

Base Up Contracting (2012) Ltd – Terms & Conditions of Trade

<p>1. Definitions 1.1 "Base Up" means Base Up Contracting (2012) Ltd, its successors and assigns or any person acting on behalf of and with the authority of Base Up Contracting (2012) Ltd. 1.2 "Client" means the person ordering the Works as specified in any invoice, document or order and for whom the Client is a reference to each Client jointly and severally. 1.3 "Works" means all Works or Materials provided by Base Up to the Client at the Client's request from time to time (where the context so permits the terms "Works" or "Materials" shall be interchangeable for the other), and include any advice or recommendations. 1.4 "Prime Cost Item" shall mean an item that either has not been selected, or whose Price is not known, at the time this contract is entered into and for the cost of supply and delivery of which Base Up must make a reasonable allowance in the contract. 1.5 "Provisional Sum" shall mean an estimate of the cost of carrying out particular Works under this contract for which Base Up, after making all reasonable inquiries, cannot give a definite Price at the time this contract is entered into. 1.6 "Price" means the Price payable for the Works as agreed between Base Up and the Client in accordance with clause 5 below.</p> <p>2. Acceptance 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts provision of the Works. 2.2 These terms and conditions may only be amended with Base Up's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Base Up.</p> <p>3. Change in Control 3.1 The Client shall give Base Up 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, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by Base Up as a result of the Client's failure to comply with this clause. 3.2 These terms and conditions may be amended to be read in conjunction with Base Up's Hire Form, and: (a) where the context so permits, the terms "Works" or "Materials" shall include any supply of Equipment, as defined therein; and (b) if there are any inconsistencies between the two documents then the terms and conditions contained in the Hire Form shall prevail.</p> <p>4. Authorised Representatives 4.1 Unless otherwise limited as per clause 4.2, the Client agrees that should the Client introduce any third party to Base Up as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Works (and/or to accept any variation thereto) on the Client's behalf, and such authority shall continue until all requested Works have been completed and the Client notifies Base Up in writing that said person is no longer the Client's duly authorised representative. 4.2 In the event that the Client's duly authorised representative as per clause 4.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise Base Up in writing of the parameters of the limited authority granted to their representative. 4.3 The Client specifically acknowledges and accepts that they will be solely liable to Base Up for all additional costs incurred by Base Up (including Base Up's profit margin) in providing any Works, or variations thereto, requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).</p> <p>5. Price and Payment 5.1 At Base Up's sole discretion the Price shall be either: (a) as indicated on invoices provided by Base Up to the Client in respect of Works provided; or (b) Base Up's quoted Price (subject to clause 6) which shall be binding upon Base Up provided that the Client shall either accept Base Up's quotation in writing within thirty (30) days, or sign Base Up's contract within the prescribed timeframes. 5.2 At Base Up's sole discretion, a non-refundable deposit may be required prior to commencement of the Works. 5.3 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by Base Up, which may be: (a) on completion of the Works; or (b) by way of progress payments in accordance with Base Up's specified progress payment schedule. Such a schedule shall be agreed between the Client and Base Up. In the event of authorised variations and the value of any Materials delivered to the worksite but not yet installed. Where no payment stages have been specified, Base Up may submit detailed payment claims at intervals not less than one (1) month for Works performed up to the end of each month. (c) for certain approved Clients, due twenty (20) days following the end of the month in which the 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 of any invoice given to the Client by Base Up. 5.4 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method agreed between the Client and Base Up. 5.5 Unless otherwise stated by the Price, does not include GST. In addition to the Price the Client must pay to Base Up an amount equal to any GST Base Up must pay for any provision of Works by Base Up under this or any other agreement. 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 where the Client expressly includes in the Price. 5.6 Unless otherwise agreed to in writing between the parties, no allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, Base Up reserves the right to treat all retentions as placing the Client's account into default.</p> <p>6. Variations 6.1 Base Up reserves the right to change the Price: (a) if a variation to the variation plan is to be provided is requested; or (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, hard rock barriers below the surface or iron reinforcing rods in concrete, obscured site conditions, removal of work, health hazards and safety considerations (such as the discovery of asbestos), prerequisite work by any third party not being completed or hidden pipes and wiring in walls, etc.) which are only discovered on commencement of the Works; or (d) in the event of increases to Base Up in the cost of labour or Materials which are beyond Base Up's control. 