

TERMS OF TRADE FOR GOODS AND SERVICES

1. Definitions

Agreement means the contract formed upon Kaneba's acceptance of an Order placed by the Customer, or the Customer's signed acceptance of a Quotation, as described in clause 3.2.

Consent means any consents, approvals, licences, permits and authorisations required by a regulatory agency or otherwise to lawfully undertake the Work or any part of it.

Customer means the client engaging Kaneba to provide the Work and may include any person(s) acting as an agent and/or behalf of a company and/or trust and/or partnership.

Goods means all present and after acquired cladding, consumable materials, fabrication products and accessories, spare parts, inventory, designed products, other products and intellectual property supplied to the Customer.

Intellectual Property means any patents, copyright, trademarks, designs, and any other right granted by the operation of law which confers protection on any written or artistic work created by intellectual effort and all associated intangible assets created as a by-product (including brands, trade names, services, techniques, configurations, know-how, methods, concepts and ideas.)

Laws means all statutes, regulations, planning requirements, by-laws, codes (including the Building Code) and all other relevant laws.

Order means any request for Work accepted by Kaneba, or written Quotation by Kaneba for Work accepted by the Customer.

Parties means the Parties to the Agreement and "Party" means any one of the Parties.

Personnel means Kaneba's employees, contractors, directors and officers, advisers and other authorised representatives.

Price means the price payable by the Customer for the Work agreed between the Parties, or if not agreed, then Kaneba's prevailing rates and charges for that Work.

Project means the project for which the Goods and Services are supplied, as described in the Order.

Quotation means an estimate of the cost of the Work provided by Kaneba.

Services means the services to be provided by Kaneba (and/or Kaneba's contractors, employees and third-party suppliers) as agreed between the Parties (which may include design services, site work, advice, consultancy, commissioning of Goods, preparing documentation and other services).

Sign-off means any certification, verification, testing or other approval (whether required by a regulatory agency or otherwise) relating to or including the Work or any part of it.

Terms means these terms and conditions.

Third Party Goods means all property (including hardware and software) manufactured by persons or entities other than Kaneba, and all services supplied by persons or entities other than Kaneba.

Work means the supply of any Goods or Services by Kaneba to or on behalf of the Customer.

Working Days means days other than Saturday, Sunday, public holidays, or days from 23 December – 6 January.

2. General Rules of Interpretation

- 2.1. Singular words include the plural and vice versa, and where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- 2.2. References to any Party shall mean and include a reference to that Party, its successors, executors or personal representatives (as the case may be), and transferees.
- 2.3. Where more Parties than one are covenanting Parties, the covenants expressed or implied on these Terms bind the covenanting Parties jointly and each of them severally.
- 2.4. Any reference to legislation, statute, regulation, ruling, code, rules or ordinance includes reference to any modification, substitute for, consolidation or re-enactment of it and any regulation, order in council or other instrument from time to time made or issued under such legislation, statute, regulation, ruling, code, rules or ordinance.
- 2.5. Headings are for convenience only and do not affect the interpretation of these Terms except for use as cross-references.
- 2.6. Any covenant not to do anything shall also constitute an obligation not to suffer, permit, cause or assist any other person to do that thing.
- 2.7. All references to Prices, fees and payments in the Agreement shall be exclusive of GST and any other taxes, levies, duties or impositions of a similar nature imposed by any authority, and (unless expressly included in an Order) freight charges, insurance charges and storage costs.

3. Engagement

- 3.1. The Customer engages Kaneba to supply to Goods and/or Services, and Kaneba accepts that engagement, on these Terms.
- 3.2. An Order, together with these Terms constitutes the entire Agreement between the Parties and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing, in relation to the Work or other subject matter of these Terms.
- 3.3. Any documents supplied by the Customer which contain any terms and conditions shall have no effect to the extent that they are inconsistent with these Terms. In the event of any conflict arising between an Order and these Terms, the Terms shall prevail.

4. Reliance on Customer Information

- 4.1. The Customer acknowledges that Kaneba may be required, in the course of providing the Good and Services, to make assessments based on information supplied either by the Customer, or compiled by others. Kaneba will rely on and not verify its accuracy and

completeness. The Customer agrees that Kaneba will not be liable for any loss or damage the Customer or any other person sustains, directly or indirectly, in connection with Kaneba's reliance on that information.

