

Professional Design Services Limited – Terms & Conditions of Trade

1. **Definitions**
 - 1.1 "PDSL" means Professional Design Services Limited, its successors and assigns or any person acting on behalf of and with the authority of Professional Design Services Limited.
 - 1.2 "Customer" means the person or persons or any person acting on behalf of and with the authority of the Customer requesting PDSL to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and includes the Customer's executors, administrators, successors and permitted assigns.
 - 1.3 "Documentation" means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by PDSL in the course of it conducting, or supplying to the Customer, any Services.
 - 1.4 "Services" means all Services supplied by PDSL to the Customer at the Customer's request from time to time.
 - 1.5 "Fee" means the price payable (plus any Goods and Services Tax ("GST") where applicable) for the Services as agreed between PDSL and the Customer in accordance with clause 5 of this contract.
 2. **Acceptance**
 - 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 Services provided by PDSL.
 - 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 contract between the Customer and PDSL.
 - 2.3 Where PDSL contracts as a builder or head contractor on the Customer's behalf, the Customer accepts that it shall be the responsibility of the builder or head contractor to provide the Customer with all other necessary building contracts and disclosure required under current building legislation.
 - 2.4 In the event that the Services provided by PDSL are the subject to payment on behalf of the Customer, the Customer, including but not limited to, multiple property owners and/or contributors). Irrespective of this clause, the Customer acknowledges that at all times they will be responsible for the payment of any monies and agree to honour their obligation for payment in the event that the third party fails to make payment on behalf of the Customer.
 - 2.5 The Customer accepts that where the Customer deviates from the specifications supplied by PDSL, PDSL shall not be held liable for any damages (including, but not limited to, leaks, structural integrity, etc.), costs of losses that result from such action.
 - 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.
 3. **Errors and Omissions**
 - 3.1 The Customer acknowledges and accepts that PDSL shall, without prejudice, accept no liability in respect of any alleged or actual errors and/or omissions/.
 - (a) resulting from an inadvertent mistake made by PDSL in the formation and/or administration of this contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by PDSL in respect of the Services.
 - 3.2 In the event of 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 PDSL, the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.
 4. **Change in Control**
 - 4.1 The Customer shall notify PDSL 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), change of trustees or business practice). The Customer shall be liable for any loss incurred by PDSL as a result of the Customer's failure to comply with this clause.
 5. **Fee and Payment**
 - 5.1 At PDSL's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by PDSL to the Customer; or
 - (b) the Price as at the date of delivery of the Services according to PDSL's current price list; or
 - (c) PDSL's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
 - 5.2 PDSL reserves the right to change the Price of a variation to PDSL's quotation is requested. Variations will be charged for on the basis of PDSL's quotation, and will be detailed in writing, and shown as variations to PDSL's quotation. The Customer shall be required to respond to any variation submitted by PDSL within ten (10) working days. Failure to do so will entitle PDSL 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.
 - 5.3 At PDSL's sole discretion a non-refundable deposit may be required.
 - 5.4 Time for payment for the Services being of the essence, the Price will be payable by the Customer on the date/s determined by PDSL, which may be:
 - (a) on delivery of the Services;
 - (b) before delivery of the Services;
 - (c) by way of instalment payments in accordance with PDSL's payment schedule;
 - (d) payment for approved Customers shall be 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;
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) any other date to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by PDSL.
 - 5.5 At the agreement of both parties, payment of the Fee may be subject to retention by the Customer of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Customer shall hold the Retention Money for the agreed period following the completion of the Services, during which time all Services are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this contract are to be dealt with in accordance with section 18 of the Construction Contracts Act 2002.
 - 5.6 Payment may be made by cash, cheque, bank cheque, electronic-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Customer and PDSL.
 - 5.7 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 PDSL nor to withhold payment of any invoice because of that invoice is in dispute.
 - 5.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to PDSL an amount equal to any GST PDSL must pay for any supply by PDSL under this or any other contract for providing PDSL's Services. 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.
 6. **Delivery of Services**
 - 6.1 At PDSL's sole discretion delivery of the Services shall take place when:
 - (a) the Services are supplied to the Customer at PDSL's address; or
 - (b) the Services are supplied to the Customer at the Customer's nominated address.
 - 6.2 Delivery of the Services to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this contract.
 - 6.3 PDSL may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
 - 6.4 Any time specified by PDSL for delivery of the Services is an estimate only and PDSL 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 Services to be supplied at the time and place as was arranged between both parties. In the event that PDSL is unable to supply the Services as agreed solely due to any action or inaction of the Customer then PDSL shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.
