

Paneltech Contractors Limited – Terms & Conditions of Trade

1. Definitions	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 Paneltech, which may be:	8.12	Paneltech shall not be liable for any defect in the Goods and/or Services if the Customer does not follow Paneltech's recommendations.
1.1 "Paneltech" means Paneltech Contractors Limited, its successors and assigns or any person acting on behalf of and with the authority of Paneltech Contractors Limited.		(a) on delivery of the Goods;	9. Customer Acknowledgements	
1.2 "Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally (where the context so permits, the term "Customer" shall also mean the Customer's duly authorised representative).		(b) before delivery of the Goods;	9.1 The Customer acknowledges that:	
1.3 "Goods" means all Goods or Services supplied by Paneltech 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).		(c) by way of instalments/progress payments in accordance with Paneltech's payment schedule;	(a) in the event asbestos or any other toxic substances are discovered at the site that it is the Customer's to ensure the safe removal of the same. The Customer further agrees to indemnify Paneltech against any costs incurred by Paneltech as a consequence of such discovery. Under no circumstances will Paneltech handle removal of asbestos product;	
1.4 "Price" means the Price payable (plus any Goods and Services Tax (GST) where applicable) for the Goods as agreed between Paneltech and the Customer in accordance with clause 5 below.		(d) 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;	(b) no other tradesmen interfere with any Services and/or Materials supplied under this contract;	
2. Acceptance		(e) the date specified on any invoice or other form as being the date for payment; or	(c) they shall not be entitled to withhold any payment due under this contract because of any delay in the connection of, or the supply of electricity to the Materials by an electrical distributor or any other third party;	
2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.	6.6	(f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Paneltech.	(d) they are responsible for any building work, excavation work, core drilling or any other non-standard surface penetrations that need to be carried out to enable Paneltech to carry out the Services;	
2.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Paneltech.	7.1	Payment may be made by cash, cheque, bank cheque, eftpos, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Customer and Paneltech.	(e) they shall provide and have erected scaffolding to enable the Services to be undertaken. Any scaffolding must comply with industry safety standards and any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection, and where necessary, shall hold a current certificate of competency and/or be fully licensed;	
2.3 Where Paneltech gives advice, recommendations, information, assistance or service to the Customer, or the Customer's agent, regarding the Goods, it is given in good faith and Paneltech shall not be liable in any way whatsoever for any damages, losses or costs however arising resulting from the Customer relying on the same.	7.2	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 Paneltech nor to withhold payment of any invoice because part of that invoice is in dispute.	(f) they shall be responsible for ensuring that the Materials ordered are suitable for their intended use;	
2.4 The Customer acknowledges and agrees that the placement and installation of all Goods supplied by Paneltech (and any associated Paneltech equipment) is within New Zealand only; sales outside the New Zealand market is prohibited, unless otherwise agreed in writing by Paneltech. Any warranty offered with said Goods will be void from the date of sale, where the said Goods are dispatched overseas. The Customer acknowledges where Goods are approved by Paneltech to be exported then the Goods must be tested and installation must comply with the country of destination's compliance standards	7.3	Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Paneltech an amount equal to any GST Paneltech must pay for any supply by Paneltech under this or any other agreement 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.	(g) Paneltech shall not be liable for any loss or damage to the Services (or any part thereof) however arising where the Customer has failed to comply with this clause 9.1.	