5. Compatibility

- 5.1. There are other sources of products that may appear similar or compatible with the Goods supplied by Kaneba. If any products are obtained from alternative sources, they may not be suitable or compatible for use with Kaneba Goods and Services.

6. Orders

- 6.1. A contract shall not come into existence between the Customer and Kaneba until Kaneba's acceptance of an Order, or a Customer's acceptance of a Quotation by Kaneba.
- 6.2. Any Order accepted by Kaneba will be on these Terms only.

7. Consents and sign-offs

- 7.1. Kaneba is not responsible for the acquisition, or liable for the accuracy, validity or compliance, of any Consent or Sign-off.
- 7.2. The Customer shall be responsible for obtaining, maintaining and administering all Consents and Sign-offs required for the Work (if any) and paying all applicable Consent and Sign-off fees and costs. The Customer warrants that all necessary Consents will be in place prior to Kaneba starting the Work.
- 7.3. Subject to clause 7.2, and assuming the Customer is not in default of its obligations, Kaneba shall upon request provide the Customer with information and documentation as may be reasonably required to enable the Customer to apply for the necessary Consents.
- 7.4. Kaneba is not obliged to carry out any Work that Kaneba reasonably believes does not comply with the required Consents, and may require the Customer to approve a variation to the Work in order to ensure compliance.
- 7.5. The Customer must not rely on, or disclose to any other party, any document provided by Kaneba for the purpose of obtaining or supporting a Consent or Sign-off without Kaneba's prior written approval that the document may be used for that purpose.
- 7.6. If during the Work Kaneba provides any inspection reports, observation notes, installation advice, or other documents or information, such documents and information are not to be treated as quality assurance or compliance advice, and must not be forwarded to any other party, unless expressly stated to be for that purpose.

8. Quotations and Price

- 8.1. A price list is available at the request of the Customer.
- 8.2. Kaneba may provide a written Quotation, which will be valid for 30 days, unless specified differently in the Quotation.
- 8.3. The Customer can accept the Quotation by returning a signed copy of the Quotation to Kaneba, or by otherwise accepting the Quotation in writing or requesting that Kaneba proceeds with the Work;
- 8.4. Kaneba may withdraw the Quotation at any time before the Customer has accepted the Quotation.
- 8.5. Where an estimate of the Price is given for the Work, Kaneba shall not be bound by that estimate.

- 8.6. The Price is subject to reasonable upward adjustment in the event that:
- (a) Through no fault of Kaneba, the Work requires more effort and labour to complete than reasonably contemplated;
 - (b) The cost of materials, transport, labour, customs and other duties, insurance, exchange rates and any other factors affecting the cost of the Work increases due to circumstances beyond the control of Kaneba between the date of the Order and the date the Work is completed;
 - (c) The Parties agree to vary the scope of the Work or its schedule;
 - (d) After completion and approval of any Work or part of any Work, the Customer instructs Kaneba to alter the Work supplied; and/or
 - (e) Any alteration to the Work is required as a condition of obtaining any Consent or Sign-off either before or after the Work commences.

9. Payment

- 9.1. Payment is to be made in full prior to any Work beginning, unless a credit arrangement has been agreed to by the Parties.
- 9.2. At Kaneba's sole discretion a non-refundable deposit (in part payment of the Price) may be required by the Customer.
- 9.3. Where paying on invoice, the Customer shall pay Kaneba's invoice within 10 days of receipt (if specified in the Order), or upon completion of milestones or on specified dates for instalment payments. The Customer may not deduct, withhold or offset any sum from the amounts owed to Kaneba. Nothing in these Terms shall prejudice or limit Kaneba's ability to make a payment claim under the Construction Contracts Act 2002.
- 9.4. Any monies not paid by the Customer when due may be charged with interest at a rate of 5% per annum above the current rate charged by Kaneba's bank for unsecured overdraft facilities from the due date of payment until the actual date of payment.
- 9.5. In the event any monies due are not paid in full, Kaneba reserves the right to immediately suspend Work for the Customer. Kaneba shall not be obliged to resume Work until the amount owing, and any costs incurred in relation to the suspension are paid in full, and Kaneba may (in its sole discretion) revoke any credit arrangements and require full payment in advance of any further work. Kaneba will not be liable to the Customer or any person for losses arising from suspension of the Work. Nothing in this clause prejudices or otherwise affects Kaneba's rights under these Terms or at law.
- 9.6. The Customer agrees that Kaneba has sole discretion to apply or off set payments from the Customer to any transaction or Company invoice notwithstanding that the Customer may have applied the payment to a particular transaction or invoice.