 7. **Risk**
 - 7.1 Irrespective of whether PDSL retains ownership of any Documentation all risk for such items shall pass to the Customer as soon as such items are delivered to the Customer and shall remain with the Customer until such time as PDSL may repossess the Documentation. The Customer must insure all Documentation on or before delivery.
 - 7.2 PDSL reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Documentation as a result of the Customer's failure to insure in accordance with clause 7.1.
 - 7.3 PDSL shall be entitled to rely on the accuracy of any plans, specifications, geotech or other reports and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, PDSL accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications, reports or other information.
 8. **Nominated Contractors and/or Consultants**
 - 8.1 PDSL shall engage contractor/sub-contractors, as specified in the quotation, acting solely as agent on behalf of the Customer and the following shall apply:
 - (a) PDSL shall be entitled to enter into contracts with such contractors/consultants in the name of the Customer; and
 - (b) the Customer shall be responsible for all payments to such contractors/consultants; and where PDSL pays the contractor's/consultant's account on behalf of the Customer, the Customer shall remain liable to the contractor's/consultant's account together with an account-handling fee within seven (7) days (unless specified otherwise) from the date of submission of the account by PDSL to the Customer; and
 - (d) if the Customer does not reimburse PDSL within seven (7) days from the date of submission of the account in accordance with sub-clause (c) above, PDSL shall be entitled to:
 - (i) charge interest on the amount due per clause 17.1; and/or
 - (ii) enforce any other rights they may have under clause 17.
 - 8.2 PDSL does not warrant the accuracy or quality of the contractor's/consultant's work or warrant that their recommendations are appropriate or adequate or are fit for their purpose or that they are not given negligently. The Customer agrees that they shall not make any demand on PDSL, or commence any legal proceedings against PDSL, and PDSL shall have no liability, whether in negligence or otherwise, to the Customer in relation to any work performed by the contractor/consultant.
 9. **Partial Service**
 - 9.1 If the Customer requires a partial service (i.e. design & documentation only) PDSL will not undertake any site involvement and is not available to sign off on any practical completion certificates or validate construction works. The Customer, by requesting a partial service understands and accepts full duty and responsibility to ensure that all and any of the critical structural and weather tightness detailing outlined in the supplied building consent documentation is constructed in accordance with PDSL's plans. Consequently, PDSL will not be liable (in contract, tort or otherwise) for any claim, damage, liability, loss or expense incurred by the Customer or any person acting on behalf of the Customer in respect of work as described in the construction contract which the documentation prepared by PDSL forms the whole or part of.
 10. **Compliance with Laws**
 - 10.1 The Customer and PDSL 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, including any WorkSafe guidelines regarding health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
 - 10.2 The Customer is responsible for obtaining all licenses, approvals, permits, consents, applications and permits that may be required for the Works.
 - 10.3 PDSL 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, including any subsequent regulations (the "HSW Act") arising from the engagement of Services under this contract. Unless otherwise agreed, the parties agree that for the purposes of the HSW Act, PDSL shall not be the person who controls the place of work in terms of the HSW Act.
 11. **Title**
 - 11.1 PDSL and the Customer agree that where it is intended that the ownership of Documentation is to pass to the Customer that such ownership shall not pass until:
 - (a) the Customer has paid PDSL all amounts owing for the Services; and
 - (b) the Customer has met all other obligations due by the Customer to PDSL in respect of all amounts owing between PDSL and the Customer.
 - 11.2 Receipt by PDSL of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then PDSL's ownership or rights in respect of the Documentation shall continue.
 - 11.3 It is further agreed that:
 - (a) if the Customer is to be the bailee of the Documentation and must return the Documentation to PDSL immediately upon request by PDSL;
 - (b) the Customer holds the benefit of the Customer's insurance of the Documentation on trust for PDSL and must pay to deliver the proceeds of any insurance in the event of the Customer's death or between PDSL and the Customer;
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Documentation, if the Customer sells, disposes or parts with possession of the Documentation then the Customer must hold the proceeds of sale of the Documentation on trust for PDSL and must pay to deliver the proceeds to PDSL on demand;
 - (d) in the event that the Customer or process the Documentation 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 PDSL and must dispose of or return the resulting product to PDSL as PDSL so directs.
 - 11.4 The Customer shall not charge or grant an encumbrance over the Documentation nor grant nor otherwise give away any interest in the Documentation while they remain the property of PDSL.
 12. **Personal Property Securities Act 1999 ("PPSA")**
 - 12.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
 - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Documentation and/or collateral (account) – being a monetary obligation of the Customer to PDSL for Services – that have previously been supplied and that will be supplied in the future by PDSL to the Customer.
 - 12.2 The Customer undertakes to:
 - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which PDSL may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify and upon demand reimburse PDSL for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Documentation charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Documentation and/or collateral (account) in favour of a third party other than PDSL or its assignee or transferee.
