the Price for all Works provided under this agreement and to indemnify Surefoot against any claim made by the owner of the premises (howsoever arising) in relation to the installation of the Materials and the provision of any related Works by Surefoot except where such claim has arisen because of the negligence of Surefoot when installing the Materials.
- (e) The Client agrees that they shall upon request from Surefoot provide evidence that:
- (i) they are the owner of the land and premises upon which the Works are to be undertaken; or
 - (ii) where they are a tenant, that they have the consent of the owner for the Materials to be installed on the land and premises upon which the works are to be undertaken.
- 2.5 Where Surefoot gives advice or recommendations to the Client as to a particular course of action and such advice or recommendations are not acted upon then Surefoot:
- (i) shall require the Client or their agent to authorise the Works in writing, in which case Surefoot shall not be liable in any way whatsoever for any damages or losses that occur as a result of such advice or recommendations not being followed; or
 - (ii) Surefoot reverses the right to cancel the Contract as per clause 24.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.7 If Surefoot has been requested by the Client to prepare a quotation that involves multiple Site visits or third party involvement (including but not limited to engineers, surveyor or local councils), all costs involved will be charged to the Client irrespective of whether or not the Works go ahead.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that Surefoot 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 Surefoot in the formation and/or administration of this Contract; and/or
 - (b) contained in/mitted from any literature (hard copy and/or electronic) supplied by Surefoot in respect of the Works.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of Surefoot, the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Client shall give Surefoot 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, change of trustees, or business practice). The Client shall be liable for any loss incurred by Surefoot as a result of the Client's failure to comply with this clause.

5. Authorised Representative

- 5.1 The Client acknowledges that Surefoot shall (for the duration of the Works) liaise directly with one (1) authorised representative, and that once introduced as such to Surefoot, that person shall have the full authority of the Client to order any Works, Materials and/or to request any variation thereto on the Client's behalf. The Client accepts that they will be solely liable to Surefoot for all additional costs incurred by Surefoot (including Surefoot's profit margin) in providing any Works, Materials or variation/s requested thereto by the Client's duly authorised representative.

6. Price and Payment

- 6.1 At Surefoot's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by Surefoot to the Client in respect of Works performed or Materials supplied; or
 - (b) Surefoot's estimated Price (subject to clause 6.2). No allowances shall be made for Site preparation unless specified in the estimate.
- The final Price can only be ascertained upon completion of the Works. Variances in the estimated Price of more than 10% will be subject to Client approval before proceeding with the Works; or
- 6.2 Surefoot's quoted Price (subject to clause 6.2) which shall be binding upon Surefoot provided that the Client shall accept Surefoot's quotation in writing within thirty (30) days.
- Surefoot reserves the right to change the Price:
- (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including, any applicable plans or specifications) is requested; or
 - (c) if during the course of the Works, the Materials cease to be available from Surefoot's third party suppliers, then Surefoot reserves the right to provide alternative Materials, subject to prior confirmation and agreement of both parties; or
 - (d) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the Site, safety considerations (discovery of asbestos, etc.), non-code compliant Works, availability of machinery, high water table, sub strata issues, perquisite work by any third party not being completed etc.) which are only discovered on commencement of the Works; or
 - (e) in the event of increases to Surefoot 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 etc or onsite inspection may require the method of Works first proposed to vary resulting in additional costs) which are beyond Surefoot's control.

- 6.3 Variations will be charged for on the basis of Surefoot's quotation, and will be detailed in writing, and shown as variations on Surefoot's invoice. The Client shall be required to respond to any variation submitted by Surefoot within ten (10) working days. Failure to do so will entitle Surefoot 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 Surefoot's sole discretion a non-refundable 50% deposit is required.
- 6.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by Surefoot, which may be:

- (a) on delivery of the Materials and/or completion of the Works; or
- (b) payment shall be due at the time of order for all identified/estimated orders; or
- (c) by way of progress payments in accordance with Surefoot's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the Site but not yet installed;
- (d) for certain approved Client's, 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;
- (e) the date specified on any invoice or other form as being the date for payment; or
- (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Surefoot.