10. Delivery of Goods and Services

- 10.1. Unless otherwise agreed, delivery of Goods shall be deemed complete:
- (a) At the time when the Goods are delivered to the warehouse address of Kaneba; or
 - (b) If an alternative delivery address is agreed as part of the Order, when the Goods are delivered to the alternate address.
- 10.2. Delivery of Goods and Services will be deemed to be complete when the description on the Order is fulfilled.

- 10.3. Kaneba will use reasonable commercial efforts to supply Goods and Services according to any specified timeframe, but unless otherwise agreed in writing, delivery time shall not be of the essence and Kaneba will in no event be liable for any late delivery. The Customer may delay payment until after the relevant Goods or Services are delivered (if payment is due on delivery), but otherwise shall not be relieved of any obligation to accept or pay for the Goods or Services by reason of any delay in delivery.
- 10.4. Kaneba reserves the right to deliver Goods and Services by instalments and to separately invoice each instalment.
- 10.5. In the event that the Customer is unable to take delivery of the Goods, then Kaneba shall be entitled to charge a reasonable fee for redelivery and/or for holding the Goods and any related materials pending redelivery.
- 10.6. The risk in Goods shall pass to the Customer when the Goods are delivered or when Kaneba first makes an attempt to deliver if the Customer fails to accept the Goods. Should the Goods remain on Kaneba's premises or with a carrier due to failure of the Customer to collect or receive the Goods (or at the request of the Customer), all such risks shall be borne by the Customer from that time as the case may be.
- 10.7. The Customer is solely responsible for ensuring that the Goods and Services are fit for purpose and satisfy the Customer's requirements. The Customer may provide plans, designs, specifications, drawings or Consents, and may use the Goods and Services as the Customer chooses (including combining the Goods with existing or Third Party Goods). Notwithstanding that Kaneba may have supplied documentation and any other materials, guidelines, instructions, policies, procedures and directions in respect of the Goods and Services, the Customer recognises that Kaneba has no control over how the Goods and Services are used by the Customer, and the Customer acknowledges and affirms that:
- (a) It has made its own independent investigation, analysis and evaluation of the Goods and Services, and affirms, that in making the decision to enter into this Agreement and use the Goods and Services, it has relied solely upon its independent evaluation and those of its representatives, including professional, technical and other advisers;
 - (b) It has had the opportunity to assess the Goods and Services, seek independent advice in relation to them, to conduct a full evaluation in relation to the Goods and Services and to obtain information in respect of those matters that it considers relevant, and that it has knowledge and experience in building construction, cladding and related matters and is therefore capable of evaluating the merits and potential uses of the Goods and Services; and
 - (c) Except as provided in clause 15.4, Kaneba and its Personnel shall not be liable in respect of any liabilities, costs, losses, claims or damages (including negligence) which may be suffered by the Customer whatsoever, whether suffered itself or as a result of claims against it by a third party or otherwise, arising from or related to the use, manufacture or installation of the Goods and Services.

11. Insurance

- 11.1. The Goods will not be insured by Kaneba. The Customer should arrange insurance for Goods which are to be supplied by Kaneba where:
- (a) the Goods are imported or transported nationally; or
 - (b) the Goods are stored in Kaneba's warehouse or third party storage facility.
 - (c) Information for insurance purposes can be obtained from Kaneba on request.

12. Third party providers, contractors and employees

- 12.1. Kaneba may engage contractors, employees and/or third party suppliers in order to complete the Work, or to provide other goods or services requested by the Customer.
- 12.2. Where Third Party Goods are used or provided:
- (a) Kaneba makes no representation as to, and takes no responsibility for, the quality or fitness for purpose of those Third Party Goods (regardless of whether the Third party Goods are sold, supplied or arranged by Kaneba);
 - (b) The Customer relies solely on the warranties (if any) provided by the third party service provider or manufacturer;
 - (c) The third party service provider or manufacturer's standard license/supply terms will apply;
 - (d) Kaneba shall provide reasonable assistance with any Customer warranty claims arising for Third Party Goods, provided however that the Customer shall be solely responsible for compliance with the manufacturer's warranty registration and claims processes; and
 - (e) Kaneba may receive commissions for, and apply margins on, Third Party Goods.
- 12.3. Unless specifically agreed in writing between the Parties, Kaneba shall not be responsible for any aspect of project management relating to the Project for which the Goods and/or Services are used.