 - 12.3 PDSL and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
 - 12.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 128, 131 and 132 of the PPSA in relation to the Documentation.
 - 12.5 Unless otherwise agreed in writing by PDSL, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
 - 12.6 The Customer shall unconditionally ratify any actions taken by PDSL under clauses 12.1 to 12.5.
 13. **Security and Charge**
 - 13.1 In consideration of PDSL agreeing to supply Services, 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).
 - 13.2 The Customer indemnifies PDSL from and against all PDSL's costs and disbursements including legal costs of a solicitor and own client basis incurred in exercising PDSL's rights under this clause.
 - 13.3 The Customer irrevocably appoints PDSL and each director of PDSL as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Customer's behalf.
 14. **Defects**
 - 14.1 The Customer shall inspect the Services on delivery and shall within seven (7) days of delivery notify PDSL of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Customer shall afford PDSL an opportunity to inspect the Services within a reasonable time following delivery if the Customer believes the Services are defective in any way. If the Customer shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
 - 14.2 For defective Services, which PDSL has agreed in writing that the Customer is entitled to reject, PDSL's liability is limited to either (a) the cost of rectifying the Services or (b) rectifying the Services provided that the Customer has complied with the provisions of clause 14.1.
 15. **Consumer Guarantees Act 1993**
 - 15.1 If the Customer is acquiring Services 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 Services by PDSL to the Customer.
 16. **Intellectual Property**
 - 16.1 Where PDSL has designed, drawn or developed Documentation for the Customer, then the copyright in any such Documentation shall remain the property of PDSL. Under no circumstances may such designs, drawings and documents be used without the express written approval of PDSL.
 - 16.2 The Customer warrants that all designs, specifications or instructions given to PDSL will not cause PDSL to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify PDSL against any action taken by a third party against PDSL in respect of any such infringement.
 - 16.3 Designs, drawings or sketches furnished by PDSL, dummies, models or like devices made or prepared by PDSL, or made from PDSL's original design, or from a design furnished by the Customer, remain the exclusive property of PDSL unless otherwise agreed upon in writing. They shall not be used for any purpose other than that nominated by PDSL and no ideas obtained there from may be used without the consent of PDSL. PDSL shall be entitled to compensation from the Customer for any unauthorised use of such items.
 - 16.4 The Customer shall not be entitled to use PDSL's name or the name of any director, employee or agent of PDSL on any marketing or like material unless PDSL provides their written consent.
 - 16.5 Where the Customer provides PDSL any materials including sketches, photographs, drawings, plans or concepts upon which PDSL is to base the work (including, but not limited to incomplete work from a previous architect engaged by the Customer), the Customer grants PDSL a licence to use and reproduce any of the materials for the express purpose of completing the work under this contract. The Customer shall also indemnify and keep indemnified PDSL at all times against all actions, proceedings, claims, demands, liabilities, losses, expenses or interest, and all costs, losses, losses of profit, damages and expenses whatsoever which may be taken against PDSL or incurred or become payable by PDSL resulting or arising from any claim or infringement of any patent, registered design, trademark, copyright or any other property interest of a third party which may result out of the use by PDSL of the materials.
 - 16.6 Designs submitted by PDSL on a speculative basis shall remain the property of PDSL. They shall not be used for any purpose other than that nominated by PDSL, and no ideas obtained there from may be used without the consent of PDSL. PDSL shall be entitled to compensation from the Customer for any unauthorised use of such sketches and dummies.
 - 16.7 The Customer shall retain the original designs of the Services. The documents and drawings or record of the Services and shall not be entered into an electronic copy of the design.
 - 16.8 The Customer is licensed to use any materials, documents and drawings designed by PDSL for which the documents were intended, provided that:
 - (a) the entitlement applies only to the site or that part of the site to which the design relates;
 - (b) PDSL has completed the particular stage or stages of the Services for which PDSL has been commissioned; and
 - (c) Fees properly due to PDSL in accordance with this Agreement have been paid.
 - 16.9 In the event the Services are terminated during any particular stage of the Services, then the Customer shall only be licensed to use those documents and drawings which have been completed or are in progress at the time of termination. The documents and drawings for a partially completed stage may only be used with the written consent of PDSL which consent may include, but not be limited to, conditions in relation to payment of fee, including license fees, recognition of PDSL's responsibility for incomplete documents and drawings and any other conditions which may be deemed reasonable. Such consent shall not be unreasonably withheld.
 - 16.10 Where the Customer wishes to reproduce the design on another site or another part of the site, then the Customer may only do so with the written consent of PDSL which consent may include, but not be limited to, a condition in relation to the payment of an additional fee as PDSL deems fit.