6.2 In the event that the Client requests a variation all such requests shall be made in writing. If Base Up believes the variation will not require a variation to any permit and will not cause any delay, and will not add more than two percent (2%) to the Price then Base Up may carry out the variation and the Client agrees to pay any variation to the Price, otherwise Base Up will charge the Client a written variation document detailing the Works, the amended Price, the estimated time to undertake the variation and the likely delay if any, and require written acceptance by the Client of the variation before commencing Work on the variation. 6.3 In the event that Base Up requests a variation, Base Up will, in writing: (a) state the reason for the variation; and (b) provide a full description of the variation; and (c) state any effect the variation will have on the contract, including but not limited to, the Price, completion date and whether further permits or authorisations are required. 6.4 Other than for the events outlined in clause 6.5 Base Up shall obtain written acceptance by the Client of any variation submitted by Base Up before commencing work on the variation. 6.5 Where the Works involve alterations to an existing building or structure then: (a) Base Up shall not be liable for any loss or damage suffered by the Client in relation to the Works where such loss or damage results from the state of or condition of the Client's existing building or structure, and the effect of such state or condition on the Works, or the effect of the Works on the existing building or structure, could not reasonably have been foreseen by Base Up during the course of the Works; and (b) where as a result of opening up any part of the existing building or structure to carry out the Works, any additional or altered work is required because of non-standard construction or any substantial timber or other materials or because of any material which is required to be replaced or removed to carry out the Works, then the cost of any additional or altered work shall be borne by the Client and treated as a variation and the Contract Price adjusted accordingly.</p> <p>7. Provision of the Works 7.1 Subject to clause 7.2, it is Base Up's responsibility to ensure that the Works start as soon as it is reasonably possible. 7.2 The Works commencement date will be put back and the building period extended by whatever time is reasonable in the event that Base Up claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Base Up's control, including but not limited to any failure by the Client to: (a) make a selection; (b) have the site ready for installation; or (c) notify Base Up that the site is ready. 7.3 Any time specified by Base Up for provision of the Works is an estimate only and Base Up will not be liable for any loss or damage incurred by the Client as a result of provision being late. However both parties agree that they shall endeavour to complete the Works to be provided at the time such loss or damage was arranged between both parties. In the event that Base Up is unable to provide the Works as agreed solely due to any action or inaction of the Client then Base Up shall be entitled to charge a reasonable fee for re-providing the Works at a later time and date. 7.4 The Works shall be deemed to be completed when: (a) the Client has carried out all work that has been completed in accordance with the plans and specifications set out in this contract; and (b) the Client either: (i) receives a certificate of acceptance where the Works were urgent and completed without a building consent; or (ii) in any other case, upon the issuance of a Notice of Practical Completion. 7.5 The Client shall inspect completion and shall within three (3) days notify Base Up of any alleged defect, error or omission, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Base Up an opportunity to inspect the Works within a reasonable time following such notification if the Client believes the Works are defective in any way. If the Client shall fail to comply with these provisions the Works shall be presumed to be free from defects. For defects the Client shall be liable for the cost of any work agreed in writing that the Client is entitled to reject. Base Up's liability is limited to either (at Base Up's discretion) replacing the Works or repairing the Works. 7.6 Materials will not be accepted for return other than in accordance with clause 7.5 above.</p>	<p>8. Risk 8.1 Risk of damage to or loss of the Materials passes to the Client on delivery and the Client must insure the Materials on or before delivery. 8.2 If any of the Materials are damaged or destroyed following delivery but prior to ownership passing to the Client, Base Up is entitled to recover all insurance proceeds payable for the Materials. The production of these terms and conditions by Base Up is sufficient evidence of Base Up's rights to receive the insurance proceeds without the need for any person dealing with Base Up to make further enquiries. 8.3 The Client acknowledges that Materials supplied may exhibit variations in texture, shade, colour, surface, finish, markings, grain, veining and contain natural fissures, occlusions, and indentations, and may fade or change colour over time. Base Up will make every effort to match dye lots/batches/sales samples supplied in order to minimise such variations, but shall not be liable in any way whatsoever where such variations occur. 