

1. Definitions

- 1.1 “**Client**” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Y J Stone to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) If there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) If the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) If the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) Includes the Client’s executors, administrators, successors and permitted assigns.
- 1.2 “**Contract**” means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.3 “**Cookies**” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including personal information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. If the Client does not wish to allow Cookies to operate in the background when using Y J Stone’s website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.
- 1.4 “**Goods**” means all Goods or Services supplied by Y J Stone to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.5 “**Price**” means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Goods as agreed between Y J Stone and the Client in accordance with clause 6 below.
- 1.6 “**Y J Stone**” means Yong Jian Stone (NZ) Limited, its successors and assigns.

2. Interpretation

- 2.1 In this Contract, unless it is stated to the contrary or the context requires otherwise:
- (a) Words in the singular shall include the plural (and vice versa), words importing one gender shall include every gender, a reference to a person shall include any other legal entity of whatsoever kind (and vice versa) and where a word or a phrase is given a defined meaning in this Contract, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning; and
 - (b) A reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction); and
 - (c) The words ‘include’ and ‘including’, and any variants of those words, will be treated as if followed by the words ‘without limitation’; and
 - (d) A reference to dollars (\$), is a reference to New Zealand currency; and
 - (e) This Contract is not to be interpreted against Y J Stone merely because they prepared this Contract; and
 - (f) The following order of precedence (in descending order) will be applied to resolve any conflict, ambiguity or discrepancy in this Contract:
 - (i) Terms and Conditions of Trade; and
 - (ii) Any schedules.
 - (g) Any reference (other than in the calculation of consideration, or of any indemnity, reimbursement or similar amount) to cost, expense or other similar amount is a reference to that cost exclusive of GST.

3. Acceptance

- 3.1 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 the Goods.
- 3.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 3.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 3.4 The Client acknowledges and accepts that:
- (a) The supply of Goods on credit shall not take effect until the Client has completed a credit application with Y J Stone and it has been approved with a credit limit established for the account;
 - (b) In the event that the supply of Goods requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, Y J Stone reserves the right to refuse Delivery;
 - (c) Any information, design and/or measurements relating to the supply of the Goods, Y J Stone shall be entitled to rely on the accuracy of any such information provided by the Client. In the event that any of this information provided by the Client is inaccurate, Y J Stone accepts no responsibility for any loss, damages, or costs however resulting from the supply of inaccurate measurements or other information;
 - (d) The supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, Y J Stone reserves the right to vary the Price with alternative Goods as per clause 6.2, subject to prior confirmation and agreement of both parties. Y J Stone also reserves the right to halt all Services until such time as Y J Stone and the Client agree to such changes. Y J Stone shall not be liable to the Client for any loss or damage the Client suffers due to Y J Stone exercising its rights under this clause.
- 3.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that Y J Stone shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) Resulting from an inadvertent mistake made by Y J Stone in the formation and/or administration of this Contract; and/or
 - (b) Contained in/omitted from any literature (hard copy and/or electronic) supplied by Y J Stone in respect of the Services.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of Y J Stone; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

5. Change in Control

5.1 The Client shall give Y J Stone 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 details (including but not limited to, changes in the Client's name, address and contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by Y J Stone as a result of the Client's failure to comply with this clause.

6. Price and Payment

6.1 At Y J Stone's sole discretion the Price shall be either:

- (a) As indicated on any invoice provided by Y J Stone to the Client; or
- (b) Y J Stone's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

6.2 Y J Stone reserves the right to change the Price if a variation to Y J Stone's quotation is requested:

- (a) If a variation to the Goods which are to be supplied is requested; or
- (b) If during the course of the Services, the Goods are not or cease to be available from Y J Stone's third party suppliers, then Y J Stone reserves the right to provide alternative Goods; or
- (c) To reflect any increases to Y J Stone in the cost of performing the carriage of the Goods, which are beyond the reasonable control of Y J Stone (including, without limitation, increases in the cost.

6.3 Variations will be charged for on the basis of Y J Stone's quotation, and will be detailed in writing, and shown as variations on Y J Stone's invoice. The Client shall be required to respond to any variation submitted by Y J Stone within ten (10) working days. Failure to do so will entitle Y J Stone to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.