2.5 Where the Customer is a tenant (and therefore not the owner of the land and premises where the Materials are to be installed) then the Customer warrants that full consent has been obtained from the owner for Paneltech to install the Materials on the owner's land and premises. The Customer acknowledges and agrees that they shall be personally liable for full payment of the Price for all Services provided under this agreement and to indemnify Paneltech 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 Services by Paneltech except where such claim has arisen because of the negligence of Paneltech when installing the Materials.	7.4	Delivery of Goods Delivery ("Delivery") of the Goods is taken to occur at the time that:	9.2 The Customer further acknowledges that they shall:	
2.6 The Customer agrees that they shall upon request from Paneltech provide evidence that;	7.5	(a) the Customer or the Customer's nominated carrier takes possession of the Goods at Paneltech's address; or	(a) remove any furniture or personal items from the vicinity of the Services, and agrees that Paneltech shall not be liable for any damage caused to those items through the Customer's failure to comply with this clause;	
(a) they are the owner of the land and premises upon which the Services are to be undertaken; or		(b) Paneltech (or Paneltech's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.	(b) be wholly responsible for animals and/or children on the worksite;	
(b) 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 Services are to be undertaken.		At Paneltech's sole discretion the cost of delivery is included in the Price. Paneltech may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.	(c) be wholly responsible for the removal of rubbish from or clean-up of the worksite;	
3. Electronic Transactions Act 2002	8. Risk	Any time specified by Paneltech for delivery of the Goods is an estimate only and Paneltech will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that Paneltech is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then Paneltech shall be entitled to charge a reasonable fee for redelivery and/or storage.	(d) supply electricity, temporary lighting, toilet, eating and first aid facilities if so required.	
3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.	8.1	Where the Customer intends to postpone any agreed commencement dates under this contract, the Customer must provide written notice of that postponement no less than forty-eight (48) hours prior to the commencement of the Services. Failure to comply will result in an additional charge (equal to two (2) hours labour, plus travel costs) shall be applicable.	10. Accuracy of Customer's Plans and Measurements	
4. Change in Control	8.2	Risk 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.	10.1 In the event the Customer gives information relating to the Goods (including plans, specifications, measurements, quantities and other information provided by the Customer):	
4.1 The Customer shall give Paneltech 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, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by Paneltech as a result of the Customer's failure to comply with this clause.	8.3	If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Paneltech is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Paneltech is sufficient evidence of Paneltech's rights to receive the insurance proceeds without the need for any person dealing with Paneltech to make further enquiries.	(a) it is the Customer's responsibility to verify the accuracy of the information before the Customer or Paneltech places an order based on the information. Paneltech accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause;	
5. Authorised Representatives	8.4	In the event the Customer requests Paneltech to leave Goods outside Paneltech'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.	(b) Paneltech shall be entitled to rely on the accuracy of such information. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, Paneltech accepts no responsibility for any loss, damages, or costs however resulting therefrom.	
5.1 Unless otherwise limited as per clause 5.2, the Customer agrees that should the Customer introduce any third party to Paneltech as the Customer's duly authorised representative, that once introduced that person shall have the full authority to act on behalf of the Customer under this contract; such authority shall continue until the time that the Customer notifies Paneltech otherwise that the said person is no longer the Customer's duly authorised representative.	8.5	Where applicable, the Customer warrants that the structure of the premises or equipment in or upon which the Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and Paneltech shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.	11. Access	
5.2 In the event that the Customer's duly authorised representative, as per clause 5.1, is to have only limited authority to act on the Customer's behalf, then the Customer must specifically and clearly advise Paneltech in writing of the parameters of the limited authority granted to that authorised representative.	8.6	Notwithstanding the provisions of clause 8.1, where Paneltech requires that Materials, fittings and appliances, or plant and tools required for the Services be stored at the Site, the Customer shall supply Paneltech a safe area for storage and shall take all reasonable efforts to protect all items from possible destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Customer's responsibility.	11.1 The Customer shall ensure that Paneltech has clear and free access to the worksite at all times to enable them to undertake the Services. Paneltech shall not be liable for any loss or damage to the site (including, without limitation, damage to walls, floors, pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Paneltech.	