- 6.6 At the agreement of both parties, payment of the Price may be subject to retention by the Client of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Client shall hold the Retention Money for the agreed period following completion of the Works during which time all Works are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this Contract is to be dealt with in accordance with section 18 of the Construction Contracts Act 2002.
- 6.7 Payment may be made by electronic-line banking, or by any other method as agreed to between the Client and Surefoot.
- 6.8 Surefoot may in its discretion allocate any payment received from the Client towards any invoice that Surefoot determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Surefoot may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Surefoot, payment will be deemed to be allocated in such manner as preserves the maximum value of Surefoot's Purchase Money Security Interest (as defined in the PPSA) in the Materials.

- 6.9 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 Surefoot nor to withhold payment of any invoice because part of that invoice is in dispute unless the request for payment by Surefoot is a claim made under the Construction Contracts Act 2002.
- 6.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Surefoot an amount equal to any GST Surefoot must pay for any supply by Surefoot under this or any other agreement for the sale of the Materials. 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.

7. On-Line Ordering

- 7.1 The Client acknowledges and agrees that:

- (a) Surefoot does not guarantee the website's performance;
- (b) display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by Surefoot;
- (c) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;
- (d) there are inherent hazards in electronic distribution, and as such Surefoot cannot warrant against delays or errors in transmitting data between the Client and Surefoot including orders, and you agree that to the maximum extent permitted by law, Surefoot will not be liable for any losses which the Client suffers as a result of online-ordering not being available or for delays or errors in transmitting orders;
- (e) when making a transaction through the website, the Client's information will pass through a secure server using SSL (secure sockets layer) encryption technology or any other similar technology as disclosed by Surefoot and/or displayed on the website. The encryption process ensures that the Client's information cannot be read by or altered by third parties; and
- (f) if the Client is not the cardholder for any credit card being used to pay for the Goods, Surefoot shall be entitled to reasonably assume that the Client has received permission from the cardholder for use of the credit card for the transaction.

- 7.2 Surefoot reserves the right to terminate the Client's order if it learns that you have provided false or misleading information, interfered with other users or the administration of Surefoot's business, or violated these terms and conditions.

8. **Provision of the Works**
- 8.1 Delivery ("Delivery") of the Materials is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Materials at Surefoot's address; or
 - (b) Surefoot (or Surefoot's nominated carrier) delivers the Materials to the Client's nominated address even if the Client is not present at the address.

- 8.2 At Surefoot's sole discretion the cost of Delivery (including but limited to, where Surefoot is instructed by the Client to pick-up Client's ordered Materials) is in addition to the Price.
- 8.3 Subject to clause 8.4 it is Surefoot's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 8.4 The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that Surefoot claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Surefoot's control, including but not limited to, any failure by the Client and/or the Client's third party contractor to:

- (a) make a selection; or
 - (b) have the Site ready; or
 - (c) notify Surefoot that the Site is ready.
- 8.5 Surefoot may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 8.6 Any time specified by Surefoot for delivery of the Works is an estimate only and Surefoot will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that Surefoot is unable to supply the Works as agreed solely due to any action or inaction of the Client, then Surefoot shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.
- 8.7 Notwithstanding clause 8.6, where the commencement date is cancelled by the Client without first providing at least forty-eight (48) hours' notice, a cancellation fee may apply.
- 8.8 Where the Works are completed and then delayed by the Client for a period greater than six (6) months, then payment for the Works must be made in full if not already done so and Surefoot shall reserve the right to requote for the remainder of the Works outstanding. Surefoot shall not be held liable for any damages, losses or costs incurred by the Client due to any such delays.

9. **Risk**
- 9.1 If Surefoot retains ownership of the Materials under clause 16 then:
- (a) where Surefoot is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials 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 Materials at Surefoot's address; or
 - (ii) the Materials are delivered by Surefoot or Surefoot's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
 - (b) where Surefoot is to both supply and install Materials then Surefoot shall maintain a contract works insurance policy, unless otherwise stipulated, until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.

