

Ó'Coinné Constructions Limited – Terms & Conditions of Trade

1. **Definitions**
 - 1.1 "Ó'Coinné" means Ó'Coinné Constructions Limited, its successors and assigns or any person acting on behalf of and with the authority of Ó'Coinné Constructions Limited.
 - 1.2 "Client" means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
 - 1.3 "Works" means all Works or Materials supplied by Ó'Coinné 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).
 - 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 Ó'Coinné 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 Ó'Coinné, 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 Ó'Coinné and the Client in accordance with clause 6 below.
 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 delivery of any Works.
 - 2.2 These terms and conditions may only be amended with Ó'Coinné's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Ó'Coinné.
 3. **Authorised Representatives**
 - 3.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to Ó'Coinné as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any materials or Services on the Client's behalf and/or to request any variation to the works on the Client's behalf (such authority to continue until all requested works have been completed or the Client otherwise notifies Ó'Coinné in writing that said person is no longer the Client's duly authorised representative).
 - 3.2 In the event that the Client's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise Ó'Coinné in writing of the parameters of the limited authority granted to their representative.
 - 3.3 The Client specifically acknowledges and accepts that they will be solely liable to Ó'Coinné for all additional costs incurred by Ó'Coinné (including Ó'Coinné's profit margin) in providing any works, materials, services or variations requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).
 4. **Electronic Transactions Act 2002**
 - 4.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.
 5. **Change in Control**
 - 5.1 The Client shall give Ó'Coinné 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 Ó'Coinné as a result of the Client's failure to comply with this clause.
 5. **Price and Payment**
 - 5.1 At Ó'Coinné's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by Ó'Coinné to the Client in respect of Works performed or Materials supplied; or
 - (b) Ó'Coinné's quoted Price (subject to clause 6.2) which shall be binding upon Ó'Coinné provided that the Client shall accept Ó'Coinné's quotation in writing within thirty (30) days. The Client accepts that any variation on the standard specification of Works required may result in a variation of Ó'Coinné's applicable hourly labour rate, which at Ó'Coinné's sole discretion may be negotiable.
 - 5.2 Ó'Coinné reserves the right to change the Price:
 - (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans, specifications, or within specified tolerances as per plans) 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, availability of machinery, safety considerations, prerequisite work by a third party not being completed, change of design, existing structure not meeting current code of compliance requirements, discovery of asbestos, synthetic mineral fibres, rot or termite damage, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc.) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to Ó'Coinné in the cost of labour or materials which are beyond Ó'Coinné's control.
 - 6.3 At Ó'Coinné's sole discretion a non-refundable deposit may be required.
 - 6.4 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by Ó'Coinné, which may be:
 - (a) on completion of the Works; or
 - (b) by way of progress payments in accordance with Ó'Coinné's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the worksite but not yet installed;
 - (c) the time agreed to in writing as a result in prior negotiation;
 - (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 fourteen (14) days following the date of any invoice given to the Client by Ó'Coinné.
 - 6.5 Where Ó'Coinné has supplied labour only to the Client, the date of payment shall be seven (7) days after the date of the invoice and the rate shall be at Ó'Coinné's applicable hourly rate.
 - 6.6 Payment may be made by bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and Ó'Coinné.
 - 6.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Ó'Coinné an amount equal to any GST Ó'Coinné must pay for any supply by Ó'Coinné under this or any other agreement for the sale of the Materials. 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 and Completion Of Works**
 - 7.1 Subject to clause 7.2 it is Ó'Coinné'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 Ó'Coinné claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Builder's control, including but not limited to any failure by the Client to:
 - (a) make a selection; or
 - (b) have the site ready for installation; or
 - (c) notify Ó'Coinné that the site is ready.
 - 7.3 The Works shall be deemed to be completed when:
 - (a) the Works carried out under this contract have 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.
 - 7.4 At Ó'Coinné's sole discretion costs of delivery are included in the Price.
 - 7.5 The Client must take delivery by receipt or collection of the Works whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Works as arranged then Ó'Coinné shall be entitled to charge a reasonable fee for redelivery and/or storage of Materials.