6.4 At Y J Stone's sole discretion a non-refundable deposit may be required.

6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Y J Stone, which may be:

- (a) On or before Delivery of the Goods;
- (b) By way of instalments/progress payments in accordance with Y J Stone's payment schedule;
- (c) For certain approved Clients, 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;
- (d) The date specified on any invoice or other form as being the date for payment; or
- (e) Failing any notice to the contrary, the date which is seven (7) days following the date that any invoice is given to the Client by Y J Stone.

6.6 Payment may be made by electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and Y J Stone.

6.7 Y J Stone may in its discretion allocate any payment received from the Client towards any invoice that Y J Stone determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Y J Stone may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Y J Stone, payment will be deemed to be allocated in such manner as preserves the maximum value of Y J Stone's Purchase Money Security Interest (as defined in the PPSA) in the Goods.

6.8 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 Y J Stone nor to withhold payment of any invoice because part of that invoice is in dispute.

6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Y J Stone an amount equal to any GST Y J Stone must pay for any supply by Y J Stone under this or any other contract for the sale of the Goods. 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 the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Delivery of Goods

7.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:

- (a) The Client or the Client's nominated carrier takes possession of the Goods at Y J Stone's address; or
- (b) Y J Stone (or Y J Stone's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.

7.2 At Y J Stone's sole discretion, the cost of Delivery is:

- (a) Included in the Price within the Auckland region, between the hours of 7.30am and 5.00pm Monday to Friday (excl statutory holidays); or
- (b) Is in addition to the Price if Delivery is to be outside of the Auckland region and/or New Zealand.

7.3 Y J Stone may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

7.4 Y J Stone is authorised to deliver the Goods at the address given to Y J Stone by the Client for that purpose and it is expressly agreed that Y J Stone shall be taken to have delivered the Goods in accordance with this Contract if at that address Y J Stone obtains from any person acceptance by way of signing the Goods delivery docket, however (subject to clause 14.1) any damaged and/or quantity discrepancies with the Goods supplied must be advised to Y J Stone's authorised representative prior to the sign-off of the delivery docket. No credit will be considered or passed where the Client has failed to comply with this clause.

7.5 Delivery of the Goods to a third party nominated by the Client is deemed to be Delivery for the purposes of this Contract.

7.6 All containers (which includes, but is not limited to, pallets, stillages and formers) in or on which the Goods are delivered and for which a deposit charge is made shall remain Y J Stone's property at all times. Upon the container's return in good order, the deposit will be returned to the Client. Y J Stone reserves the right to deduct monies from the Client's deposit to compensate Y J Stone for any damage to the container(s).

7.7 Any time specified by Y J Stone for Delivery of the Goods is an estimate only. The Client must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. Y J Stone will not be liable for any loss or damage incurred by the Client as a result of

Yong Jian Stone (NZ) Limited – Terms & Conditions of Trade

Delivery being late. In the event that the Client is unable to take Delivery of the Goods as arranged then Y J Stone shall be entitled to charge a reasonable fee for redelivery and/or storage.

8. On-Line Ordering

- 8.1 The Client acknowledges and agrees that:
- (a) Y J Stone does not guarantee the website's performance;
 - (b) Display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by Y J Stone
 - (c) On-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;
 - (d) There are inherent hazards in electronic distribution, and as such Y J Stone cannot warrant against delays or errors in transmitting data between the Client and Y J Stone including orders, and you agree that to the maximum extent permitted by law, Y J Stone will not be liable for any losses which the Client suffers as a result of online-ordering not being available or for delays or errors in transmitting orders;
 - (e) When making a transaction through the website, the Client's information will pass through a secure server using SSL (secure sockets layer) encryption technology. The encryption process ensures that the Client's information cannot be read by or altered by outside influences;
 - (f) If the Client is not the cardholder for any credit card being used to pay for the Goods, Y J Stone shall be entitled to reasonably assume that the Client has received permission from the cardholder for use of the credit card for the transaction.
- 8.2 Y J Stone reserves the right to terminate the Client's order if it learns that you have provided false or misleading information, interfered with other users or the administration of Y J Stone's business, or violated these terms and conditions.