13. Warranty and Defects

- 13.1. Subject to the other provisions of these Terms, Kaneba warrants that the Work shall be substantially free of defects for 12 months after delivery (for Goods) or 12 months after completion (in the case of Services) ("the Warranty Period"). This warranty will be effective only where the Customer has complied with its payment obligations. To the fullest extent permitted by law, this warranty shall be the Customer's sole remedy against Kaneba, arising from or relating to the Work, and Kaneba shall have no further liability to the Customer under the Agreement or otherwise. This warranty does not cover Third Party Goods (refer to clause 12 above).
- 13.2. If any Goods or Services (excluding Third Party Goods) are found by the Customer upon receipt to be in a defective state such that they cannot reasonably be used for the intended purpose, or otherwise do not conform to the specifications recorded in the Order, then, on such defect being notified to Kaneba, Kaneba shall, at its sole discretion, replace such defective Goods or Services or credit the Customer with an amount equal to the full price paid by the Customer for such Goods or Services (inclusive of any delivery charges). If requested by Kaneba, the Customer shall promptly return to Kaneba all Goods alleged by the Customer to be defective.
- 13.3. In this clause 13, a "defect" means any fault or flaw in the Work which is sufficient to constitute a breach of Kaneba's obligations under the Agreement or any warranties or guarantees, and "rectified" means remedied, re-done, fixed, replaced or completed (at Kaneba's option) so that the relevant item complies with those obligations. Defects do not include:
- (a) Cosmetic blemishes, imperfections, or trivial faults or flaws that are within the tolerances normally regarded as acceptable according to common trade practice;
 - (b) Any failure to achieve standards of finish or detail that are beyond what is required by the Agreement and any applicable documentation;

- (c) Any fault or flaw that is attributable to incorrect, inappropriate, incomplete or unintended installation, alteration or use of the Work;
 - (d) Any fault or flaw arising from not following the operation manuals or instructions supplied by Kaneba;
 - (e) Any fault or flaw that is attributable to any event or occurrence beyond Kaneba's reasonable control, or to the acts or omissions of anyone for whom Kaneba is not responsible;
 - (f) Any fault or flaw in a third-party component or material;
 - (g) Any issue arising in the Work where a third person has modified, repaired or tampered with the Work;
 - (h) Any issue arising from a defective or inappropriate design, specification or instruction provided to Kaneba by the Customer (or otherwise required to be followed by Kaneba);
 - (i) Any fault or flaw that is attributable to fair wear and tear, or any failure by the Customer to adequately maintain, preserve, protect and care for the Work; and
 - (j) Any fault or flaw arising (or exacerbated) by the Customer's failure to promptly notify Kaneba of the issue.
- 13.4. The warranty will not apply when the Goods and Services have not been paid for in full and according to clause 9.
- 13.5. Warranty claims must be promptly notified to Kaneba in writing, together with all such information, including photographs, as Kaneba may reasonably require to evaluate the issue. The Customer must provide Kaneba with access to the relevant worksite or location to inspect the issue.
- 13.6. Any defect in the Work which is notified to Kaneba within the Warranty Period in clause 13.1 shall be rectified by Kaneba within a reasonable time at Kaneba's own cost. The Customer shall not engage anyone else to do so unless and until a reasonable time has elapsed and the Customer has given Kaneba at least 20 Working Days' notice of the Customer's intention to engage someone else, or Kaneba has permanently and unequivocally abandoned the Work. If the Customer engages someone else to rectify the defects when the Customer is not entitled to do so, then without prejudice to Kaneba's rights and remedies:
- (a) Kaneba shall be entitled to cancel the Agreement; and
 - (b) Kaneba shall be immediately discharged from any remaining obligation or liability in respect of the Work and the Agreement.
- 13.7. Any requests for out-of-warranty support and maintenance of the Work shall (if accepted by Kaneba) be provided at Kaneba's prevailing hourly rates.

14. Warranties

- 14.1. Except as expressly provided in clause 13.1, to the maximum extent permitted by law all guarantees, warranties (statutory, express or implied, including, without limitation, any implied warranties of merchantability, fitness for a particular purpose or standards compliance) or other provisions that would otherwise be implied by statute or rule of law, are expressly excluded, as are any representations or statements made prior to the Agreement.

