

1. Definitions

- 1.1 "Seller" shall mean Futura or Aztech Buildings, divisions of Zeala Limited and its successors and assigns.
- 1.2 "Buyer" shall mean the Buyer or any person (or persons) acting on behalf of and with the authority of the Buyer.
- 1.3 "Goods" shall have the same meaning as in section 2 of the Sale of Goods Act 1908 and are any goods supplied by the Seller to the Buyer (and where the context permits shall include supply of Services as defined below).
- 1.4 "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include supply of Goods as defined above).
- 1.5 "Price" shall mean the price of the Goods, Services, and Works; as agreed between the Seller and the Buyer subject however to paragraph 4 of these terms.
- 1.6 "Party" means the Buyer or the Seller.
- 1.7 Reference to the singular or to a person includes respectively reference to the plural or a company and vice versa.
- 1.8 "Works" means the building, and construction of the building to be carried out under this contract, and all related Goods and Services to be provided by the Seller to the Buyer under this contract.
- 1.9 "Section" means the property on which the Works are to be carried out.
- 1.10 "Site" means the portion of the Section in which the Works are to be carried out, including access for construction machinery and storage area for materials, as reasonably required by the Seller.
- 1.11 "Completion of the Works" means the date on which the Seller, upon practical completion of the Works described by this contract, gives notification to the Buyer that the Works have been practically completed. An invoice issued by the Seller for the balance of the Price shall be deemed such a notification. For the avoidance of doubt, a Code of Compliance Certificate is not a condition or requirement of practical completion.

2. Acceptance

- 2.1 Any instructions received by the Seller from the Buyer for supply of Goods or for the carrying out of the Works shall constitute Acceptance of these terms and conditions by the Buyer.
- 2.2 Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for all payments of the Price and for compliance with the terms of this contract.
- 2.3 Upon acceptance of these terms and conditions by the Buyer, these terms and conditions shall become irrevocable and can only be rescinded or amended in accordance with these terms and conditions or by written agreement between the Buyer and the Seller's manager.
- 2.4 Upon Acceptance as defined in clause 2.1 the written contract which includes these terms and conditions, shall constitute the entire agreement between the Buyer and the Seller and shall completely supersede any prior representations, statements, conditions or agreements made by the Seller or its agents or representatives.

3. Description of the Works

- 3.1 The Works shall be as described on the quotation, invoices, acceptance form or any other work commencement forms provided by the Seller to the Buyer.
- 3.2 Height dimensions stated are measured from ground level (or top of concrete floor if poured prior to construction) to the underside of roofing. Width and length dimensions are measured over corner poles, columns, or framing.
- 3.3 Standard Personnel Access (P.A.) doors shall open inwards and Aluminium P.A. doors shall open outwards unless otherwise requested by the Buyer prior to door manufacture.
- 3.4 Where Roller Doors include a hand chain (some models only); this will be supplied on the Right Side (viewed from inside the building) unless otherwise requested by the Buyer prior to door manufacture. Motorization or remote control of doors is not included unless expressly stated otherwise. Where motorization or remote control of doors is included, all wiring or provision of electrical supply is specifically excluded.
- 3.5 Whitecap membrane will not be provided under translucent roof sheets. The Buyer may request otherwise only if accepting full responsibility for any subsequent deterioration of the Whitecap.
- 3.6 Ridge flashings do not include soft-edges, unless expressly stated otherwise.
- 3.7 If any material, arrangement, or process required by the contract becomes practically or uneconomically available, the Seller may substitute another reasonably equivalent material, arrangement, or process.
- 3.8 Unless expressly stated otherwise, the Seller will prepare and lodge Building Consent Plans and a Producer Statement for Design with the relevant Local Authority; however all fees incurred shall be in addition to the Price.
- 3.9 Any design or engineering changes, including due to the Local Authority's requirements, will incur extra charges. If the Local Authority requests a design review or PS4, extra charges will apply in addition to the Price.
- 3.10 If required, the Seller may lodge a Resource Consent application on behalf of the Buyer; however extra charges shall apply in addition to the Price.
- 3.11 Where the contract does not include construction by the Seller, it shall be the Buyers responsibility to obtain a Code of Compliance Certificate (CCC) and advise the Local Authority of completion of construction.
- 3.13 Vermin Flashing, if expressly included, will inhibit rodent entry through the base of the cladding corrugations, however Expanding Foam sealant will be supplied to provide additional sealing around the base of the poles.

4. Price and Payment

- 4.1 The Price shall be the Seller's quoted price which shall be binding upon the Seller provided that the Buyer accepts in writing the Seller's quotation within thirty (30) days or any other period expressly stated by the Seller.
- 4.2 The Price shall be subject to variation only as provided for in this agreement or these terms and conditions.