9. Goods On Consignment

- 9.1 Where Goods are supplied on consignment to the Client, the following provisions apply specifically to those Goods:
- (a) The Goods shall be at the Client's risk from the time of Delivery and the Client shall be responsible for insuring the Goods.
 - (b) The Client may retain possession of the Goods until the Client sells them or Y J Stone requires re-delivery of them to Y J Stone, whichever first occurs.
 - (c) If Y J Stone requires re-delivery of the Goods such re-delivery shall be at the Client's cost.
 - (d) The Client shall notify Y J Stone on a fortnightly basis of all consignment Goods sold during that fortnightly period and shall within seven (7) days of that fortnightly advice pay Y J Stone for the Goods sold.

10. Risk

- 10.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 10.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, Y J Stone is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Y J Stone is sufficient evidence of Y J Stone's rights to receive the insurance proceeds without the need for any person dealing with Y J Stone to make further enquiries.
- 10.3 If the Client requests Y J Stone to leave Goods outside Y J Stone's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 10.4 Granite, marble caesarstone and all other natural products supplied as part of the Services have natural elements in them which have naturally occurring variations in colour and shade tones and markings which may vary from colour samples provided. Y J Stone gives no guarantee (expressed or implied) that colour samples will match the Goods supplied. Y J Stone will make every effort to match colour samples to the Goods supplied but will not be liable in any way whatsoever for colour samples differing from the Goods supplied.

11. Title

- 11.1 Y J Stone and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Y J Stone all amounts owing to Y J Stone; and
 - (b) the Client has met all of its other obligations to Y J Stone.
- 11.2 Receipt by Y J Stone 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.
- 11.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 11.1:
- (a) The Client is only a bailee of the Goods and must return the Goods to Y J Stone on request;
 - (b) The Client holds the benefit of the Client's insurance of the Goods on trust for Y J Stone and must pay to Y J Stone the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) The Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Y J Stone and must pay or deliver the proceeds to Y J Stone on demand;
 - (d) The Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Y J Stone and must sell, dispose of or return the resulting product to Y J Stone as it so directs;
 - (e) The Client irrevocably authorises Y J Stone to enter any premises where Y J Stone believes the Goods are kept and recover possession of the Goods;
 - (f) Y J Stone may recover possession of any Goods in transit whether or not Delivery has occurred;
 - (g) The Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Y J Stone; and
 - (h) Y J Stone may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

12. Personal Property Securities Act 1999 ("PPSA")

Yong Jian Stone (NZ) Limited – Terms & Conditions of Trade

- 12.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) These terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) A security interest is taken in all Goods that have previously been supplied and that will be supplied in the future by Y J Stone to the Client, and the proceeds from such Goods.
- 12.2 The Client undertakes to:
- (a) Sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Y J Stone may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) Indemnify, and upon demand reimburse, Y J Stone for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) Not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of Y J Stone; and
 - (d) Immediately advise Y J Stone of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 12.3 Y J Stone and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 12.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 12.5 Unless otherwise agreed to in writing by Y J Stone, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.6 The Client shall unconditionally ratify any actions taken by Y J Stone under clauses 12.1 to 12.5.
- 12.7 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

13. Security and Charge

- 13.1 In consideration of Y J Stone agreeing to supply the Goods, 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, and the Client grants a security interest in all of its present and after-acquired property, 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). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 13.2 The Client indemnifies Y J Stone from and against all Y J Stone's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Y J Stone's rights under this clause.
- 13.3 The Client irrevocably appoints Y J Stone and each director of Y J Stone as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.

14. Defects and Returns

- 14.1 The Client shall inspect the Goods on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify Y J Stone of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Y J Stone an opportunity to inspect the Goods within a reasonable time following Delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Y J Stone has agreed in writing that the Client is entitled to reject, Y J Stone's liability is limited to either (at Y J Stone's discretion) replacing the Goods or repairing the Goods.
- 14.2 Goods will not be accepted for return other than in accordance with 14.1 above, and provided that:
- (a) Y J Stone has agreed in writing to accept the return of the Goods; and
 - (b) The Goods are returned at the Client's cost within seven (7) days of the Delivery date; and
 - (c) Y J Stone will not be liable for Goods which have not been stored or used in a proper manner; and
 - (d) The Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 14.3 Y J Stone may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of twenty percent (20%) of the value of the returned Goods plus any freight.
- 14.4 Subject to clause 14.1, non-stocklist items or Goods made to the Client's specifications are not acceptable for credit or return.