 - 7.6 Ó'Coinné may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
 - 7.7 Any time or date given by Ó'Coinné to the Client is an estimate only. Ó'Coinné shall not be liable for any loss or damage whatsoever due to failure by Ó'Coinné to deliver the Works (or any part of them) promptly or at all, where due to circumstances beyond the reasonable control of Ó'Coinné.
8. **Risk**
 - 8.1 If Ó'Coinné retains ownership of the Materials nonetheless, all risk for the Materials passes to the Client on completion.
 - 8.2 Ó'Coinné shall be responsible for the Works from the date that Ó'Coinné takes possession of the building site until the date of Practical Completion recorded in the Notice of Practical Completion.
 - 8.3 Any advice, recommendation, information, assistance or service provided by Ó'Coinné in relation to Materials or Works supplied is given in good faith is based on Ó'Coinné's own knowledge and experience and shall be accepted without liability on the part of Ó'Coinné and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Materials or Works.
 - 8.4 Where Ó'Coinné is required to install the Materials the Client warrants that the structure of the premises or equipment in or upon which these Materials are to be installed or erected is sound and will sustain the installation and work incidental thereto and Ó'Coinné shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 8.5 Timber is a natural product and as such may exhibit variations in texture, shade, colour, surface, finish, markings, veining, and contain natural fissures, occlusions, and indentations. Whilst Ó'Coinné will make every effort to match sales samples to the finished Materials Ó'Coinné accepts no liability whatsoever where such samples differ to the finished Materials supplied.
- 8.6 Timber is a hygroscopic material subject to expansion and contraction, therefore Ó'Coinné will accept no responsibility for gaps that may appear in the flooring of other exposed panelling or cladding during prolonged dry periods.
- 8.7 The Client acknowledges that Materials supplied may:
 - (a) fade or change colour over time; and
 - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (c) mark or stain if exposed to certain substances; and
 - (d) be damaged or disfigured by impact or scratching.
9. **Dimensions, Plans and Specifications**
 - 9.1 All customary building industry tolerances shall apply to the dimensions and measurements of the Materials unless Ó'Coinné and the Client agree otherwise in writing.
 - 9.2 Ó'Coinné shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client
 - 9.3 If the giving of an estimate or quotation for the supply of Materials involves Ó'Coinné estimating measurements and quantities, it shall be the responsibility of the Client to verify the accuracy of Ó'Coinné's estimated measurements and quantities, before the Client places an order based on such estimate or accepts such quotation.
 - 9.4 Should the Client require any changes to Ó'Coinné's estimated measurements and quantities, the Client shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.
10. **Care of Materials**
 - 10.1 Ó'Coinné may at its discretion notify the Client that it requires to store at the work site Materials, fittings and appliances, or plant and tools required for the Works, in which event the Client shall supply Ó'Coinné a safe area for storage or placement of a container or porta-cabin etc., and shall take all reasonable efforts to protect all items so stored from possible destruction, theft or damage or unauthorised access into such container or porta-cabin. In the event that any such items are destroyed, stolen or damaged then the cost of repair or replacement shall be the Client's responsibility.
11. **Surplus Materials**
 - 11.1 Unless otherwise stated elsewhere in this contract:
 - (a) demolished Materials remain the Client's property; and
 - (b) Materials which Ó'Coinné brings to the site which are surplus remain the property of Ó'Coinné.
12. **Site Access and Condition**
 - 12.1 It is the intention of Ó'Coinné and agreed by the Client that:
 - (a) it is the Client's responsibility to provide Ó'Coinné, while at the site, with adequate access to available water, electricity, toilet and washing facilities; and
 - (b) have all areas clean and clear to enable scheduled work to be completed in accordance with the schedule of installation; and
 - (c) remove all fragile items such as glassware, crockery, pot plants, furniture and ornaments. Breakages and damages are the responsibility of the Client. All care taken but no responsibility accepted by Ó'Coinné in this regard; and
 - (d) provide adequate dust sheets to protect the Client's furniture and décor. Ó'Coinné will not accept any responsibility for cleaning or repair costs attributed to dust or damage caused by any sanding process; and
 - (e) make the premises available on the agreed date and time. If installation is interrupted by the failure of the Client to adhere to the installation schedule agreed to between Ó'Coinné and the Client, any additional costs will be invoiced to the Client as an extra; and
 - (f) the Client is entitled to have reasonable access to inspect the Works at all reasonable hours in the presence of Ó'Coinné provided that Ó'Coinné shall not be responsible for any damage done to the Works by the Client, and the Client does not interfere with the process of the Works, and the Client complies with all requirements of Health and Safety in Employment Act 1992; and
 - (g) Ó'Coinné is not responsible for the removal of rubbish from, or clean-up of, the building/construction site/s when it has been stated on the quotation/estimate that no allowance has been given for rubbish removal/dump fees. This is the responsibility of the Client or the Client's agent; and.