- 4.3 Pricing is based on delivery being taken within 90 days from Acceptance as defined in clause 2.1; after this time the Price may be increased to reflect any cost increases.
- 4.4 Where the Seller pays any building consent or other statutory or regulatory fees relating to the contract, the Buyer shall within 7 days reimburse the Seller for the fees paid, which shall be in addition to the Price.
- 4.5 Time for payment for the Goods shall be of the essence and will be as stated on the invoice, quotation, or acceptance forms.
- 4.6 Where a deposit amount or percentage of the Price is stipulated this shall become payable upon Acceptance as defined in clause 2.1. In the case of a contract being cancelled or terminated by the Buyer, the amount of any Deposit paid by the Buyer shall be non-refundable up to ten percent (10%) of the value of the contract.
- 4.7 Where the contract includes construction by the Seller, the Seller may submit a Progress Payment Claim for work performed up to the date of the claim. The value of work performed shall include the reasonable value of authorised variations, whether or not the value of such variations has been finally confirmed, and the value of materials delivered to the site but not installed. Progress Payments shall be made within seven (7) days of claim.
- 4.8 Payment of any unpaid balance of the Price will be due seven (7) days after Completion of the Works.
- 4.9 Payment shall be made by cash, cheque, or direct credit; or as otherwise agreed to between the parties; however receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that payment has been honoured, cleared or recognised.
- 4.10 The Price shall be increased by the amount of Goods and Services Tax (GST), except to the extent that GST is expressly included in any quotation given by the Seller.

5. Delivery of Goods

- 5.1 Delivery of Goods and materials may be made to the Buyer's address. The Buyer shall make all arrangements necessary to take delivery of the Goods or materials when they are tendered for delivery.
- 5.2 Where the contract includes Construction services, delivery of Goods or materials may be made to the Site. If any delivery vehicle encounters unforeseen ground conditions which in the opinion of the driver are not suitable for access, then the Seller shall be entitled to increase the price for any additional costs incurred in delivery, and extend any agreed date for Completion of the Works to allow for any resulting delay in delivery.

6. Risk and Insurance

- 6.1 Where the Works are to be fully or partially constructed by the Seller, then the Seller will provide Contract Works Insurance up to \$1,000,000 (one million dollars) per project while under construction by the Seller. All risk will pass to the Buyer on Completion of the Works, even where title remains with the Seller.
- 6.2 Where the Works do not include constructions services, all risk in any Goods shall pass to the Buyer upon delivery of those Goods to the Buyer, the Buyer's agent, or the Buyer's address; even where title remains with the Seller.

7. Defects

- 7.1 Upon Completion of the Works, the Buyer shall inspect the Works and within thirty (30) days of Completion of the Works notify the Seller of any alleged defect, shortage, damage or failure to comply with description. The Buyer shall give the Seller an opportunity to inspect and/or remedy the Works within a reasonable time following notification.

8. Warranty

- 8.1 The Seller warrants to undertake the works shown in the acceptance documents, specifications, and plans, in a proper and tradesman like manner; and where a Building Consent has been issued, in conformity with the Building Consent, The Building Act 2004, and relevant regulations.
- 8.2 For goods manufactured by the Seller and work performed by the Seller, the Seller warrants freedom from defects and will make good any defects that become apparent within One Year from Completion of the Works. This warranty does not cover deterioration arising from wear and tear, natural weathering of materials, misuse, or lack of maintenance or care. This warranty is in addition to any statutory obligations of the Seller.
- 8.3 For any Goods not manufactured by the Seller, the sole warranty shall be the current warranty (if any) provided by the original manufacturer of the Goods. The Seller shall not be bound by, or responsible for any term, condition, representation or warranty given by the original manufacturer of the Goods.
- 8.4 The Buyer undertakes to perform all maintenance procedures prescribed by the manufacturer(s) of the Goods.

9. Default & Consequences of Default

- 9.1 Interest on overdue invoices shall accrue daily from the due date until the date of payment at a rate of 1.5% compounding per calendar month and shall accrue at such a rate after as well as before any judgement.
- 9.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against the Seller's costs and disbursements including on a solicitor and own client basis, and all costs of collection.
- 9.3 In the event that: Any money payable to the Seller becomes overdue by more than 7 days or the Buyer is in breach of any of its obligations under this agreement; or the Buyer becomes insolvent or 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 a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer; - then in addition to and without prejudice to the Seller's other rights or remedies:
 - (i) The Seller may suspend the Works until such time as it sees fit; and/or
 - (ii) The Seller shall be entitled to terminate the Contract and all or any part of the Works; and
 - (iii) All amounts owing to the Seller shall immediately become due and payable.
 The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.