- 9.2 Notwithstanding the provisions of clause 9.1 if the Client specifically requests Surefoot to leave Materials outside Surefoot's premises for collection or to deliver the Materials 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 Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- 9.3 Surefoot shall not be liable whatsoever for:
- (a) any loss or damage to the Works that is caused by any other tradesmen during and after the completion of the Works; or
 - (b) delays caused by any other third party suppliers that impacts on the provision of the Works by Surefoot;
 - (c) Where the Works are completed by the Client and/or any other third party; and
 - (d) any defect or damage resulting from incorrect or faulty installation carried out by any other third party; and
 - (e) if the Client instructs Surefoot to rectify any damage caused by any other tradesman, this will become a variation to the original quotation and will be charged at Surefoot normal hourly rate; and
 - (f) if the Client request Surefoot to alter products supplied but not manufactured by Surefoot, the Client acknowledges and accepts that no warranty will apply for those products;
 - (g) where Surefoot is required to install the Materials, the Client warrants that the structure of the premises upon which these Materials are to be installed is sound and will sustain the installation and work incidental thereto (including that all fixings that the Materials are to be installed are suitable for their intended use). Where the structure needs strengthening in order to withstand the installation all additional cost incurred by Surefoot will be on charged to the Client in accordance with clause 6.2(d). Surefoot shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises be unable to accommodate the installation; and
 - (h) where the Client is to provide heavy equipment/scaffolding for Surefoot, which is later found upon use does not meet the Health and Safety standards for compliance, Surefoot reserves the right to hire such equipment to complete the Works and all such associated costs will be in addition to the Price which will be invoiced to the Client in accordance with clause 6.2.

- 9.4 In the event that during the course of the Works Surefoot discovers any fossils, artefacts or any other remains of geological or archaeological interest or the Site is discovered to be subject to land rights, then Surefoot reserves the right to halt all Works and immediately notify the Client. The Client accepts and agrees that all additional costs that may be incurred by Surefoot as a result of any such delays shall be borne by the Client and shall be treated as a variation in accordance with clause 6.2 above, however, in the event that the Site is closed indefinitely, then Surefoot's shall be entitled to claim payment for all Materials and Works supplied and/or carried out up to the point of the Site closure. Such an event as detailed in this clause would be beyond Surefoot's control therefore, Surefoot accepts no liability for any damages, losses or costs incurred by the Client due to any such delay.

10. **Dimensions, Plans and Specifications**
- 10.1 All customary building industry tolerances shall apply to the dimensions and measurements of the Materials unless Surefoot and the Client agree otherwise in writing.
- 10.2 Surefoot shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, Surefoot accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 10.3 In the event the Client gives information relating to measurements and quantities of Materials required in completing the Works, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or Surefoot places an order based on these measurements and quantities. Surefoot accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.

11. **Client Responsibilities**
- 11.1 It is the intention of Surefoot and agreed by the Client that it is the responsibility of the Client to (where applicable to the Works):
- (a) where asbestos or any other toxic substances is discovered during the course of the Works to ensure the safe removal of the same. The Client further agrees to indemnify Surefoot against any costs incurred thereby as a consequence of such discovery. Under no circumstances will Surefoot handle removal of any asbestos product;
 - (b) access to toilet, waste disposal amenities, running water, eating and first aid facilities, if required. Any costs incurred by Surefoot will be invoiced to the Client should this requirement not be met.

- 11.2 Where Surefoot has affected Delivery all risk passes to the Client as per clause 9.1 and the Client claims the Materials have been stolen, it shall be the Client's responsibility to notify the police and forward evidence to Surefoot, this shall not excuse the Client from fulfilling their financial obligations under this Contract.

12. **Access**
- 12.1 The Client shall ensure that Surefoot has clear and free access to the Site at all times to enable them to deliver the Materials. Surefoot shall not be liable for any loss or damage to the Site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of Surefoot.
- 12.2 **Site Inductions**
- (a) in the event the Client requires an employee or sub-contractor of Surefoot to undertake a Site induction during working hours, the Client will be liable to pay the hourly charges for that period. If any induction is needed to be undertaken prior to the commencement date then the Client shall be liable to pay Surefoot's standard (and/or overtime, if applicable) hourly labour rate; or
- (b) where Surefoot is in control of the Site, the Client and/or the Client's third party contractors must initially carry out Surefoot's Health & Safety induction course ("HSW Act") and meeting their obligations for health and safety laws in the course of the Works will be by appointment only and unless otherwise agreed, in such an event the Client and/or third party acting on behalf of the Client must at all times be accompanied by Surefoot.

