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## Vision Painters Limited – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 "Vision Painters" means Vision Painters Limited, its successors and assigns or any person acting on behalf of and with the authority of Vision Painters Limited.
- 1.2 "Customer" means the person/s or any person acting on behalf of and with the authority of the Customer requesting Vision Painters 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
  - (c) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.3 "Goods" means all Goods or Services supplied by Vision Painters to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between Vision Painters and the Customer in accordance with clause 5 below.

### 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 delivery of the Goods.
- 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 Vision Painters.
- 2.3 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.

### 3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that Vision Painters 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 Vision Painters 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 Vision Painters in respect of the Services.
- 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 wilful misconduct of Vision Painters; 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 give Vision Painters 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 Vision Painters as a result of the Customer's failure to comply with this clause.

### 5. Price and Payment

- 5.1 At Vision Painters's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by Vision Painters to the Customer; or
  - (b) the Price as at the date of delivery of the Goods according to Vision Painters's current price list; or
  - (c) Vision Painters'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 Vision Painters reserves the right to change the Price if a variation to Vision Painters's quotation is requested. Any variation from the plan of scheduled services or specifications (including, but not limited to, any variation as a result of additional Services required due to unforeseen circumstances such as limitations to accessing the site, change of design, prerequisite work by any third party not being completed or as a result of increases to Vision Painters in the cost of labour, materials or overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond Vision Painters's control and will be charged for on the basis of Vision Painters's quotation and will be shown as variations on the invoice. The Customer shall be required to respond to any variation submitted by Vision Painters within ten (10) working days. Failure to do so will entitle Vision Painters to add the cost of the variation to the Price. Payment for all variations must be made in full at their time of completion.
- 5.3 At Vision Painters's sole discretion a non-refundable deposit may be required.
- 5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Vision Painters, which may be:
- (a) on delivery of the Goods;
  - (b) before delivery of the Goods;
  - (c) by way of instalments/progress payments in accordance with Vision Painters's payment schedule;
  - (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;
  - (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 Customer by Vision Painters.
- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Customer and Vision Painters.
- 5.6 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 Vision Painters nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.7 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Vision Painters an amount equal to any GST Vision Painters must pay for any supply by Vision Painters under this or any other contract for the sale of the Goods. The

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## **Vision Painters Limited – Terms & Conditions of Trade**

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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 Goods**

- 6.1 Delivery (“**Delivery**”) of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer’s nominated carrier takes possession of the Goods at Vision Painters’s address; or
  - (b) Vision Painters (or Vision Painters’s nominated carrier) delivers the Goods to the Customer’s nominated address even if the Customer is not present at the address.
- 6.2 At Vision Painters’s sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 6.3 Any time specified by Vision Painters for delivery of the Goods is an estimate only. The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. Vision Painters will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. In the event that the Customer is unable to take delivery of the Goods as arranged then Vision Painters shall be entitled to charge a reasonable fee for redelivery and/or storage.

### **7. Risk**

- 7.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Vision Painters is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Vision Painters is sufficient evidence of Vision Painters’s rights to receive the insurance proceeds without the need for any person dealing with Vision Painters to make further enquiries.
- 7.3 If the Customer requests Vision Painters to leave Goods outside Vision Painters’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.
- 7.4 Where the Customer is to supply Vision Painters with any design specifications the Customer shall be responsible for providing accurate data. Vision Painters shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Customer
- 7.5 The Customer shall be liable for any loss or damage whatsoever caused in the event that the Goods are fitted, serviced or operated incorrectly, or adapted for use other than the purpose that the Goods were intended for, or any part thereof however arising.
- 7.6 The Customer acknowledges that Goods supplied may exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. Vision Painters will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 7.7 The Customer acknowledges that where an anodised surface finish has been selected, slight colour variation may occur between the main unit frame and any installation trims used due to the difference in aluminium alloys available and manufacturing standards and tolerances shall not be deemed to be a defect in the Goods.
- 7.8 The Customer warrants they will not exceed any specified weights/load limits of the Goods. Vision Painters shall not be liable for any damage caused to the Goods as a result of the Customer exceeding any specified weights/load limits.
- 7.9 The Customer acknowledges that Goods supplied may:
- (a) fade or change colour over time; and
  - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
  - (c) mark or stain if exposed to certain substances; and
  - (d) be damaged or disfigured by impact or scratching.
- 7.10 The Customer shall be responsible for ensuring that the Goods ordered are suitable for their intended use.
- 7.11 The Customer warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and are of suitable capacity to handle the Goods once installed. If for any reason that Vision Painters, or employees of Vision Painters, reasonably form the opinion that the Customer’s premises is not safe for the installation of Goods to proceed then Vision Painters shall be entitled to delay installation of the Goods until Vision Painters is satisfied that it is safe for the installation to proceed.
- 7.12 The Customer acknowledges and agree that where Vision Painters has performed temporary repairs or welding of joints or metal tears, that:
- (a) Vision Painters offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
  - (b) Vision Painters will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair; and
  - (c) Vision Painters shall not be held liable for any losses or damages resulting from the welding being misused.