5.3 The Customer specifically acknowledges and accepts that they will be solely liable to Paneltech for all additional costs incurred by Paneltech (including Paneltech profit margin) in providing Goods and and/or Services requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 5.2 (if any)).	8.7	The Customer acknowledges that Paneltech is only responsible for parts that are replaced/supplied by Paneltech and does not at any stage accept any liability in respect of components supplied by any other third party that subsequently fail and are found to be the source of the failure, the Customer agrees to indemnify Paneltech against any loss or damage to the Goods, or caused thereby, or any part thereof howsoever arising.	(b) The responsibility of the Customer to ensure that access is suitable to accept the weight of laden trucks, front end loaders or other earth moving equipment as may be deemed necessary by Paneltech.	
6. Price and Payment	8.8	Where the Customer has supplied any materials for Paneltech to complete the Goods and/or Services under this contract, the Customer acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in those materials. Paneltech shall not be responsible for any defects in the Goods, any loss or damage howsoever arising from the use of materials supplied by the Customer.	The Customer agrees to be present at the worksite when and as reasonably requested by Paneltech and its employees, contractors and/or agents.	
6.1 At Paneltech's sole discretion the Price shall be either:	8.9	Paneltech shall not be liable for any defect or damage resulting from incorrect or faulty installation of the Goods by any other third party.	12. Underground Locations & Hidden Services	
(a) as indicated on any invoice provided by Paneltech to the Customer; or		The Customer acknowledges and accepts that the supply of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, Paneltech 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 Paneltech will notify the Customer in advance of any such substitution, and also reserves the right to place the Customer's order on hold until such time as Paneltech and the Customer agree to such changes.	12.1 Prior to Paneltech commencing any work the Customer must advise Paneltech of the precise location of all underground services and/or hidden services on the site and clearly mark the same. The underground and/or hidden mains & services the Customer 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.	
(b) Paneltech'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. Services supplied under this contract may at Paneltech's discretion, be quoted on an hourly rate		The Customer acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in Paneltech'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 Paneltech.	Whilst Paneltech will take all care to avoid damage to any services the Customer agrees to indemnify Paneltech 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 12.1.	
6.2 Paneltech reserves the right to change the Price:		Where Paneltech gives advice or recommendations to the Customer regarding a specific course of action and/or the suitability of the worksite for the provision of the Goods and/or Services and such advice or recommendations are not acted upon, then Paneltech shall require the Customer to authorise the provision of Goods/commencement of the Services in writing. Paneltech shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.	13. Compliance with Laws & Approvals	
(a) if a variation to Paneltech's quotation is requested; or			13.1 The Customer and Paneltech 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.	
(b) if unforeseen circumstances or unidentifiable difficulties which are beyond Paneltech's control occur (including, but not limited to, heavy equipment hire charges, availability of machinery, change of design, quantity surveyor fees, health hazards and safety considerations (such as the discovery of asbestos or other toxic substances), prerequisite work by any third party not being carried out substantially or at all, , limitations to accessing the site, inclement weather etc.) which are only discovered on commencement of the Services; or	8.10		13.2 The Customer warrants that the site will comply with any health and safety at work laws relating to building/construction sites and any other relevant safety standards or legislation.	
(c) where the Customer elects to obtain local consents and licences for the Services provided under this contract; or			Paneltech has not and will not at any time assume any obligation as the Customer's agent or otherwise which may be imposed upon the Customer from time to time pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") arising out of the engagement. The parties agree that for the purposes of the HSW Act, Paneltech shall not be the person who controls the place of work in terms of the HSW Act.	
(d) in the event of increases to Paneltech in the cost of Goods and/or Services (including but not limited to variations in foreign currency rates of exchange, freight costs, insurance costs, labour costs etc.).	8.11		The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.	
6.3 Variations will be charged for on the basis of Paneltech's quotation, and will be detailed in writing, and shown as variations on Paneltech's invoice. The Customer shall be required to respond to any variation submitted by Paneltech within ten (10) working days. Failure to do so will entitle Paneltech 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.			14. Title	
6.4 At Paneltech's sole discretion a non-refundable deposit may be required.			14.1 Paneltech and the Customer agree that ownership of the Goods shall not pass until:	

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- (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 Paneltech and must sell, dispose of or return the resulting product to Paneltech as it so directs.