13. **Hidden Services**
- 13.1 Prior to Surefoot commencing any Works the Client must advise Surefoot of the precise location of all hidden services on the site and clearly mark the same. The hidden mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on Site.
- 13.2 Whilst Surefoot will take all care to avoid damage to any hidden services the Client agrees to indemnify Surefoot in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 13.1.

14. **Insurance**
- 14.1 Surefoot shall have public liability insurance of at least \$2m. It is the Client's responsibility to ensure that they are similarly insured.

15. **Compliance with Laws**
- 15.1 The Client and Surefoot shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Equipment including but not limited to, the Good Practice Guidelines for scaffolding / edge fall protection / fall through protection) as outlined in the Scaffolding in New Zealand published by WorkSafe and any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Works.
- 15.2 Notwithstanding clause 15.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") Surefoot agrees at all times comply with sections 29 of the HSW Act with meeting their obligations for health and safety laws in the course of the Works regardless of whether they may be the party in control of the Site or if in the event that they may be acting as a subcontractor for the Client's where the Client has engaged a third party head contractor.
- 15.3 The Client shall obtain (at the expense of the Client) all engineering reports, certificates, and all licenses, permits and approvals that may be required for the supply of Works.

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16. **Surplus Materials**
16.1 Unless otherwise stated elsewhere in this Contract:
(a) only suitable new Materials will be used;
(b) deminished Materials remain the Client's property; and
(c) Materials which Surefoot brings to the Site which are surplus remain the property of Surefoot unless such Materials have been paid for by the Client.
17. **Title**
17.1 Surefoot and the Client agree that ownership of the Materials shall not pass until:
(a) the Client has paid Surefoot all amounts owing to Surefoot; and
(b) the Client has met all of its other obligations to Surefoot.
17.2 Receipt by Surefoot 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.
17.3 It is further agreed that:
(a) until ownership of the Materials passes to the Client in accordance with clause 17.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Surefoot on request;
(b) the Client holds the benefit of the Client's insurance of the Materials on trust for Surefoot and must pay to Surefoot the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
(c) the production of these terms and conditions by Surefoot shall be sufficient evidence of Surefoot's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Surefoot to make further enquiries;
(d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for Surefoot and must pay or deliver the proceeds to Surefoot on demand;
(e) the Client should not convert or process the Materials 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 Surefoot and must sell, dispose of or return the resulting product to Surefoot as it so directs;
(f) unless the Materials have become fixtures the Client irrevocably authorises Surefoot to enter any premises where Surefoot believes the Materials are kept and recover possession of the Materials;
(g) Surefoot may recover possession of any Materials in transit whether or not delivery has occurred;
(h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of Surefoot;
(i) Surefoot may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.
18. **Personal Property Securities Act 1999 ("PPSA")**
18.1 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 created in all Materials and/or collateral (account) – being a monetary obligation of the Client to Surefoot for Works – that have previously been supplied and that will be supplied in the future by Surefoot to the Client.
18.2 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 Surefoot may reasonably require to register a financing statement or financing charge statement on the Personal Property Securities Register;
(b) indemnify, and upon demand reimburse, Surefoot for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register or releasing any Materials charged thereby;
(c) not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of Surefoot; and
(d) immediately advise Surefoot of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.
18.3 Surefoot and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
18.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
18.5 Unless otherwise agreed to in writing by Surefoot, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
18.6 The Client shall unconditionally ratify any actions taken by Surefoot under clauses 18.1 to 18.5.
18.7 Subject to any express provisions to the contrary (including those contained in this clause 18), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
19. **Security and Charge**
19.1 In consideration of Surefoot agreeing to supply the Works, 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).
19.2 The Client indemnifies Surefoot from and against all Surefoot's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Surefoot's rights under this clause.
19.3 The Client irrevocably appoints Surefoot and each director of Surefoot as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 19 including, but not limited to, signing any document on the Client's behalf.
20. **Defects, Returns and Warranties**
20.1 The Client shall inspect the Materials on delivery and shall within seven (7) days of delivery (time being of the essence) notify Surefoot of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Surefoot an opportunity to inspect the Materials within a reasonable time following delivery if the Client believes the Materials are defective in any way. If the Client shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which Surefoot has agreed in writing that the Client is entitled to reject, Surefoot's liability is limited to either (at Surefoot's discretion) replacing the Materials or repairing the Materials.