- (h) Ó'Coinné shall not be responsible for the removal of rubbish left by any other contractor or subcontractor.
- 12.2 The Client acknowledges that in the event asbestos or any other toxic substances are discovered at the worksite that it is their responsibility to ensure the safe removal of the same. The Client further agrees to indemnify Ó'Coinné against any costs incurred by Ó'Coinné as a consequence of such discovery. Under no circumstances will Ó'Coinné handle removal of asbestos product.
- 12.3 Ó'Coinné is not insured to remove furniture or fittings and will not do so, nor is Ó'Coinné licensed to move gas or electrical appliances.
13. **Works undertaken by Client**
 - 13.1 In the event that any part of the Works is undertaken by, or is reliant upon Works undertaken by the Client then any Works undertaken by the Client shall be a written permission of Ó'Coinné and executed in accordance with a timetable provided to the Client by Ó'Coinné and shall be undertaken strictly in accordance with the plans and specifications, the Building Act 2004 (in particular sections 14B(b) and (c)) and any relevant regulations made under the Act, and any direction given by Ó'Coinné.
 - 13.2 In the event of the Client failing to undertake any such Works strictly in accordance with clause 13.1 Ó'Coinné shall be entitled to:
 - (a) rectify any such failure to make good a defect and
 - (b) charge the Client any extra costs incurred due to additional labour or material costs with any such costs being paid to Ó'Coinné as invoiced prior to possession being given and taken.
 - 13.3 Ó'Coinné shall not be liable for any loss or damage howsoever caused as a result of any Works 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 Ó'Coinné and shall comply with the provisions of the Health and Safety in Employment Act 1992.
14. **Underground Locations**
 - 14.1 Prior to Ó'Coinné commencing any work the Client must advise Ó'Coinné of the precise location of all underground services on the site and clearly mark the same. The underground mains & 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 on site.
 - 14.2 Whilst Ó'Coinné will take all care to avoid damage to any underground services the Client agrees to indemnify Ó'Coinné 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 14.1.
15. **Compliance with Laws**
 - 15.1 The Client and Ó'Coinné 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.
 - 15.2 The Client shall obtain (at the expense of the Client all licenses and approvals that may be required for the Works.
 - 15.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
16. **Insurance**
 - 16.1 Ó'Coinné shall maintain a public liability insurance policy indemnifying Ó'Coinné against claims in respect of loss or damage against any property or injury or death or illness to any person arising out of the operations of Ó'Coinné or any of its subcontractors in connection with the execution of the Works. The policy shall be in the joint names of Ó'Coinné and the Client and shall be for an amount of not less than one million dollars (\$1,000,000) and shall be kept continuously in force until any Works required to remedy defects has been completed.
 - 16.2 Where the Works involve physical change to an existing structure including additions or alterations Works then the Client shall arrange insurance:
 - (a) for the Works against loss or damage for not less than the total of the contract 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 made available for the Works to be carried out
 - 16.3 In the case of additions or alterations Works insurance cover under clause 16.2 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, Ó'Coinné and the mortgagee (if any); and
 - (b) shall not be able to be cancelled or materially changed without giving at least ten (10) working

Ó'Coinné Constructions Limited – Terms & Conditions of Trade

- days prior notification by the insurer in writing to Ó'Coinné and the Client; and
- (c) shall include a waiver of the insurer's right to subrogation against the insurer parties.
- 16.4 For new dwellings Ó'Coinné 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, Ó'Coinné and the mortgagee (if any). Such cover shall also be maintained after completion if any defects require rectification by Ó'Coinné and until such time as those Works have been completed.