- (e) the Customer irrevocably authorises Paneltech to enter any premises where Paneltech believes the Goods are kept and recover possession of the Goods.
- (f) Paneltech 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 Paneltech.
- (h) Paneltech may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 15. Personal Property Securities Act 1999 ("PPSA")**
- 15.1 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 and/or collateral (account) – being a monetary obligation of the Customer to Paneltech for Services – that have previously been supplied and that will be supplied in the future by Paneltech to the Customer.
- 15.2 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 Paneltech may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register; indemnify, and upon demand reimburse, Paneltech for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Paneltech; and
- (d) immediately advise Paneltech 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.
- 15.3 Paneltech and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 15.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 15.5 Unless otherwise agreed to in writing by Paneltech, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 15.6 The Customer shall unconditionally ratify any actions taken by Paneltech under clauses 15.1 to 15.5.
- 16. Security and Charge**
- 16.1 In consideration of Paneltech 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, 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).
- 16.2 The Customer indemnifies Paneltech from and against all Paneltech's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Paneltech's rights under this clause.
- 16.3 The Customer irrevocably appoints Paneltech and each director of Paneltech as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Customer's behalf.
- 17. Customer's Disclaimer**
- 17.1 The Customer hereby disclaims any right to rescind, or cancel any contract with Paneltech or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by Paneltech and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.
- 18. Defects**
- 18.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify Paneltech of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Paneltech 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 shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage.
- 18.2 For defective Goods, which Paneltech has agreed in writing that the Customer is entitled to reject, Paneltech's liability is limited to either (at Paneltech's discretion) replacing the Goods or repairing the Goods; and the Customer shall in the first instance provide Paneltech with the opportunity to resolve any aforementioned issues with the Goods prior to involving any other third party.
- 18.3 Goods will not be accepted for return other than in accordance with 18.1 above, and provided that:
- (a) Paneltech has agreed in writing to accept the return of the Goods; and
- (b) the Goods are returned at the Customer's cost within seven (7) days of the delivery date; and
- (c) Paneltech will not be liable for Goods which have not been stored or used in a proper manner; and
- (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 19. Warranty**
- 19.1 Subject to the conditions of warranty set out in clause 19.1 Paneltech warrants that if any defect in any workmanship of Paneltech becomes apparent and is reported to Paneltech within twelve (12) months of the date of delivery (time being of the essence) then Paneltech will either (at Paneltech's sole discretion) replace or remedy the workmanship.
- 19.2 The conditions applicable to the warranty given by clause 19.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
- (i) failure on the part of the Customer to properly maintain any Goods; or
- (ii) failure on the part of the Customer to follow any instructions or guidelines provided by Paneltech; or
- (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
- (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
- (v) fair wear and tear, any accident or act of God.
- (b) the warranty shall cease and Paneltech shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Paneltech's consent.
- (c) in respect of all claims Paneltech shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- For Goods not manufactured by Paneltech, the warranty shall be the current warranty provided by the manufacturer of the Goods. Paneltech 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.
- Consumer Guarantees Act 1993**
- 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 do not apply to the supply of Goods by Paneltech to the Customer.
- Intellectual Property**
- Where Paneltech has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Paneltech. Under no circumstances may such designs, drawings and documents be used without the express written approval of Paneltech.
- The Customer warrants that all designs, specifications or instructions given to Paneltech will not cause Paneltech to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Paneltech against any action taken by a third party against Paneltech in respect of any such infringement.
- The Customer agrees that Paneltech may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Paneltech has created for the Customer.
- Default and Consequences of Default**
- 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 Paneltech's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- If the Customer owes Paneltech any money the Customer shall indemnify Paneltech from and against all costs and disbursements incurred by Paneltech in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Paneltech's collection agency costs, and bank dishonour fees).