- 14.2. To the maximum extent permitted by law, any Third Party Goods or components supplied as part of the Work are subject only to the warranty (if any) given by the manufacturers or suppliers of the Third Party Goods or components.
- 14.3. If the Work is carried out for trade or business purposes, then the Consumer Guarantees Act 1993 and Sections 9, 12A and 13 of the Fair Trading Act 1986 shall not apply to the Agreement or the supply of Goods or Services.

15. Intellectual Property

15.1. The Parties acknowledge that:

- (a) All Intellectual Property in the Work (except Intellectual Property provided by the Customer, and any Intellectual Property in any Third Party Goods) and/or created incidentally, is the property of Kaneba;
- (b) All of Kaneba's existing Intellectual Property used or applied in completing the Work is reserved as the sole property of Kaneba;
- (c) Kaneba shall be entitled to utilise in future projects any know-how which it obtains or develops when completing the Work; and
- (d) Kaneba retains the right to reasonably use the Work for the purposes of Kaneba's portfolio and marketing purposes in any media, websites, exhibitions, competitions, and other material.

15.2. The Customer agrees that it can only use Kaneba's Intellectual Property for its own business purposes solely in relation to the Project and only for a maximum period of three months (unless a longer period is agreed in writing) from when it became available to the Customer.

15.3. Kaneba's Intellectual Property must be kept confidential and only be used by the Customer for the Project. The Customer shall not transfer, disclose, licence, sell or assign Kaneba's Intellectual Property to any third party.

15.4. Kaneba agrees to indemnify the Customer for any liability from a claim that Kaneba's Intellectual Property in Goods or Services (excluding Third Party Goods) infringes the proprietary Intellectual Property rights of a third person, provided that the Customer:

- (a) Immediately notifies Kaneba in writing of any such claim against it;
- (b) authorises Kaneba to assume sole control over the defence of any such claim thereafter, together with the right to settle or compromise such claim ;
- (c) make available to Kaneba such information, assistance and authority as may be reasonably requested by Kaneba in order to enable Kaneba to defend any such claim; and
- (d) not admit liability for, settle, incur expenses in connection with or otherwise prejudice the Kaneba's position in respect to the claim.
- (e) Kaneba's aggregate liability under this clause 15.4 shall not exceed NZ\$1,000,000.

15.5. If a Customer uses any information supplied by Kaneba in the course of their business and requires further advice from Kaneba, then this can be provided (subject to Kaneba's availability) at Kaneba's prevailing hourly rates:

- (a) \$240 per hour of work for continuous work more than four hours; or
- (b) \$360 per hour of work for less than four hours

plus expenses, disbursements and GST.

16. Indemnity

16.1. The Customer shall indemnify Kaneba and its Personnel against any liability, costs, losses, claims, or damages (including legal fees and disbursements on a solicitor-client basis) arising in any way from or in connection with:

- (a) The Customer's breach of the Agreement;
- (b) Non-payment of debts when they become due or any action taken by Kaneba as a result;
- (c) Infringement of Intellectual Property or other proprietary rights in the Work;
- (d) The Customer's use or installation of the Work (including compliance with all relevant laws and Consents);
- (e) Any claim or demand by a third party arising from, relating to or otherwise connected with the Work;
- (f) Any instruction or information (including Intellectual Property) provided by the Customer to Kaneba in connection with the Work;
- (g) Any damage to the Work caused by the Customer, the Customer's authorised representatives, or any separate contractors engaged by the Customer; and
- (h) Any breach of the Health and Safety at Work Act 2015 (or other applicable health and safety requirements) caused by the Customer, the Customer's authorised representatives, or any separate contractors engaged by the Customer.

16.2. The Customer may use current published material, manuals, training notes and instructions of care for the Goods and maintenance guidelines provided by Kaneba. However, the Customer shall not give or make any assertion or representation, in relation to the Goods, to any other person or company without the prior approval in writing of Kaneba. The Customer shall indemnify Kaneba against any liability or cost incurred by Kaneba as a result of any breach by the Customer of this provision.

17. Exclusion of Liability

17.1. Except as provided in clauses 13 and 15.4, to the fullest extent permitted by law, Kaneba and its Personnel shall in no circumstance be liable under contract, common law (including negligence) or otherwise for any liability, costs, losses, claims or damages (including legal fees and disbursements on a solicitor-client basis) arising from or relating to the Agreement, any defect or non-compliance of the Work supplied, or from any act, default or negligence on the part of Kaneba or its Personnel.