### **8. Accuracy of Customer’s Plans and Measurements**

- 8.1 Vision Painters shall be entitled to rely on the accuracy of any plans, specifications (including, but not limited to CAD drawings) 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, Vision Painters accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.2 All customary industry tolerances shall apply to the dimensions and measurements of the Goods unless Vision Painters and the Customer agree otherwise in writing.

### **9. Access**

- 9.1 The Customer shall ensure that Vision Painters has clear and free access to the work site at all times to enable them to undertake the Services. Vision Painters shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Vision Painters.
- 9.2 It is the responsibility of the Customer to ensure that access is suitable to accept the weight of laden trucks, front end loaders and/or other unloading equipment as may be deemed necessary by Vision Painters.

### **10. Underground Locations and Hidden Services**

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## Vision Painters Limited – Terms & Conditions of Trade

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- 10.1 Prior to Vision Painters commencing any work the Customer must advise Vision Painters of the precise location of all underground services on the site and clearly mark the same. The underground 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.
- 10.2 Whilst Vision Painters will take all care to avoid damage to any underground services the Customer agrees to indemnify Vision Painters 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 10.1.
- 11. Compliance with Laws**
- 11.1 The Customer and Vision Painters shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 11.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 11.3 The Customer agrees that the site will comply with Health and Safety at Work Act 2015 (HSW) laws relating to building/construction sites and any other relevant safety standards or legislation.
- 12. Title**
- 12.1 Vision Painters and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Vision Painters all amounts owing to Vision Painters; and
  - (b) the Customer has met all of its other obligations to Vision Painters.
- 12.2 Receipt by Vision Painters 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.
- 12.3 It is further agreed that until ownership of the Goods passes to the Customer in accordance with clause 12.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to Vision Painters on request.
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Vision Painters and must pay to Vision Painters the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Vision Painters and must pay or deliver the proceeds to Vision Painters on demand.
  - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Vision Painters and must sell, dispose of or return the resulting product to Vision Painters as it so directs.
  - (e) the Customer irrevocably authorises Vision Painters to enter any premises where Vision Painters believes the Goods are kept and recover possession of the Goods.
  - (f) Vision Painters 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 Vision Painters.
  - (h) Vision Painters may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 13. Personal Property Securities Act 1999 ("PPSA")**
- 13.1 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 Vision Painters for Services – that have previously been supplied and that will be supplied in the future by Vision Painters to the Customer.
- 13.2 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 Vision Painters may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, Vision Painters 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 Vision Painters; and
  - (d) immediately advise Vision Painters 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.
- 13.3 Vision Painters and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 13.5 Unless otherwise agreed to in writing by Vision Painters, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.6 The Customer shall unconditionally ratify any actions taken by Vision Painters under clauses 13.1 to 13.5.
- 14. Security and Charge**
- 14.1 In consideration of Vision Painters 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).
- 14.2 The Customer indemnifies Vision Painters from and against all Vision Painters's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Vision Painters's rights under this clause.

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## Vision Painters Limited – Terms & Conditions of Trade