- 10. Title**
- 10.1 It is agreed between the parties that property in the Goods or Works shall not pass to the Buyer until the Buyer has paid all amounts owing for the Goods or Works; and that the Goods, or proceeds of any sale of the Goods or Works, shall be kept separate until the Seller shall have received payment and all other obligations of the Buyer are met.
- 10.2 It is further agreed that until ownership of the Goods passes from the Seller to the Buyer the Seller or the Seller's agent may enter upon and into land and premises where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.
- 13. Intellectual property**
- 13.1 Where the Seller has produced designs or drawings for the Contract, then the copyright in those designs and drawings shall remain vested in the Seller, and shall only be used by the Buyer at the Seller's discretion.
- 14. Termination**
- 14.1 If the Seller is prevented from completing the contract by circumstances beyond its control, including where a Building or Resource Consent is refused by the Territorial Authority; then the Seller may terminate the Contract by giving written notice to the Buyer without being liable for any direct or indirect or consequential loss or damage arising from such termination.
- 14.2 In any event whatsoever where the contract is terminated, the Buyer shall be liable to the Seller for the proportion of the Price (including profit) relating to work carried out or expenses incurred by the Seller prior to termination.
- 15. Privacy Act 1993**
- 15.1 The Buyer authorises the Seller to:
- (a) Collect, retain and use any information about the Buyer for the purpose of assessing the Buyer's creditworthiness or marketing products and services; and to
 - (b) Disclose any information about the Buyer, whether collected by the Seller from the Buyer directly or obtained from any other source, to any other credit provider or reporting agency for the purpose of providing or obtaining a credit reference, debt collection or notifying a default by the Buyer.
- 15.2 Where the Buyer is a natural person the authorities under clause 15.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 16. Buyer's Disclaimer**
- 16.1 Any building design or advice supplied by the Seller has been supplied to suit their interpretation of the Buyers requirements. However the Buyer accepts full and final responsibility to ensure the layout, design, and form of construction are fit and suitable for its intended purpose in all respects; and the Buyer acknowledges that it has entered into the contract relying solely upon its own skill and judgement and disclaims any right to sue for damages or to claim restitution in regards of any matter arising out of the layout, design, or form of construction of the building.
- 17. Communication**
- 17.1 The Buyer shall communicate with the Seller or its appointed representative directly. The Buyer shall not give directions to the Seller's other employees or subcontractors, and shall not be entitled to rely on statements or representations made by them.
- 18. Unpaid Seller's Rights to Dispose of Goods**
- 18.1 In the event that the Seller retains possession or control of the Goods and payment of the Price to the Seller is due; and the Seller has made demand in writing of the Buyer for payment of the Price in terms of this contract; but the Seller has not received full payment for the Goods, then, whether the title in the Goods has passed to the Buyer or remained with the Seller, the Seller may dispose of the Goods and claim from the Buyer any loss incurred.
- 19. Consumer Guarantees Act 1993**
- 19.1 This agreement is subject, in all cases except where the Buyer is contracting within the terms of a trade or business (which cases are specifically excluded), to the provisions of the Consumer Guarantees Act 1993.
- 21. General**
- 21.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.2 All Goods and Services supplied by the Seller are supplied subject to the laws of New Zealand and the Seller takes no responsibility for changes in the law that affect the Goods or Services supplied.
- 21.3 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages and the Seller shall be under no liability whatsoever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.
- 21.4 Neither party shall be liable for any default due to any act of God, terrorism, war, strike, lock-out, industrial action, flood, storm or other event beyond the reasonable control of that party.
- 21.5 The Seller may sub-contract all or any part of its rights or obligations under this contract without the Buyer's consent.
- 21.6 All disputes and differences between the parties shall be referred to arbitration in accordance with Arbitration Act 1996. The arbitration shall be commenced by either party giving to the other notice in writing, stating the subject matter and details of the dispute or difference and that party's desire to have the matter referred to arbitration. The arbitration shall be by one arbitrator to be agreed upon by the parties and, failing agreement, to be nominated by the then President of the Waikato/Bay of Plenty District Law Society. The award in the arbitration shall be final and binding on the parties.
- 22. Variations**
- 22.1 The Buyer may authorize variations to the Works. The Buyer may request confirmation of the amount of any resulting adjustment to the Price before authorizing a variation.
- 22.2 The contract Price shall be adjusted for all variations carried out, by the amount previously confirmed by the Seller, or where no amount was confirmed, by a reasonable amount subsequently determined by the Seller.
- 22.3 The Seller shall not be obliged to make any unreasonable variation; or any variation which increases the contract price unless the Seller is satisfied that the Buyer is able to pay such increased price.
- 23. Entry, Use or Occupation by Buyer; applying only to Contracts which include Construction services**
