

# The Polished Concrete Waikato Limited – Terms & Conditions of Trade

<b>1. Definitions</b> <p>1.1 "PCWL" means The Polished Concrete Waikato Limited, its successors and assigns or any person acting on behalf of and with the authority of the Client.</p> <p>1.2 "Client" means the person ordering the Works as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.</p> <p>1.3 "Works" means all Works or Materials supplied by PCWL to the Client at the Client's request from the time (where the contract so permits) the terms "Works" and "Materials" are used in writing by PCWL to the Client (and where the "Equipment" means all Equipment including any accessories supplied or hired by PCWL to the Client (and where the contract so permits) shall include any supply of Works). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorization form provided by PCWL to the Client.</p> <p>1.5 "Price" means the Price payable for the Works as agreed between PCWL and the Client in accordance with clause 5 below.</p>	<b>13. Personal Property Securities Act 1999 ("PPSA")</b> <p>13.1 The Client agrees to these terms and conditions in writing the Client acknowledges and agrees that:</p> <p>(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and</p> <p>(b) a security interest is taken in all Materials previously supplied by PCWL to the Client (if any) and all Materials that will be supplied in the future by PCWL to the Client.</p>	<p>(ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment;</p> <p>(iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to PCWL by a particular date; and</p> <p>(iv) PCWL has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.</p>
<b>2. Acceptance</b> <p>2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works/Equipment.</p> <p>2.2 These terms and conditions with PCWL's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and PCWL.</p>	<b>13.2. The Client undertakes:</b> <p>(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 PCWL may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;</p> <p>(b) indemnify, and upon demand reimburse, PCWL for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials charged thereto;</p> <p>(c) not register a financing change statement or a charge demand without the prior written consent of PCWL; and</p> <p>(d) immediately advise PCWL of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.</p>	<p>(b) if PCWL suspends work, it:</p> <p>(i) is not in breach of contract and</p> <p>(ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and</p> <p>(iii) is entitled to an extension of time to complete the contract; and</p> <p>(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.</p> <p>(c) if PCWL exercises the right to suspend work, the exercise of that right does not:</p> <p>(i) affect any rights that would otherwise have been available to PCWL under the Contractual Remedies Act 1979; or</p> <p>(ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of PCWL suspending work under this provision.</p>
<b>3. Authorised Representatives</b> <p>3.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to PCWL as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any materials or Works on the Client's behalf and/or to request variation to the Works/Equipment on the Client's behalf (such authority to continue until all requested Works/Equipment have been completed or the Client otherwise notifies PCWL in writing that said person is no longer the Client's duly authorised representative).</p> <p>3.2 In the event that the Client's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise PCWL in writing of the parameters of the limited authority granted to that representative.</p>	<b>13.3. PCWL waives its rights as a debtor under sections 116, 120(1), 121, 122, 125, 126, 127, 129, 131 and 132 of the PPSA.</b> <p>13.4 The Client waives its rights as a debtor under sections 116, 120(1), 121, 122, 125, 126, 127, 129, 131 and 132 of the PPSA.</p> <p>13.5 Unless otherwise agreed in writing by PCWL, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.</p> <p>13.6 The Client shall unconditionally ratify any actions taken by PCWL under clauses 13.1 to 13.5.</p>	<b>28.1. General</b> <p>The failure by PCWL to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect PCWL'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.</p> <p>28.2 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 Hamilton Courts of New Zealand.</p> <p>28.3 PCWL shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by PCWL of these terms and conditions (alternatively PCWL's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works/Equipment).</p> <p>28.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by PCWL, nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>28.5 PCWL may license or sub-contract all or any part of its rights and obligations without the Client's consent.</p> <p>28.6 The Client agrees that PCWL may amend these terms and conditions at any time. If PCWL makes a change to these terms and conditions, then that change will take effect from the date on which PCWL notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for PCWL to provide any Works/Equipment to the Client.</p> <p>28.7 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.</p> <p>28.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.</p>
<b>4. Change in Control</b> <p>4.1 The Client shall give PCWL, not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's affairs (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by PCWL as a result of the Client's failure to comply with this clause.</p>	<b>14. Security and Charge</b> <p>14.1 In consideration of PCWL agreeing to supply the Materials, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).</p> <p>14.2 The Client indemnifies PCWL from and against all PCWL's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising PCWL's rights under this clause.</p> <p>14.3 The Client irrevocably appoints PCWL and each director of PCWL as the Client's true and lawful attorney 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 Client's behalf.</p>	