8.4 Base Up gives no guarantee (expressed or implied) as to the length of time the curing process will take and/or against cracking of concrete that may occur naturally in the Works such as: (a) shrinkage and growth; (b) damage caused by contact with chemicals, solvents, oils or any other substances; or (c) the affects by elements such as heat exposure or wet weather conditions that prolong the curing process. 8.5 Where Base Up gives advice or recommendations to the Client (or their agent), regarding the suitability of the site for the laying of concrete slabs, foundations or similar work and such advice is not acted upon then Base Up shall not be liable for any loss or damage to the Client or their agent) to authorise commencement of the Works in writing. Base Up shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.</p> <p>9. Site Access and Condition 9.1 The Client shall ensure that Base Up has clear and free access to the work site at all times to enable the Client's Base Up is entitled to recover all insurance proceeds payable for the Works. The production of these terms and conditions by Base Up is sufficient evidence of Base Up's rights to receive the insurance proceeds without the need for any person dealing with Base Up to make further enquiries. 9.2 It is the intention of Base Up and agreed by the Client that it is the Client's responsibility to provide Base Up, while at the site, with adequate access to available water, electricity, toilet and washing facilities.</p> <p>10. Underground Services 10.1 Prior to Base Up commencing the Works the Client must advise Base Up of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be present. 10.2 Whilst Base Up will take all care to avoid of all underground services the Client agrees to indemnify Base Up in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 10.1.</p> <p>11. Compliance with Laws 11.1 The Client and Base Up shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including but not limited to the Health and Safety laws relating to building/construction sites and any other relevant safety standards or legislation, and the terms and conditions of all consents and approvals (in so far as such consents and approvals relate to the carrying out of the Works). 11.2 The Client shall obtain (at the expense of the Client) all licences, consents and approvals, including the Code Compliance Certificate(s) that may be required for the Works, if applicable. Base Up shall provide the Client with all necessary information relating to the Works so that the Client may apply for such licences, consents and approvals.</p> <p>12. Insurance 12.1 Base Up shall have public liability insurance. It is the Client's responsibility to ensure that they are similarly insured. 12.2 Base Up shall maintain a public liability insurance policy of at least one million dollars (\$1m) comprising Base Up against claims in respect of loss of damage against any property or injury or death or illness to any person arising out of the operations of Base Up or any of its subcontractors in connection with the execution of the Works. The policy shall be kept continuously in force until all Works required to remedy defects has been completed. 12.3 Where the Works involve physical change to an existing structure including additions or alterations, the Client shall arrange insurance: (a) for the Works against loss or damage for not less than the total of the Price; and (b) for full replacement value against loss or damage to the Client's existing structure made available to enable performance of the Works or adjacent to the Works and against loss or damage to the Client's contents; and (c) against consequential loss arising from loss or damage to the Client's existing structures and contents available for the Works to be carried out. 12.4 In the case of additions or alterations Works, insurance cover under clause 12.3 may be provided under the Client's existing policy of insurance in relation to the existing building or structure as an extension of such policy and: (a) shall be in the joint names of the Client, Base Up and the mortgagee (if any); and (b) shall be subject to the Client's consent and the mortgagee's consent (if any); and (c) working days prior notification by the insurer in writing to Base Up and the Client; and (d) shall include a waiver of the insurer's right to subrogate against the insurer parties. 12.5 For new dwellings Base Up shall from the date that the Works are due to be commenced until the date that the Works are completed keep the Works insured against loss or damage. The insurance policy shall be in the names of the Client, Base Up and the mortgagee (if any). Such insurance cover must be maintained after completion if any defects require rectification by Base Up and until such time as those Works have been completed.</p> <p>13. Work undertaken by Client 13.1 In the event that any part of the Works is undertaken by, or is reliant upon work undertaken by the Client then any work undertaken by the Client shall be at the written permission of Base Up and executed in accordance with a timetable provided to the Client by Base Up and shall be subject to the Client's compliance with the plans and specifications, the Building Act 2004 (in particular sections 14B(b) and (c)) and any relevant regulations made under that Act, and any direction given by Base Up. 13.2 In the event of the Client failing to undertake any such work strictly in accordance with clause 13.1, Base Up shall be entitled to: (a) rectify any such failure to make good a defect; and (b) recover the Client any costs incurred due to additional labour or Materials costs with any such costs being paid to Base Up as invoiced prior to possession being given and taken. 