17. **Liquidated Damages**
- 17.1 Liquidated Damages shall only apply in the event that negligence on Ó'Coinné's part occurs and means that Practical Completion has not been achieved by the end of the working period as previously agreed to. In this instance only, the Client shall be entitled to Liquidated Damages equivalent to the amount as previously agreed to for each day after the working period that the Works remain uncompleted, continuing until either Practical Completion has been achieved or the Client has taken possession of the worksite whichever is the earliest.
- 17.2 Liquidated Damages applied under this contract may only be deducted from the final progress payment, and in the event there is a shortfall then such shortfall shall become a debt due and payable by Ó'Coinné to the Client.
18. **Title**
- 18.1 Ó'Coinné and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid Ó'Coinné all amounts owing to Ó'Coinné; and
- (b) the Client has met all of its other obligations to Ó'Coinné.
- 18.2 Receipt by Ó'Coinné 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.
- 18.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Client in accordance with clause 18.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Ó'Coinné on request.
- (b) the Client holds the benefit of the Client's insurance of the Materials on trust for Ó'Coinné and must pay to Ó'Coinné the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
- (c) the production of these terms and conditions by Ó'Coinné shall be sufficient evidence of Ó'Coinné's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Ó'Coinné to make further enquiries.
- (d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for Ó'Coinné and must pay or deliver the proceeds to Ó'Coinné on demand.
- (e) the Client should not convert or process the Materials 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 Ó'Coinné and must sell, dispose of or return the resulting product to Ó'Coinné as it so directs.
- (f) unless the Materials have become fixtures the Client irrevocably authorises Ó'Coinné to enter any premises where Ó'Coinné believes the Materials are kept and recover possession of the Materials.
- (g) Ó'Coinné may recover possession of any Materials in transit whether or not delivery has occurred.
- (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of Ó'Coinné.
- (i) Ó'Coinné may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.
19. **Personal Property Securities Act 1999 ("PPSA")**
- 19.1 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/or collateral (account) – being a monetary obligation of the Client to Ó'Coinné for Services – that have previously been supplied and that will be supplied in the future by Ó'Coinné to the Client.
- 19.2 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 Ó'Coinné may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, Ó'Coinné for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Materials charged thereby;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of Ó'Coinné; and
- (d) immediately advise Ó'Coinné of any material change in its business practices of selling Materials which would result in a change in the nature of proceeds derived from such sales.
- 19.3 Ó'Coinné and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 19.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 19.5 Unless otherwise agreed to in writing by Ó'Coinné, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 19.6 The Client shall unconditionally ratify any actions taken by Ó'Coinné under clauses 19.1 to 19.5.
20. **Security and Charge**
- 20.1 In consideration of Ó'Coinné agreeing to supply the Materials, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 20.2 The Client indemnifies Ó'Coinné from and against all Ó'Coinné's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Ó'Coinné's rights under this clause.
- 20.3 The Client irrevocably appoints Ó'Coinné and each director of Ó'Coinné as the Client's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 20 including, but not limited to, signing any document on the Client's behalf.
21. **Client's Disclaimer**
- 21.1 The Client hereby disclaims any right to rescind, or cancel any contract with Ó'Coinné or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by Ó'Coinné and the Client acknowledges that the Works are bought relying solely upon the Client's skill and judgment.
22. **Defects In Materials**
- 22.1 The Client shall inspect the Materials on delivery and shall within seven (7) days of delivery (time being of the essence) notify Ó'Coinné of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Ó'Coinné an opportunity to inspect the Materials within a reasonable time following delivery if the Client believes the Materials are defective in any way. If the Client shall fail to comply with these provisions the Materials shall be presumed to be free from any defect or damage. For defective Materials, which Ó'Coinné has agreed in writing that the Client is entitled to reject, Ó'Coinné's liability is limited to either (at Ó'Coinné's discretion) replacing the Materials or repairing the Materials.
- 22.2 Materials will not be accepted for return other than in accordance with 22.1 above.
- 22.3 Non-stocklist items or Materials made to the Client's specifications are under no circumstances acceptable for credit or return.