15. Warranty

- 15.1 To the extent permitted by statute, no warranty is given by Y J Stone as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. Y J Stone shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 15.2 For Goods not manufactured by Y J Stone, the warranty shall be the current warranty (10 years) provided by the manufacturer of the Goods. Y J Stone shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods. The conditions applicable to the manufacturer's warranty given on Goods supplied by Y J Stone are contained on the "Warranty Documentation" which will be supplied with the Goods at the time of Delivery.

16. Consumer Guarantees Act 1993

- 16.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Goods by Y J Stone to the Client.

17. Trademarks Rights

- 17.1 The Client agrees and acknowledges the following with regard to Y J Stone's Trademarks:

Yong Jian Stone (NZ) Limited – Terms & Conditions of Trade

- (a) Y J Stone is the sole and exclusive owner to all rights, title and interest in Y J Stone's trademarks (including, but not limited to, legal or trading name, logo, letterhead or anything legally registered or established by use as representing Y J Stone) or to any other trademarks associated with Y J Stone ("Trademarks"), which the Client may utilise in performing the services herein.
- (b) Y J Stone hereby grants the Client, for the duration of this Contract, and subject to the limitations stated within this Contract, a non-exclusive, non-transferable, revocable right to use Y J Stone's Trademarks as agreed in the to promote the use and sale Y J Stone's Goods.

18. Intellectual Property

- 18.1 For the purposes of this clause 18 'Intellectual Property' shall mean all vested contingent and future intellectual property rights including, but not limited to, copyright, Trademarks, service marks, design rights (whether registered or unregistered), patents, know-how, trade secrets, inventions, database rights and any applications for the protection or registration of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created.
- 18.2 Any misuse, misrepresentation or any other action that negatively impacts on Y J Stone's business (including but not limited to, any online services and/or marketing campaigns run by any other third party in the same industry that may imply they are acting on behalf or in favour of Y J Stone), which is deemed to damage and/or tarnish the reputation of Y J Stone, will result in Y J Stone enforcing their right to seek an injunction for the use of that third party's name, including seeking compensation for damages in respect of misuse of Y J Stone's logos, Trademarks etc.
- 18.3 The Client warrants that all designs, specifications or instructions given to Y J Stone will not cause Y J Stone to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Y J Stone against any action taken by a third party against Y J Stone in respect of any such infringement.
- 18.4 The Client agrees that Y J Stone may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Y J Stone has created for the Client.

19. Default and Consequences of Default

- 19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Y J Stone's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes Y J Stone any money the Client shall indemnify Y J Stone from and against all costs and disbursements incurred by Y J Stone in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Y J Stone's collection agency costs, and bank dishonour fees).
- 19.3 Further to any other rights or remedies Y J Stone may have under this Contract, if a Client has made payment to Y J Stone, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Y J Stone under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 19.4 Without prejudice to Y J Stone's other remedies at law Y J Stone shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Y J Stone shall, whether or not due for payment, become immediately payable if:
 - (a) Any money payable to Y J Stone becomes overdue, or in Y J Stone's opinion the Client will be unable to make a payment when it falls due;
 - (b) The Client has exceeded any applicable credit limit provided by Y J Stone;
 - (c) The Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

20. Cancellation

- 20.1 Without prejudice to any other remedies Y J Stone may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Y J Stone may suspend or terminate the supply of Goods to the Client. Y J Stone will not be liable to the Client for any loss or damage the Client suffers because Y J Stone has exercised its rights under this clause.
- 20.2 Y J Stone may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Y J Stone shall repay to the Client any money paid by the Client for the Goods. Y J Stone shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 In the event that the Client cancels Delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Y J Stone as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