20.2 Notwithstanding clause 20.1, the Client acknowledges and accepts that Surefoot must be given first right of refusal to inspect the Works in respect of any alleged defect and to rectify before the Client consents the engagement of any other third party contractor.
20.3 Materials will not be accepted for return other than in accordance with 20.1 above and provided that:
(a) the Client has complied with the provisions of clause 20.1; and
(b) Surefoot has agreed in writing to accept the return of the Materials; and
(c) the Materials are returned at the Client's cost within fourteen (14) days of the delivery date; and
(d) Surefoot will not be liable for Materials which have not been stored or used in a proper manner; and
(e) the Materials are returned in the condition in which they were delivered and with all original packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
20.4 Subject to the conditions of warranty set out in clause 20.5 Surefoot warrants that if any defect in any workmanship of Surefoot becomes apparent and is reported to Surefoot within two (2) years of the date of delivery (time being of the essence) then Surefoot will either (at Surefoot's sole discretion) replace or remedy the workmanship.
20.5 The conditions applicable to the warranty given by clause 20.4 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 Materials; or
(ii) failure on the part of the Client to follow any instructions or guidelines provided by Surefoot; or
(iii) any use of any Materials otherwise than for any application specified on a quote or order form; or
(iv) the continued use of any Materials after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
(v) fair wear and tear, accident or act of God.
(b) the warranty shall cease and Surefoot shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Surefoot's consent.
(c) in respect of all claims Surefoot 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.
20.6 Surefoot may (in its discretion) accept the return of materials for credit but this may incur a handling fee of fifteen percent (15%) of the value of the returned Materials plus any freight.
20.7 Non-stocklist items or Materials made to the Client's specifications are under no circumstances acceptable for credit or return.
20.8 For Materials not manufactured by Surefoot, the warranty shall be the current warranty provided by the manufacturer of the Materials. Surefoot shall not be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Materials.
21. **Consumer Guarantees Act 1993**
21.1 If the Client is acquiring Materials 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 Materials by Surefoot to the Client.
22. **Intellectual Property**
22.1 Where Surefoot has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in Surefoot, and shall only be used by the Client at Surefoot's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of Surefoot.
22.2 The Client warrants that all designs, specifications or instructions given to Surefoot will not cause Surefoot to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Surefoot against any action taken by a third party against Surefoot in respect of any such infringement.
22.3 The Client agrees that Surefoot may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, digital images, photographs, plans or products which Surefoot has created for the Client.
23. **Default and Consequences of Default**
23.1 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 Surefoot's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
23.2 If the Client owes Surefoot any money the Client shall indemnify Surefoot from and against all costs and disbursements incurred by Surefoot in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Surefoot's collection agency costs, and bank dishonour fees).
23.3 Further to any other rights or remedies Surefoot may have under this Contract, if a Client has made payment to Surefoot, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Surefoot under this clause 23, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
23.4 Without prejudice to Surefoot's other remedies at law Surefoot shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Surefoot shall, whether or not due for payment, become immediately payable if:
(a) any money payable to Surefoot becomes overdue, or in Surefoot's opinion the Client will be unable to make a payment when it falls due;
(b) the Client has exceeded any applicable credit limit provided by Surefoot;
(c) the Client becomes insolvent or bankrupt, 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
24. **Cancellation**
24.1 Without prejudice to any other rights or remedies Surefoot may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Client of such notice) then Surefoot may suspend the Works immediately. Surefoot will not be liable to the Client for any loss or damage the Client suffers because Surefoot has exercised its rights under this clause.
24.2 Surefoot may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice Surefoot shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to Surefoot for Works already performed. Surefoot shall not be liable for any loss or damage whatsoever arising from such cancellation.
24.3 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by Surefoot as a direct result of the cancellation (including, but not limited to, any loss of profits).
24.4 Cancellation of orders for products 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.
25. **Privacy Policy**
25.1 All emails, documents, images or other recorded information held or used by Surefoot is Personal Information as defined and referred to in clause 25.3 and therefore considered confidential. Surefoot acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Surefoot acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Surefoot that may result in serious harm to the Client, Surefoot will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