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- 14.3 The Customer irrevocably appoints Vision Painters and each director of Vision Painters as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer's behalf.
- 15. Defects**
- 15.1 The Customer shall inspect the Goods on delivery and shall within forty-eight (48) hours of delivery (time being of the essence) notify Vision Painters of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Vision Painters 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. For defective Goods, which Vision Painters has agreed in writing that the Customer is entitled to reject, Vision Painters's liability is limited to either (at Vision Painters's discretion) replacing the Goods or repairing the Goods.
- 15.2 Goods will not be accepted for return other than in accordance with 15.1 above, and provided that:
- (a) Vision Painters has agreed in writing to accept the return of the Goods; and
  - (b) the Goods are returned at the Customer's cost within forty-eight (48) hours of the delivery date; and
  - (c) Vision Painters 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.
- 15.3 Vision Painters may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of fifteen percent (15%) of the value of the returned Goods plus any freight.
- 15.4 Subject to clause 15.1, non-stocklist items or Goods made to the Customer's specifications are not acceptable for credit or return.
- 16. Warranty**
- 16.1 Subject to the conditions of warranty set out in clause 16.1 Vision Painters warrants that if any defect in any workmanship of Vision Painters becomes apparent and is reported to Vision Painters within twelve (12) months of the date of delivery (time being of the essence) then Vision Painters will either (at Vision Painters's sole discretion) replace or remedy the workmanship.
- 16.2 The conditions applicable to the warranty given by clause 16.1 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 Vision Painters; 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 Vision Painters shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Vision Painters's consent.
  - (c) in respect of all claims Vision Painters 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.
- 16.3 For Goods not manufactured by Vision Painters, the warranty shall be the current warranty provided by the manufacturer of the Goods. Vision Painters 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.
- 16.4 In the case of second hand Goods, the Customer acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by Vision Painters as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. Vision Painters shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 17. Consumer Guarantees Act 1993**
- 17.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by Vision Painters to the Customer.
- 18. Intellectual Property**
- 18.1 Where Vision Painters has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Vision Painters. Under no circumstances may such designs, drawings and documents be used without the express written approval of Vision Painters.
- 18.2 The Customer warrants that all designs, specifications or instructions given to Vision Painters will not cause Vision Painters to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Vision Painters against any action taken by a third party against Vision Painters in respect of any such infringement.
- 18.3 The Customer agrees that Vision Painters may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Vision Painters has created for the Customer.
- 19. Default and Consequences of Default**
- 19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Vision Painters's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Customer owes Vision Painters any money the Customer shall indemnify Vision Painters from and against all costs and disbursements incurred by Vision Painters in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Vision Painters's collection agency costs, and bank dishonour fees).

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## Vision Painters Limited – Terms & Conditions of Trade

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- 19.3 Further to any other rights or remedies Vision Painters may have under this contract, if a Customer has made payment to Vision Painters, 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 Vision Painters under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this contract.
- 19.4 Without prejudice to Vision Painters's other remedies at law Vision Painters shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Vision Painters shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Vision Painters becomes overdue, or in Vision Painters'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 Vision Painters;
  - (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.
20. **Cancellation**
- 20.1 Without prejudice to any other remedies Vision Painters may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Vision Painters may suspend or terminate the supply of Goods to the Customer. Vision Painters will not be liable to the Customer for any loss or damage the Customer suffers because Vision Painters has exercised its rights under this clause.
- 20.2 Vision Painters 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 Vision Painters shall repay to the Customer any money paid by the Customer for the Goods. Vision Painters shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 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 Vision Painters as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
21. **Privacy Act 1993**
- 21.1 The Customer authorises Vision Painters or Vision Painters'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 Vision Painters from the Customer directly or obtained by Vision Painters from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 21.2 Where the Customer is an individual the authorities under clause 21.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 21.3 The Customer shall have the right to request Vision Painters for a copy of the information about the Customer retained by Vision Painters and the right to request Vision Painters to correct any incorrect information about the Customer held by Vision Painters.
22. **Service of Notices**
- 22.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this contract;
  - (c) by sending it by registered post to the address of the other party as stated in this contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party's last known email address.
- 22.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
23. **Trusts**
- 23.1 If the Customer at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Vision Painters may have notice of the Trust, the Customer covenants with Vision Painters as follows:
- (a) the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
  - (b) the Customer 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 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 Vision Painters (Vision Painters 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.

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## Vision Painters Limited – Terms & Conditions of Trade

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**24. Construction Contract Act 2002**

24.1 The Customer hereby expressly acknowledges that:

- (a) Vision Painters 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 Vision Painters by a particular date; and
  - (iv) Vision Painters has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.
- (b) if Vision Painters 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 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 Vision Painters exercises the right to suspend work, the exercise of that right does not:
  - (i) affect any rights that would otherwise have been available to Vision Painters 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 Vision Painters suspending work under this provision.

**25. General**

- 25.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 25.3 Vision Painters 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 Vision Painters of these terms and conditions (alternatively Vision Painters's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 25.4 Vision Painters may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 25.5 The Customer cannot licence or assign without the written approval of Vision Painters.
- 25.6 Vision Painters 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 Vision Painters's sub-contractors without the authority of Vision Painters.
- 25.7 The Customer agrees that Vision Painters 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 Vision Painters to provide Goods to the Customer.
- 25.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 25.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.