<b>5. Price and Payment</b> <p>5.1 At PCWL's sole discretion the Price shall be either:</p> <p>(a) as indicated on invoices provided by PCWL to the Client in respect of Works performed or Materials/Equipment supplied; or</p> <p>(b) PCWL's quoted Price (subject to clause 5.2) which shall be binding upon PCWL provided that the Client shall accept PCWL's quoted Price in writing within thirty (30) days.</p> <p>5.2 PCWL reserves the right to change the Price:</p> <p>(a) if a variation to the Materials/Equipment which are to be supplied is requested; or</p> <p>(b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or</p> <p>(c) where additional Works are required due to the discovery of hidden or identifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, pre-site work by a third party, or any other unforeseen circumstances, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc) which are only discovered on commencement of the Works; or</p> <p>(d) in the event of increases to PCWL in the cost of labour or materials which are beyond PCWL's control.</p> <p>5.3 At PCWL's sole discretion a deposit may be required.</p> <p>5.4 Time for payment for the Works being in the essence, the Price will be payable by the Client on the date/s determined by PCWL which may be:</p> <p>(a) on completion of the Works; or</p> <p>(b) for certain approved Client's, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;</p> <p>(c) the date specified on any invoice or other form as being the date for payment; or</p> <p>(d) failing any notice to the date specified on any invoice or other form as being the date for payment.</p> <p>5.5 Payment may be made by cheque, electronic-finance banking, or by any other method as agreed to between the Client and PCWL.</p> <p>5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to PCWL an amount equal to any GST PCWL must pay for any supply by PCWL under this or any other agreement for the sale of the Materials/Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays GST on any other goods and services. The Client's duties and obligations that may be applicable in addition to the Price except where they are expressly included in the Price.</p>	<b>15. Client's Disclaimer</b> <p>15.1 The Client releases, disclaims any right to rescind, or cancel any contract with PCWL, or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made by the Client by PCWL and the Client acknowledges that the Works are bought relying solely upon the Client's skill and judgment.</p> <b>16. Defects</b> <p>16.1 The Client shall inspect the Materials/Equipment on delivery and shall within seven (7) days of delivery (time being of the essence) notify PCWL of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford PCWL an opportunity to inspect the Materials/Equipment within a reasonable time following delivery if the Client believes the Materials/Equipment are defective in any way. If the Client shall fail to comply with these provisions the Materials/Equipment shall be presumed to be free from any such defect or damage. For defective Materials/Equipment, which PCWL has agreed in writing that the Client is entitled to reject, PCWL's liability is limited to either (at PCWL's discretion) replacing the Materials/Equipment or repairing the Materials/Equipment.</p> <b>17. Returns</b> <p>17.1 Returns will only be accepted provided that:</p> <p>(a) the Client has complied with the provisions of clause 16.1; and</p> <p>(b) PCWL has agreed in writing to accept the return of the Materials; and</p> <p>(c) the Materials are returned at the Client's cost within seven (7) days of the delivery date; and</p> <p>(d) PCWL will not be liable for Materials which have not been stored or used in a proper manner; and</p> <p>(e) the Materials 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.</p> <p>17.2 Non-stockist items or Materials made to the Client's specifications are under no circumstances acceptable for credit or return.</p>	
<b>6. Delivery</b> <p>6.1 Delivery ("Delivery") of the Materials/Equipment is taken to occur at the time that:</p> <p>(a) the Client or the Client's nominated carrier takes possession of the Materials/Equipment at PCWL's address; or</p> <p>(b) PCWL or PCWL's nominated carrier delivers the Materials/Equipment to the Client's nominated address even if the Client is not present at the address.</p> <p>6.2 At PCWL's sole discretion the cost of delivery is included in the Price.</p> <p>6.3 Subject to clause 6.4 it is PCWL's responsibility to ensure that the Works start as soon as it is reasonably possible.</p> <p>6.4 The Works commencement date will be put back and the completion date extended by whatever time is reasonable in the event that PCWL claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond PCWL's control, including but not limited to any failure by the Client to:</p> <p>(a) make a selection; or</p> <p>(b) have the site ready for the Works; or</p> <p>(c) notify PCWL that the site is ready.</p> <p>6.5 PCWL may deliver the Works/Equipment by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.</p> <p>6.6 Any time or date given by PCWL to the Client is an estimate only. PCWL shall not be liable for any loss or damage whatsoever due to failure by PCWL to deliver the Works/Equipment (or any part of them) promptly or at all, where due to circumstances beyond the reasonable control of PCWL.</p>	<b>18. Warranties</b> <p>18.1 Subject to the conditions of warranty set out in clause 18.2 PCWL warrants that if any defect in any workmanship of PCWL becomes apparent and is reported to PCWL within five (5) years of the date of delivery (time being of the essence) then PCWL will either (at PCWL's sole discretion) replace or remedy the workmanship.</p> <p>18.2 The conditions applicable to the warranty given by clause 18.1 are:</p> <p>(a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:</p> <p>(i) failure on the part of the Client to properly maintain any Materials; or</p> <p>(ii) failure on the part of the Client to follow any instructions or guidelines provided by PCWL; or</p> <p>(iii) any use of any Materials otherwise than for any application specified on a quote or order form; or</p> <p>(iv) the continued use of any Materials after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user;</p> <p>(v) fair wear and tear, any accident or act of God;</p> <p>(b) the warranty shall cease and PCWL shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled by the Client;</p> <p>(c) in respect of all claims PCWL shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.</p> <p>18.3 For Materials not manufactured by PCWL, the warranty shall be the current warranty provided by the manufacturer. The Materials/PCWL shall not be bound or not be responsible for any terms, conditions and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.</p> <p>18.4 To the extent permitted by statute, no warranty is given by PCWL, as to the quality or suitability of the Materials for any purpose and any warranty, express or implied, is excluded. PCWL shall not be responsible for any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising.</p>	