17.2. Without limiting clause 17.1, Kaneba and its Personnel shall in no circumstance be liable for:

- (a) Any loss or damage arising by reason of any delay in the completion or delivery of the Work;
- (b) Any loss of profits or loss of revenues;
- (c) Any indirect or consequential loss;
- (d) Any loss or damage resulting from the reliance on Kaneba's publications without direct advice from Kaneba;

- (e) Any loss or damage resulting from any errors or omissions arising from incorrect information provided by the Customer, or failure by the Customer to provide information, or an oversight or a misinterpretation of a Customer's verbal instructions; or
- (f) Any loss or damage caused in part or in full by the act or omission of the Customer or a third party.

17.3. Kaneba accepts no liability for any claim relating to or arising from any representations, warranties or conditions made or conveyed by any agent or representative of Kaneba, which is not expressly confirmed by Kaneba in writing.

17.4. Unless and to the extent that the Agreement expressly provides otherwise, in the event that Kaneba is liable to the Customer, Kaneba's total liability in respect of the Work or the Agreement, whether in contract, tort (including negligence) or otherwise, shall not in any event exceed the Price.

18. Force Majeure

18.1. Kaneba shall not be liable for any failure or delay in performing an obligation under the Agreement or breach of these Terms that is due to causes beyond its reasonable control, such as (but not limited to) natural catastrophes, terrorist acts, governmental acts or omissions, pandemics, transportation stoppages or slowdowns, restrictions on site or network access, confiscation or seizure, laws or regulations, labour strikes or difficulties, transportation stoppages or slowdowns or the inability to procure parts, equipment, services, applications or materials.

19. Grounds for Termination

19.1. TERMINATION OF ORDERS:

- (a) The Customer may only terminate an Order with Kaneba's consent and by paying Kaneba for the Work and expenses undertaken.
- (b) The Customer will be liable for the cost of pre-ordered Third Party Goods from other suppliers if those orders cannot be cancelled, or if a cancellation fee is payable, or amounts paid by Kaneba are forfeited on cancellation.
- (c) Where Kaneba has manufactured Goods for a Customer or has arranged for the manufacture of Customer-specific Third Party Goods, then the Customer is liable to pay the full cost of the Goods at the time of termination.

19.2. TERMINATION FOR CAUSE: Without prejudice to any other right or remedy it may have, whether under these Terms, under statute or otherwise, either Party may immediately terminate some or all Orders by written notice to the other Party if:

- (a) The other Party defaults in the payment of any moneys due under the Agreement;
- (b) The other Party is in breach of these Terms and such breach is not remedied within ten (10) Working Days of notifying the other Party;
- (c) The other Party commits an act of bankruptcy or makes any assignment or composition with its creditors;
- (d) Liquidation or bankruptcy proceedings are commenced for the other Party; and/or
- (e) The other Party has a receiver or manager or statutory manager appointed.

19.3. SUSPENSION: Where Work is suspended for 5 days or more then the Customer must, at the time of suspension, pay Kaneba for all Work completed to date.

20. Consequences of Termination

- 20.1. Upon suspension or termination of an Order or Work, Kaneba shall be entitled to payment for all Work undertaken up to the effective date of postponement or termination, and all other fees, disbursements and costs and losses arising from or incidental to the postponement or orderly wind-down of the Work (including lost labour costs if Kaneba is unable to reallocate Personnel to other projects).
- 20.2. If the Customer terminates the Agreement, other than for breach of the Agreement by Kaneba, the Customer shall indemnify Kaneba against any liability, costs, losses, claims or damages (including legal fees and disbursements on a solicitor-client basis) suffered or incurred in relation to the Work.