25.2 Notwithstanding clause 25.1, privacy limitations will extend to Surefoot in respect of Cookies where transactions for purchases/orders transpire directly from Surefoot's website. Surefoot agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
(a) IP address, browser, email client type and other similar details;
(b) tracking website usage and traffic; and
(c) reports are available to Surefoot when Surefoot sends an email to the Client, so Surefoot may collect and review that information ("collectively Personal Information")
In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Surefoot's website.
25.3 The Client authorises Surefoot or Surefoot's agent to:
(a) access, collect, retain and use any information about the Client:
(i) (including name, address, D.O.B., occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical or insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history and any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
(ii) for the purpose of marketing products and services to the Client.
(b) disclose information about the Client, whether collected by Surefoot from the Client directly or obtained by Surefoot 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.
25.4 Where the Client is an individual the authorities under clause 25.3 are authorities or consents for the purposes of the Privacy Act 1993.
25.5 The Client shall have the right to request Surefoot for a copy of the Personal Information about the Client retained by Surefoot and the right to request Surefoot to correct any incorrect Personal Information about the Client held by Surefoot.
26. **Confidentiality**
26.1 The information contained in the quotation provided by Surefoot to the Client is done so on a "commercial in confidence" basis thereby, the Client agrees not to reproduce or provide said information in any manner to any third party without the prior written approval of Surefoot.
26.2 Surefoot and the Client agree to keep confidential any information in relation to the other party which is not in the public domain (including, but not limited to, trade secrets, technical information, ideas or training techniques, processes, formulae, accounts, marketing, designs, databases and all other information held in any form) and each agrees not to divulge it to any third party, without the other party's written consent.
26.3 Exceptions to clause 26.1 will be disclosures required by law, and disclosures necessary for the proper performance of the Works.
27. **Suspension of Works**
27.1 Where the Contract is subject to the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
(a) Surefoot has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client; and
(i) the payment is not paid in full by the due date for payment in accordance with clause 6.5 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
(ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
(iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to Surefoot by a particular date; and
(iv) Surefoot has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
(b) if Surefoot 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 Surefoot exercises the right to suspend work, the exercise of that right does not:
(i) affect any rights that would otherwise have been available to Surefoot under the Contract and Commercial Law Act 2017; or
(ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of Surefoot suspending work under this provision.
(d) due to any act or omission by the Client, the Client effectively precludes Surefoot from continuing the Works or performing or complying with Surefoot's obligations under this Contract, then without prejudice to Surefoot's other rights and remedies, Surefoot may suspend the Works immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Works is based. All costs and expenses incurred by Surefoot as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
27.2 If pursuant to any right conferred by this Contract, Surefoot suspends the Works and the default that led to that suspension continues unremedied subject to clause 24.1 for at least ten (10) working days, Surefoot shall be entitled to terminate the Contract, in accordance with clause 24.
28. **Service of Notices**
28.1 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.
28.2 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.
29. **Trusts**
29.1 If the Client at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Surefoot may have notice of the Trust, the Client covenants with Surefoot as follows:
(a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
(b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
(c) the Client will not without consent in writing of Surefoot (Surefoot will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
(i) the removal, replacement or retirement of the Client as trustee of the Trust;
(ii) any alteration to or variation of the terms of the Trust;
(iii) any advancement or distribution of capital of the Trust; or
(iv) any resettlement of the trust property.
30. **General**
30.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
30.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
30.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Canterbury Courts of New Zealand.
30.4 Surefoot 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 Surefoot of these terms and conditions (alternatively Surefoot's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
30.5 Surefoot may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
30.6 The Client cannot licence or assign without the written approval of Surefoot.
30.7 Surefoot may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Surefoot's subcontractors without the authority of Surefoot.
30.8 The Client agrees that Surefoot may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Surefoot to provide Works to the Client.
30.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
30.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.