<b>7. Risk</b> <p>7.1 PCWL retains ownership of the Materials under clause 12 then:</p> <p>(a) where PCWL is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials or before delivery. Delivery of the Materials shall be deemed to have taken place immediately upon completion of the Works, or</p> <p>(i) the Client or the Client's nominated carrier takes possession of the Materials at PCWL's address; or</p> <p>(ii) the Materials are delivered by PCWL or PCWL's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).</p> <p>(b) where PCWL is supplying materials and installing the Works, the Client shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.</p> <p>7.2 Notwithstanding the provisions of clause 7.1 if the Client specifically requests PCWL to leave Materials outside PCWL's premises for collection or to deliver the Materials to an unattended location then such Materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately at all times. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.</p> <p>7.3 Where PCWL is required to install the Materials the Client warrants that the structure of the premises or equipment or upon which these Materials are to be installed or erected is sound and will sustain the installation and work incidental thereto and PCWL shall not be liable for any claims, demands, losses, damages, costs and expenses however caused or arising in connection with the installation and work incidental thereto.</p> <p>7.4 Where the Client has supplied materials for PCWL to complete the Works, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. PCWL shall not be responsible for any defects in the Works, any loss or damage to the Materials (or any part thereof), however arising from the use of materials supplied by the Client.</p> <p>7.5 The Client acknowledges that PCWL is only responsible for parts that are replaced by PCWL and that in the event that other parts/Materials, subsequently fail, the Client agrees to indemnify PCWL against any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising.</p> <p>7.6 The Client acknowledges that the presence of plant or tree root growth and/or other blockages may indicate damaged pipe work and therefore where PCWL is requested to merely clear such blockages, PCWL can offer no guarantee against recurrence or of the safety of the pipe during the pipe clearing process. PCWL will immediately advise the Client of the same and shall provide the Client with an estimate for the full repair of the damaged pipe work.</p>	<b>19. Consumer Guarantees Act 1993</b> <p>19.1 If the Client is acquiring Materials for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Materials by PCWL to the Client.</p> <b>20. Intellectual Property</b> <p>20.1 Where PCWL has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then copyright in such designs, drawings, plans, schedules, documents, plans, schedules and products shall remain vested in PCWL and shall only be used by the Client at PCWL's discretion.</p> <p>20.2 The Client warrants that all designs, specifications or instructions given to PCWL will not cause PCWL to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify PCWL against any action taken by a third party against PCWL in respect of any such infringement.</p> <p>20.3 The Client agrees that PCWL may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which PCWL has created for the Client.</p>	
<b>8. Access</b> <p>8.1 The Client shall ensure that PCWL has clear and free access to the work site at all times to enable them to undertake the Works. PCWL shall be responsible for any loss or damage to the site (including, but not limited to, limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of PCWL.</p>	<b>21. Default and Consequences of Default</b> <p>21.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two (2) per cent above the bank's base rate per calendar month. PCWL's sole discretion such interest shall compound monthly (at such a rate) after as well as before any judgment.</p> <p>21.2 If the Client owes PCWL any money the Client shall indemnify PCWL from and against all costs and disbursements incurred by PCWL in connection with the recovery of such amounts (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, PCWL's collection agency costs, and bank dishonour fees).</p> <p>21.3 Without prejudice to any other remedies PCWL may have, if at any time the Client is in breach of any obligation (not those relating to payment) under these terms and conditions PCWL may suspend or terminate the supply of Works to the Client. PCWL will not be liable to the Client for any loss or damage the Client suffers because PCWL has exercised its rights under this clause.</p> <p>21.4 Where a provision of PCWL's contract is deemed at law PCWL shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to PCWL shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to PCWL becomes overdue, or in PCWL's opinion the Client will be unable to make a payment when it falls due;</p> <p>(b) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(c) the receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.</p>	
<b>9. Underground Locations</b> <p>9.1 Prior to PCWL commencing any work the Client must advise PCWL of the precise location of all underground services on the site and clearly mark the same. The underground mains &amp; services the Client must identify include, but are not limited to, electrical services, pumping services, sewer connections, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, of pumping mains, and any other services that may be on site.</p> <p>9.2 Whilst PCWL will take all care to avoid damages to any underground services the Client agrees to indemnify PCWL in respect of all any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 9.1.</p>	<b>22. Compliance with Laws</b> <p>22.1 The Client and PCWL shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.</p> <p>22.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.</p> <p>22.3 The Client agrees that the site will comply with any applicable health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.</p>	