13.3 Base Up shall not be liable for any loss or damage whatsoever caused as a result of any work performed by the Client. 13.4 In the event of any loss arising out of any materials supplied by the Client, the Client shall be liable for all such loss or damage. 13.5 During any period that the Client is working on the Works the Client shall take all practical steps to prevent harm to Base Up and shall comply with the provisions of the Health and Safety in Employment Act 1992.</p> <p>14. Title 14.1 Base Up and the Client agree that the Client's obligations to Base Up for the provision of the Works shall not cease (and ownership of the Materials shall not pass) until: (a) the Client has paid Base Up all amounts owing to Base Up; and (b) the Client has met all other obligations due by the Client to Base Up in respect of all contracts between Base Up and the Client. 14.2 Receipt by Base Up of any form of payment other than cash shall not be deemed to be payment until such time as the Client has met all other obligations due by the Client to Base Up or ownership or rights in respect of this agreement (and the Materials) shall continue. It is further agreed that: (a) where practicable the Materials shall be kept separate and identifiable until Base Up shall have received payment and all other obligations of the Client are met; and (b) in the event of such time as ownership of the Materials shall pass from Base Up to the Client Base Up may give notice in writing to the Client to return the Materials or any of them to Base Up. Upon such notice the rights of the Client to obtain ownership or any other interest in the Materials shall cease; and (c) Base Up shall have the right of stopping the Materials in transit whether or not delivery has been made; and (d) in the event the Client fails to return the Materials to Base Up then Base Up's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Materials are situated and take possession of the Materials.</p> <p>15. Personal Property Securities Act 1999 ("PPSA") 15.1 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 Materials and collateral (accounts) – being a monetary obligation of the Client to Base Up for Works – previously provided and that will be provided in the future by Base Up to the Client. 15.2 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 Base Up may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register; or releasing any registration made thereby; (b) advise Base Up of any change of reimbursement, Base Up for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby; (c) not register a financing or a change demand without the prior written consent of Base Up. 15.3 Base Up and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions. 15.4 The Client agrees to act as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA. 15.5 Unless otherwise agreed to in writing by Base Up, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA. 15.6 The Client shall unconditionally ratify any actions taken by Base Up under clauses 15.6 to 15.7.</p> <p>16. Security and Charge 16.1 In consideration of Base Up agreeing to provide the Works, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).</p>	<p>16.2 The Client indemnifies Base Up from and against all Base Up's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Base Up's rights under this clause. 16.3 The Client irrevocably appoints Base Up and each director of Base Up as the Client's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client's behalf. 16.4 Client's Disclaimer The Client hereby disclaims any right to rescind, or cancel any contract with Base Up or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by Base Up and the Client acknowledges that the Works are bought relying solely upon the Client's skill and judgment. 16.5 Warranties 16.6 Subject to the conditions of warranty set out in clause 18.2, Base Up warrants that if any defect in any workmanship of Base Up becomes apparent and is reported to Base Up within six (6) months of the date of completion (time being of the essence) then Base Up will either (at Base Up's sole discretion) replace or remedy the workmanship. 16.7 The conditions applicable to the warranty are given in clause 18.1 are: (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through: (i) failure on the part of the Client to properly maintain the Works; or (ii) failure on the part of the Client to follow any instructions or guidelines provided by Base Up; or (iii) any use of the Works other than for any application specified on a quote or order form; or (iv) the continued use of the Works after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or (v) fair wear and tear, any accident or act of God. (b) the warranty shall cease and Base Up shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Base Up's consent. (c) in respect of all claims Base Up shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim. 16.8 Materials not manufactured by Base Up, the warranty shall be the current warranty provided by the manufacturer of the Materials. Base Up shall not be bound by or be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Materials. 16.9 Intellectual Property The Client agrees that Base Up may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans, or digital media of the Works which Base Up has prepared or created for the Client. 16.10 Default and Consequences of Default 16.11 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 (due at Base Up's sole discretion) such interest shall compound monthly from such a date) after as well as before any payment. 