 - 16.11 The Customer agrees that PDSL may (at no cost) use for the purposes of marketing or entry into any competition, any Documentation which PDSL has created for the Customer.
17. **Default and Consequences of Default**
 - 17.1 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 PDSL's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
 - 17.2 If the Customer owes PDSL any money the Customer shall indemnify PDSL from and against all costs and disbursements incurred by PDSL in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, PDSL collection agency costs, and bank dishonour fees).
 - 17.3 Further to any amount owed to PDSL 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 PDSL under this clause 17, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this contract.
 - 17.4 Without prejudice to clause 17.3, other remedies at law PDSL shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to PDSL shall, whether or not due for payment, become immediately payable if:
 - (a) any money payable to PDSL becomes overdue; or in PDSL'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 PDSL;
 - (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.
 18. **Cancellation**
 - 18.1 Without prejudice to any other remedies PDSL may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions PDSL may suspend or terminate the supply of Services to the Customer. PDSL will not be liable to the Customer for any loss or damage the Customer suffers because PDSL has exercised its rights under these terms.
 - 18.2 PDSL may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time where the Services are commenced by giving written notice to the Customer. On giving such notice PDSL shall repay to the Customer any money paid by the Customer for the Services. PDSL shall not be liable for any loss or damage whatsoever arising from such cancellation.
 - 18.3 In the event that the Customer cancels delivery of the Services the Customer shall be liable for any and all loss incurred (whether direct or indirect) by PDSL as a direct result of the cancellation (including, but not limited to, any loss of profits).
 19. **Privacy Act 1993**
 - 19.1 The Customer authorises PDSL or PDSL'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 PDSL from the Customer directly or obtained by PDSL 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.
 - 19.2 Where the Customer is an individual the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 1993.
 - 19.3 The Customer shall have the right to request PDSL for a copy of the information about the Customer retained by PDSL and the right to request PDSL to correct any incorrect information about the Customer held by PDSL.
 20. **Construction Contracts Act 2002**
 - 20.1 The Customer hereby expressly acknowledges that:
 - (a) PDSL 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 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 PDSL by a particular date; and
 - (iv) PDSL has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.
 - (b) if PDSL 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 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 to terminate 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 completed with.
 - (c) if PDSL exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that the Customer may otherwise have available to PDSL under the Contract with PDSL or any other contract; 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 PDSL suspending work under this provision.
 21. **Indemnity**
 - 21.1 Except as is specified in clause 14 the liability limitations of PDSL, its partners, associates, and employees shall be limited to the amount of the cover provided under PDSL's Professional Indemnity Insurance Policy.
 - 21.2 The Client agrees to indemnify PDSL's partners, associates, employees and any other person who may be sought to be made liable in excess of the limit of liability described in clause 21.1 in respect of any activity arising from or connected with these terms in respect of any claim of whatever kind that may be made by any person and any costs and expenses incurred by PDSL in the defence of such claim.
 - 21.3 PDSL shall be deemed to have been discharged from all liability in respect of the Services, whether under the law of contract or tort, on the expiration of, unless otherwise agreed, one year from the date of either practical completion or the termination of the Services, whichever is the earlier date.
 22. **Service of Notices**
 - 22.1 Any written notice given under this contract shall be deemed to have been given and received:
 - (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this contract;
 - (c) by sending it by registered post to the address of the other party as stated in this contract; or
 - (d) 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;
 - 22.2 If the notice is sent to the other party's last known email address, PDSL shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
 23. **Trusts**
 - 23.1 If the Customer at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not PDSL may have notice of the Trust, the Customer covenants with PDSL as follows:
 - (a) the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust or any other person;
 - (b) the Customer shall indemnify PDSL for any loss or damage which the Customer now or subsequently may have against the Trust and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Customer will not without consent in writing of PDSL (PDSL will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.
 - 23.2 If the Customer at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not PDSL may have notice of the Trust, the Customer covenants with PDSL as follows:
 - (a) the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust or any other person;
 - (b) the Customer shall indemnify PDSL for any loss or damage which the Customer now or subsequently may have against the Trust and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Customer will not without consent in writing of PDSL (PDSL will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.
 24. **General**
 - 24.1 In 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).
 - 24.2 The failure by either party to enforce any provision of these terms and conditions shall not be taken 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 by the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
 - 24.3 These terms and conditions shall apply to all Services but shall not be relieved from the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand. PDSL may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
 - 24.4 The Customer cannot licence or assign without the written approval of PDSL.
 - 24.5 Without prejudice to 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 PDSL to provide Goods to the Customer.
 - 24.6 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.
 - 24.7 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.
 - 24.8
 - 24.9

Please note that a larger print version of these terms and conditions is available from PDSL on request.