- 23.1 If any part of the site is enclosed or locked-up by the Seller prior to Completion of the Works, the Buyer shall not enter such part except by prior arrangement with the Seller, who is entitled to be present.
- 23.2 The Buyer shall only be entitled to use or occupy the site or any part thereof if the Buyer has fulfilled all of its obligations under this contract, including final payment.
- 23.3 If the purchaser uses or occupies the site otherwise than in accordance with clauses 23.1 or 23.2, all amounts that would become payable to the Seller upon Completion of the Works, shall become immediately due and payable.
- 24. Miscellaneous Provisions applying only to Contracts which include Construction services**
- 24.1 It is the Buyers responsibility to locate the boundaries of the Section. If the Seller requires the boundaries of the Section or the Site to be pegged or verified, then upon the Seller's written request the Buyer shall, at the Buyer's expense, engage a registered surveyor to perform this work.
- 24.2 The Buyer shall ensure that the Seller has unimpeded access to the Site, and availability of power and water on site, for carrying out the Works at all reasonable times. If power or water is not available, additional charges will apply.
- 24.3 If on opening up the ground or excavation of any footings or foundations the Seller discovers unforeseen adverse conditions, or at any time the site conditions do not provide a firm and stable substrate for construction machinery to operate on, the Seller shall be entitled to: increase the price for any additional costs attributable to those conditions, and extend any agreed date for Completion of the Works to allow for delays arising out of those conditions.
- 24.4 The Buyer shall point out to the Seller the location of all services such as gas, telephone, power cables and pipes. The Seller accepts no responsibility for damage to any services during construction due to failure by the Buyer to accurately advise the location of any service; or consequences of proximity to services.
- 24.5 If the Seller discovers after signing this agreement that the ground is irretrievably unsuitable for the Works the Seller shall immediately inform the Buyer in writing. At any time after discovering that the ground is irretrievably unsuitable for the works, either party may terminate the contract, subject however to Clause 14.2.
- 24.6 Any site preparation or fill required to level the building platform, or removal of excavated soil, or reinstatement of terrain affected by construction activities; is not included in the Price unless expressly stated otherwise. The Buyer shall provide a clear and level building platform prior to construction commencing. The Seller will level and compact the top 20mm only of sand beneath concrete floors; any sand required will be an extra charge.
- 24.7 Site works such as power supply, telecommunications, water supply, storm water drainage, and soak holes, are not included in the Price unless expressly stated otherwise.
- 24.8 Upon Completion of the Works and receipt by the Seller of full payment, the Seller will lodge an application for a Code of Compliance Certificate (CCC) on the Buyers behalf; providing however that if there is work by any other party required to obtain a CCC which is incomplete, the Seller will instead forward to the Buyer only those documents required for obtaining a CCC which relate to the Works. The Seller will remedy any defects in the Works required to obtain a CCC.
- 24.9 The Seller shall comply with the Provisions of the Health & Safety in Employment Act 1992 in respect of all works carried out under this contract.
- 25. Covid-19 Provisions**
- 25.1 The Covid-19 global pandemic and its ramifications have resulted directly and indirectly in supply chain issues, delays, labour and materials shortages, and cost increases. The intention of this clause is that the risk of those factors should lie with the Buyer unless expressly otherwise agreed. Therefore, notwithstanding any other provision of this contract (and in the event of any inconsistency between that provision and this clause, this clause will prevail):
- 25.2 Any obligation on the Seller to:
- (a) commence the Works within a certain time frame or by a certain date,
 - (b) carry out and perform the Works diligently and conscientiously, or complete the Building Work as soon as is reasonably practicable, or
 - (c) complete the Works within a certain time frame or by a certain date; must make a fair and reasonable allowance for delays that are wholly or partially attributable to the Covid-19 global pandemic, including (without limitation):
 - I. any requirements imposed by statute, regulation or bylaws of central or local Government or their agencies,
 - II. the unavailability or shortage of the specified building materials or any products that might be reasonably substituted for them,
 - III. the unavailability or shortage of sufficiently skilled labour, including subcontractors and consultants, or
 - IV. the unavailability or shortage of reasonably required plant and equipment.
- 25.3 The Price shall be automatically adjusted for any increase in the costs incurred by the Seller in connection with the Project (including, without limitation, the cost of labour, subcontractors, and materials), which are wholly or partially attributable to the Covid-19 global pandemic, and which would otherwise have the effect of eroding the Seller's profit margin. It shall be presumed to be impractical for the Seller to resist any cost increases which are wholly or partially attributable to the Covid-19 global pandemic, unless there is irrefutable evidence to the contrary.
- 25.4 The fact that any delays or cost increases that are wholly or partially attributable to the Covid-19 global pandemic, either were foreseen or ought to have been foreseen by the Seller, shall have no bearing on the Seller's entitlement to pass on cost increases or rely on the protection afforded by any Force Majeure or similar provision in the Contract.