- Further to any other rights or remedies Paneltech may have under this contract, if a Customer has made payment to Paneltech, 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 Paneltech under this clause 22 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.
- Without prejudice to Paneltech's other remedies at law Paneltech shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Paneltech shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Paneltech becomes overdue, or in Paneltech'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 Paneltech;
- (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.
- Liquidated Damages**
- Liquidated Damages shall only apply in the event that negligence on Paneltech's part occurs and means that Practical Completion has not been achieved by the end of the working period as previously agreed to. In this instance only, the Customer shall be entitled to liquidated damages equivalent to the amount as previously agreed to for each day after the working period that the Services remain uncompleted, continuing until either Practical Completion has been achieved or the Customer has taken possession of the worksite whichever is the earliest.
- In the event that there is no agreed amount pertaining to liquidated damages, then liability will be limited in accordance with clause 30.3 Paneltech's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods
- Liquidated damages applied under this contract may only be deducted from the final progress payment, and in the event there is a shortfall then such shortfall shall become a debt due and payable by Paneltech to the Customer.
- Dispute Resolution**
- If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. The arbitration should be under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.
- Cancellation**
- Without prejudice to any other remedies Paneltech may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Paneltech may suspend or terminate the supply of Goods to the Customer. Paneltech will not be liable to the Customer for any loss or damage the Customer suffers because Paneltech has exercised its rights under this clause.
- Paneltech may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Paneltech shall repay to the Customer any money paid by the Customer for the Goods. Paneltech shall not be liable for any loss or damage whatsoever arising from such cancellation.
- In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Paneltech as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 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.
- Construction Contracts Act 2002**
- The Customer hereby expressly acknowledges that:
- (a) Paneltech has the right to suspend the provision of works/Services within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer, and:
- (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or
- (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
- (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to Paneltech by a particular date; and
- (iv) Paneltech has given written notice to the Customer of its intention to suspend the provision of Works/Services under the construction contract.
- (b) if Paneltech suspends the provision of works/Services, 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 Customer or by any person claiming through the Customer; 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 Paneltech exercises the right to suspend the provision of works/Services, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to Paneltech under the Contractual Remedies Act 1979; or
- (ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of Paneltech suspending the provision of works/Services under this provision.
- Privacy Act 1993**
- The Customer authorises Paneltech or Paneltech's agent to:
- (a) access, collect, retain and use any information about the Customer;
- (i) (including 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 Paneltech from the Customer directly or obtained by Paneltech 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.
- Where the Customer is an individual the authorities under clause 27.1 are authorities or consents for the purposes of the Privacy Act 1993.
- The Customer shall have the right to request Paneltech for a copy of the information about the Customer retained by Paneltech and the right to request Paneltech to correct any incorrect information about the Customer held by Paneltech.
- Unpaid Seller's Rights**
- Where the Customer has left any item with Paneltech for repair, modification, exchange or for Paneltech to perform any other service in relation to the item and Paneltech has not received or been tendered the whole of any monies owing to it by the Customer, Paneltech shall have, until all monies owing to Paneltech are paid:
- (a) a lien on the item; and
- (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- The lien of Paneltech shall continue despite the commencement of proceedings, or judgment for any monies owing to Paneltech having been obtained against the Customer.
- Service of Notices**
- 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.
- 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.
- General**
- 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.
- 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 Christchurch Courts of New Zealand.
- Paneltech shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Paneltech of these terms and conditions (alternatively Paneltech's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- Neither party to this contract may assign this contract, any payment or any other right, benefit or interest under this contract without the written consent of the other party (which shall not be unreasonably withheld). Paneltech 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 Paneltech's sub-contractors without the authority of Paneltech.
- The Customer agrees that Paneltech may amend these terms and conditions by notifying 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 Paneltech to provide Goods to the Customer.
- 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.
- Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.