23. **Warranties**
- 23.1 Subject to the conditions of warranty set out in clause 23.2 Ó'Coinné warrants that if any defect in any workmanship of Ó'Coinné becomes apparent and is reported to Ó'Coinné within two (2) years of the date of delivery (time being of the essence) then Ó'Coinné will either (at Ó'Coinné's sole discretion) replace or remedy the workmanship.
- 23.2 The conditions applicable to the warranty given by clause 23.1 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 any Materials; or
- (ii) failure on the part of the Client to follow any instructions or guidelines provided by Ó'Coinné; or
- (iii) any use of any Materials otherwise than for any application specified on a quote or order form; or
- (iv) the continued use of any Materials 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 Ó'Coinné shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Ó'Coinné's consent.
- (c) in respect of all claims Ó'Coinné 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.
- 23.3 For Materials not manufactured by Ó'Coinné, the warranty shall be the current warranty provided by the manufacturer of the Materials. Ó'Coinné 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 Materials.
24. **Consumer Guarantees Act 1993**
- 24.1 Where the Client is acquiring Materials for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Materials by Ó'Coinné to the Client.
25. **Intellectual Property**
- 25.1 Where Ó'Coinné has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in Ó'Coinné, and shall only be used by the Client at Ó'Coinné's discretion.
- 25.2 The Client warrants that all designs, specifications or instructions given to Ó'Coinné will not cause Ó'Coinné to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Ó'Coinné against any action taken by a third party against Ó'Coinné in respect of any such infringement.
- 25.3 The Client agrees that Ó'Coinné may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which Ó'Coinné has created for the Client.
26. **Default and Consequences of Default**
- 26.1 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 Ó'Coinné's sole discretion such interest shall compound monthly at such rate) after as well as before any judgment.
- 26.2 If the Client owes Ó'Coinné any money the Client shall indemnify Ó'Coinné from and against all costs and disbursements incurred by Ó'Coinné in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Ó'Coinné's collection agency costs, and bank dishonour fees).
- 26.3 Without prejudice to any other remedies Ó'Coinné may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Ó'Coinné may suspend or terminate the supply of Works to the Client. Ó'Coinné will not be liable to the Client for any loss or damage the Client suffers because Ó'Coinné has exercised its rights under this clause.
- 26.4 Without prejudice to Ó'Coinné's other remedies at law Ó'Coinné shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Ó'Coinné shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Ó'Coinné becomes overdue, or in Ó'Coinné'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, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
27. **Cancellation**
- 27.1 Ó'Coinné may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice Ó'Coinné shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to Ó'Coinné for Works already performed. Ó'Coinné shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 27.2 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by Ó'Coinné as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 27.3 Cancellation of orders for products 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.
28. **Privacy Act 1993**
- 28.1 The Client authorises Ó'Coinné or Ó'Coinné'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 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 Ó'Coinné from the Client directly or obtained by Ó'Coinné 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.
- 28.2 Where the Client is an individual the authorities under clause 28.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 28.3 The Client shall have the right to request Ó'Coinné for a copy of the information about the Client retained by Ó'Coinné and the right to request Ó'Coinné to correct any incorrect information about the Client held by Ó'Coinné.
29. **Dispute Resolution**
- 29.1 All disputes and differences between the Client and Ó'Coinné 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.
30. **Construction Contracts Act 2002**
- 30.1 The Client hereby expressly acknowledges that:
- (a) Ó'Coinné 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 amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
- (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to Ó'Coinné by a particular date and
- (iv) Ó'Coinné has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
- (b) if Ó'Coinné 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 a 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 Ó'Coinné exercises the right to suspend work the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to Ó'Coinné 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 Ó'Coinné suspending work under this provision.
31. **General**
- 31.1 The failure by Ó'Coinné to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Ó'Coinné'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.
- 31.2 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 courts of New Zealand.
- 31.3 Ó'Coinné 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 Ó'Coinné of these terms and conditions (alternatively Ó'Coinné's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 31.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Ó'Coinné nor to withhold payment of any invoice because part of that invoice is in dispute.
- 31.5 Ó'Coinné may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 31.6 The Client agrees that Ó'Coinné may amend these terms and conditions at any time. If Ó'Coinné makes a change to these terms and conditions, then the change will take effect from the date on which Ó'Coinné notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Ó'Coinné to provide any Works to the Client.
- 31.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 31.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.