16.12 If the Client does not pay Base Up any money the Client shall indemnify Base Up from and against all costs and disbursements incurred by Base Up in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Base Up's collection agency costs, and bank dishonour fees). 16.13 Without prejudice to any other remedies Base Up may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Base Up may suspend or terminate the provision of Works to the Client. Base Up will not be liable to the Client for any loss or damage the Client suffers because Base Up has exercised its rights under this clause. 16.14 Without prejudice to Base Up's other remedies at law Base Up shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Base Up shall, whether or not due for payment, become immediately payable if: (a) any money payable to Base Up becomes overdue; or in Base Up's opinion the Client will be unable to make a payment when it falls due; (b) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or (c) a receiver or liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client. 16.15 Cancellation Base Up may cancel any contract to which these terms and conditions apply or cancel provision of Works at any time before the Works have commenced by giving written notice to the Client. On giving such notice Base Up shall repay to the Client any sums paid in respect of the Works that have not been completed by the Client to Base Up. For Materials already ordered/supplied, Base Up shall not be liable for any loss or damage whatsoever arising from such cancellation. 16.16 In the event that the Client cancels the provision of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by Base Up as a direct result of the cancellation (including, but not limited to, any loss of profits). 16.17 Cancellation of the Works by the Client shall not be a breach of the Client's obligations under the contract, and the Client's obligations under the contract shall be deemed to have been fulfilled. 16.18 Privacy Act 1993 The Client authorises Base Up or Base Up's agent to: (a) access, collect, retain and use any information about the Client: (i) including any overdue fines balance information held by the Ministry of Justice) for a purpose as authorised by the Client's creditworthiness; (ii) for the purpose of marketing products and services to the Client. (b) disclose information about the Client, whether collected by Base Up from the Client directly or obtained by Base Up 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. 16.19 Where the Client is an individual the authorities under clause 22.1 are authorities or consents for the purposes of the Privacy Act 1993. 16.20 The Client shall have the right to request Base Up for a copy of the information about the Client retained by Base Up and the right to request Base Up to correct any incorrect information about the Client held by Base Up. 16.21 Dispute Resolution 16.22 In the event of any differences between the Client and Base Up touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996. 16.23 Construction Contracts Act 2002 In the event that the Client is a residential occupier as defined by the Construction Contracts Act 2002 the Client hereby expressly acknowledges that: (a) Base Up has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client; and (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Client; or (ii) a scheduled payment has not been made in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to Base Up by a particular date; and (iv) Base Up has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract. (b) if Base Up suspends work it: (i) is not in breach of contract; and (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and (iii) is entitled to an extension of time to complete the contract; and (iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with. (c) if Base Up exercises the right to suspend work, the exercise of that right does not: (i) affect any rights that would otherwise have been available to Base Up under the Contractual Remedies Act 1979; or (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of Base Up suspending work under this provision. 16.24 General The failure by Base Up to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Base Up's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal, unenforceable the validity, enforceability, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired. 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 Tauranga Court of New Zealand. 16.25 Base Up 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 Base Up of these terms and conditions (alternatively Base Up's liability shall be limited to damages which under no circumstances shall exceed the Price). 16.26 Base Up may license or sub-contract all or any part of its rights and obligations without the Client's consent, and the Client understands that they have no authority to give any instructions to any of Base Up's sub-contractors without the authority of Base Up. 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 Base Up nor to withhold payment of any invoice because part of that invoice is in dispute. 16.27 The Client agrees that Base Up may amend these terms and conditions at any time. If Base Up amends or varies these terms and conditions, then that change will take effect from the date on which Base Up notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Base Up to provide any Works to the Client. 16.28 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party. The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do, it is not insolvent and that this agreement creates binding and valid legal obligations on it.</p>
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