21. Title and securities

- 21.1. The title and ownership of the Goods shall become and remain the sole property of Kaneba until the Customer has paid for the Work in full together with all sums due from the Customer to Kaneba.
- 21.2. Until payment in full has been made for the Work and all other sums due to Kaneba, the Customer acknowledges and agrees as follows:
- (a) The Goods are to be held by the Customer as bailee and may only be resold as the agent for and on behalf of Kaneba;
 - (b) The Customer in reselling the Goods as an agent of Kaneba shall not represent to any other person that it is acting for Kaneba and Kaneba will not be bound by any contract with any other person to which the Customer is a party. The Customer shall pay into a separate account the proceeds from the resale of the Goods and shall pay the full price of the Work together with all outstanding debt to Kaneba;
 - (c) The Customer shall store the Goods separately from the Customer's own goods and any other goods supplied to the Customer;
 - (d) The Customer hereby irrevocably authorises Kaneba, its agent and contractors to enter on and into any site or premises occupied by the Customer to search for and remove any of the Goods in which Kaneba has ownership without in any way being liable to the Customer or any person or company claiming through the Customer. If the Goods or any part of the Goods is wholly or partially attached to other goods Kaneba may, where practical, disconnect or sever in any way whatsoever as may be necessary to remove the Goods;
 - (e) The Customer shall make available all Goods that have not been fully paid for at a reasonable time and place designated by Kaneba;
 - (f) Kaneba may sell, lease or otherwise dispose of the Goods;
 - (g) Kaneba may terminate the Agreement;
 - (h) The Customer grants to Kaneba a security interest (for the purposes of the Personal Property Securities Act 1999 ("the PPSA")) in the Work and its proceeds to secure payment of the Price, and to secure payment of all fees and other amounts due from the Customer to Kaneba from time to time; and
 - (i) Nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply. The Customer waives its rights pursuant to sections 121, 125, 129, 131 and 132 of the PPSA and its rights to receive any verification statement relating to the security interests in the Work supplied and any ancillary goods (section 148).

22. Dispute resolution

- 22.1. Either Party may raise a dispute by notice in writing to the other Party. The Parties agree to use their best efforts to resolve any dispute which may arise under this Agreement through good faith without-prejudice negotiations.
- 22.2. If the Parties' nominated contact persons are unable to resolve the dispute within seven Working Days following delivery of the dispute notice referred to in clause 22.1, the dispute shall be escalated to the Chief Executive Officer (or equivalent) of each party who shall conduct informal, off-the-record and without-prejudice discussions in good faith seeking to resolve the dispute.
- 22.3. If after a further discussion period of ten (10) Working Days the parties remain unable to reach an agreed outcome, then the following process occurs as follows:
- (a) If the dispute amounts to less than \$30,000 inclusive of GST, it shall be referred to the Disputes Tribunal of New Zealand for resolution. Where there are several separate matters, each matter amounting to \$30,000 inclusive of GST, they will be considered as a separate matter for the purposes of dispute resolution.
 - (b) If the dispute amounts to more than \$30,000 inclusive of GST, it shall be referred to and finally resolved by arbitration in Auckland, in accordance with the Arbitration Act 1996.

23. Variation

- 23.1. The provisions of the Agreement shall not be varied except by agreement in writing signed by each Party.

24. Waiver

- 24.1. Failure by Kaneba to insist upon strict performance of any of the Terms or to exercise any of its rights shall not be or deemed to be a waiver of any subsequent breach of any term, condition or right. No right or obligation under the Agreement shall be deemed to be waived by Kaneba except by notice in writing signed by each Party.

25. Survival of Agreement

- 25.1. The covenants, conditions and provisions of the Agreement which are capable of having effect after the expiration of the Agreement shall remain in full force and effect following the expiration of the Agreement.

26. Severability

- 26.1. If any provision of the Agreement for any reason is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable it shall not affect the legality, validity or enforceability of the other provisions or other part of any provisions of the Agreement and shall be severed from the Agreement so that the remaining provisions of the Agreement shall remain in full force and effect.

27. Good Faith

- 27.1. The Parties agree to act in good faith towards one another and use their best endeavours to comply with the spirit and intention of the Agreement.

28. Miscellaneous

- 28.1. The Agreement and any rights, duties or obligations arising under the Agreement shall not be assigned or transferred without the prior written consent of Kaneba.

- 28.2. Currency amounts are in New Zealand dollars unless otherwise stated.
- 28.3. This Agreement shall be construed in accordance with and governed by the laws of New Zealand and the Customer submits to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to the Agreement.
- 28.4. Nothing in the Agreement shall be construed as evidence of a partnership or similar between the parties or their successors or assignees, and unless specifically agreed in writing, no provision of the Agreement shall empower a Party to act on behalf of the other in any way, or to incur any liability on behalf of the other.
- 28.5. Notices under the Agreement can be delivered in person, or by post or email to the addressed notified by each Party (which may be updated from time to time by each Party).