21. Dispute Resolution

- 21.1 Where a dispute arises between the parties, it will be referred to Y J Stone and the Client's directors for resolution. Y J Stone and the Client agree to solve any disputes amicably and in good faith and on a without prejudice basis and not begin court proceedings or mediation or arbitration proceedings until the dispute resolution channel provided in this clause has been exhausted.
- 21.2 The dispute resolution process will be as follows:
 - (a) a party may give notice to the other party about the nature of the dispute (a "Dispute Notice") and the parties will seek to reach settlement amongst themselves within ten (10) Business Days of receipt of the Dispute Notice ("Negotiation Period"). Should the Parties fail to determine the dispute within the Negotiation Period, the Parties may seek within a further period of ten (10) Business Days (or such longer period as agreed in writing between the Parties) to reach agreement on:
 - (i) **a mediation procedure out of courts and arbitration proceedings, (such as mediation, reconciliation or expert determination process);**

- (ii) the steps to be taken by each Party and the timing of those steps;
 - (iii) who will be the independent person/body conducting the mediation process and who will pay for such independent person's/ body's professional fees and expenses; and
- (b) if the parties fail to solve the entire dispute or fail to reach agreement on any of the matters described above within twenty (20) days (or any other period agreed in writing) from the date of the Dispute Notice, either Y J Stone or the Client may commence court proceedings or arbitration proceedings to resolve the dispute.

22. Privacy Policy

- 22.1 All emails, documents, images or other recorded information held or used by Y J Stone is personal information as defined and referred to in clause 22.3 and therefore considered confidential. Y J Stone acknowledges its obligation in relation to the handling, use, disclosure and processing of personal information pursuant to the Privacy Acts 1993 and 2020 ("the Act") including Part II of the OECD Guidelines as set out in the Act. Y J Stone acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's personal information, held by Y J Stone that may result in serious harm to the Client, Y J Stone will notify the Client in accordance with the Act. Any release of such personal information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.
- 22.2 Notwithstanding clause 22.1, privacy limitations will extend to Y J Stone in respect of Cookies where the Client utilises Y J Stone's website to make enquiries. Y J Stone agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of personal information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) Tracking website usage and traffic; and
 - (c) Reports are available to Y J Stone when Y J Stone sends an email to the Client, so Y J Stone may collect and review that information ("collectively personal information")
- If the Client consents to Y J Stone's use of Cookies on Y J Stone's website and later wishes to withdraw that consent, the Client may manage and control Y J Stone's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 22.3 The Client authorises Y J Stone or Y J Stone's agent to:
- (a) Access, collect, retain and use any information about the Client;
 - (i) Including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice for the purpose of assessing the Client's creditworthiness; or
 - (ii) For the purpose of marketing products and services to the Client.
 - (b) Disclose information about the Client, whether collected by Y J Stone from the Client directly or obtained by Y J Stone from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 22.4 Where the Client is an individual the authorities under clause 22.3 are authorities or consents for the purposes of the Privacy Acts 1993 and 2020.
- 22.5 The Client shall have the right to request (by e-mail) from Y J Stone, a copy of the personal information about the Client retained by Y J Stone and the right to request that Y J Stone correct any incorrect personal information.
- 22.6 Y J Stone will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 22.7 The Client can make a privacy complaint by contacting Y J Stone via e-mail. Y J Stone will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

23. Service of Notices

- 23.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) By handing the notice to the other party, in person;
 - (b) By leaving it at the address of the other party as stated in this Contract;
 - (c) By sending it by registered post to the address of the other party as stated in this Contract;
 - (d) If sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) If sent by email to the other party's last known email address.
- 23.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

24. Trusts

- 24.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Y J Stone may have notice of the Trust, the Client covenants with Y J Stone as follows:
- (a) The Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) The Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) The Client will not without consent in writing of Y J Stone (Y J Stone will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) The removal, replacement or retirement of the Client as trustee of the Trust;

- (ii) Any alteration to or variation of the terms of the Trust;
- (iii) Any advancement or distribution of capital of the Trust; or
- (iv) Any resettlement of the trust property.

25. General

- 25.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Auckland Courts of New Zealand.
- 25.3 Subject to the CGA, Y J Stone 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 Y J Stone of these terms and conditions (alternatively Y J Stone's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 25.4 Y J Stone may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 25.5 The Client cannot licence or assign without the written approval of Y J Stone.
- 25.6 Y J Stone may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Y J Stone's subcontractors without the authority of Y J Stone.
- 25.7 The Client agrees that Y J Stone may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Y J Stone to provide Goods to the Client.
- 25.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to Y J Stone.
- 25.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.