<b>10. Accuracy of Client's Plans and Measurements</b> <p>10.1 PCWL shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, PCWL accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.</p> <p>10.2 In the event the Client gives information relating to measurements and quantities of the Materials required to complete the Works, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or PCWL places an order based on these measurements and quantities. PCWL accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.</p>	<b>23. Cancellation</b> <p>23.1 PCWL may cancel any contract to which these terms and conditions apply or cancel delivery of Works/Equipment at any time before the Works are commenced by giving written notice to the Client. On giving such notice PCWL shall release the Client any sums paid in respect of the price, less any amounts owing by the Client to PCWL for Works already performed/Equipment already delivered. PCWL shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>23.2 In the event that the Client cancels the delivery of Works/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by PCWL as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> <p>23.3 Cancellation of orders for products made to the Client's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order is placed for such.</p>	
<b>11. Surplus Materials</b> <p>11.1 Unless otherwise stated elsewhere in this contract:</p> <p>(a) only suitable new Materials will be used;</p> <p>(b) demolished Materials remain the Client's property; and</p> <p>(c) Materials that PCWL brings to the site which are surplus remain the property of PCWL.</p>	<b>24. Dispute Resolution</b> <p>24.1 All disputes and differences between the Client and PCWL touching and concerning this agreement shall be referred to arbitration 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.</p> <b>25. Privacy Act 1993</b> <p>25.1 The Client authorises PCWL or PCWL's agent to:</p> <p>(a) access, collect, retain and use any information about the Client:</p> <p>(i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or</p> <p>(ii) for the purpose of marketing products and services to the Client;</p> <p>(b) disclose information about the Client, whether collected by PCWL from the Client directly or obtained by PCWL 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 providing a debt advisory service to the Client.</p> <p>25.2 Where the Client is an individual the authorises under clause 25.1 are authorities or consents to the purposes of the Privacy Act 1993.</p> <p>25.3 The Client shall have the right to request PCWL for a copy of the information about the Client, retained by PCWL and the right to request PCWL, to correct any incorrect information about the Client held by PCWL.</p>	
<b>12. Title</b> <p>12.1 PCWL and the Client agree that ownership of the Materials shall not pass until:</p> <p>(a) the Client has paid PCWL all amounts owing to PCWL; and</p> <p>(b) the Client has met all of its other obligations to PCWL.</p> <p>12.2 Receipt by PCWL 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.</p> <p>12.3 It is further agreed that:</p> <p>(a) until approval of the Materials passes to the Client in accordance with clause 12.1 that the Client is to only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to PCWL on request;</p> <p>(b) the Client holds the benefit of the Client's insurance of the Materials on trust for PCWL and must pay to PCWL the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;</p> <p>(c) the production of these terms and conditions by PCWL shall be sufficient evidence of PCWL's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with PCWL to make further enquiries;</p> <p>(d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for PCWL and must pay and deliver the proceeds to PCWL, on demand;</p> <p>(e) the Client should not convert or process the Materials or interfere with them by other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of PCWL and must sell, dispose of or return the resulting product to PCWL, as it so directs;</p> <p>(f) unless the Materials have become fixtures the Client irrevocably authorises PCWL to enter any premises where PCWL believes the Materials are kept; and recover possession of the Materials;</p> <p>(g) PCWL may recover possession of any Materials in transit whether or not delivery has occurred;</p> <p>(h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials or they remain the property of PCWL;</p> <p>(i) PCWL may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.</p>	<b>26. Equipment Hire</b> <p>26.1 Equipment shall at all times remain the property of PCWL and is returnable on demand by PCWL. In the event that Equipment is not returned to PCWL in the condition in which it was delivered PCWL retains the right to charge the Client the full cost of repairing the Equipment. In the event that Equipment is not returned at all PCWL shall have the right to charge the Client the full cost of replacing the Equipment.</p> <p>26.2 The Client shall:</p> <p>(a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment;</p> <p>(b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;</p> <p>(c) keep the Equipment complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by PCWL to the Client.</p> <p>26.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self-insure, PCWL's interest in the Equipment and agrees to indemnify PCWL against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.</p>	
<b>13. Construction Contract 2002</b> <p>13.1 The Client hereby expressly acknowledges that:</p> <p>(a) PCWL has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client; and</p> <p>(b) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Client; or</p>		

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