

1. Definitions

- 1.1 “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.
- 1.2 “Maximo” means Maximo Limited, respective successors and assigns or any person acting on behalf of and with the authority of Maximo Limited.
- 1.3 “Client” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Maximo to provide goods and 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.
- 1.4 “Construction Work” is defined in accordance with section 6 of the Construction Contracts Act 2002 (“CCA”), being summarised by section 6(1)(a) of the CCA as the construction, erection, installation, carrying out, alteration, repair, restoration, renewal, maintenance, extension, demolition, removal, or dismantling of any building, erection, edifice, or structure forming, or to form, part of land (whether permanent or not and whether constructed wholly or partly on, above, or below ground level).
- 1.5 “Infrastructure Owner” mean the person or entity retaining possession of the property on which the Construction Work is undertaken, including where the person or entity is the leasing party of the property or has the right to occupy the property for the purpose of undertaking the Construction Work.
- 1.6 “Insurer” means any licenced insurance provider in accordance with Insurance (Prudent Supervision) Act 2010.
- 1.7 “Construction Site” is defined in accordance with section 5 of the CCA, being summarised as the land or premises that are subject of the Contract.
- 1.8 “Intended Use” means a building product and the use thereof, for which the building product is intended to be, or is reasonably likely to be, associated with a building.
- 1.9 “Non-Conforming Product” means repair or mechanical products that are regarded as Non-Conforming for an Intended Use if, when associated with the Construction Work:
- (a) the product is not, or will not be, safe; or
 - (b) does not, or will not, comply with the relevant regulatory provisions; or
 - (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.10 “Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “**Personal Information**” such as: 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) and pricing details.
- 1.11 “Contract Contract Price” is defined in accordance with section 5 of CCA, being the total amount payable under the contract for carrying out the construction work to which the contract relates, and includes any variations to that amount agreed to between the parties to the contract. Any Contract Contract Price shall be indicated as exclusive of GST, unless specifically indicated as otherwise.

2. Acceptance

- 2.1 The Client acknowledges that an updated version of the Maximo’s terms of trade can be found at <https://maximo.co.nz/resources>
- 2.2 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client accepts the contract for Construction Work.
- 2.3 The Client becomes liable for the cost of any Construction Work provided by Maximo upon confirming instructions to Maximo for the purpose of the Construction Work to be undertaken.
- 2.4 Where the Client is a company, the person giving instruction shall be personally liable as a guarantor of the Construction Work undertaken by Maximo.
- 2.5 Where the Client is an Insurer, and the Insurer subsequently declines the Infrastructure Owner for which the Construction Work have been provided, the Infrastructure Owner shall be liable for Construction Work undertaken prior Maximo becoming aware that of the decline of any insurance claims by the Insurer.
- 2.6 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, the terms of this Contract shall prevail, except where the CCA provides specific guidance and/or requirements for any terms and conditions for any Construction Work under the CCA.
- 2.7 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.8 The Client acknowledges that the supply of Construction Work on credit shall not take effect until the Client has completed a credit application with Maximo and it has been approved with a credit limit established for the account.
- 2.9 In the event that the supply of Construction Work request exceeds the Clients credit limit and/or the account exceeds the payment terms, Maximo reserves the right to refuse to complete the Construction Work.
- 2.10 Maximo does not accept responsibility for any possessions left on the Construction Site while the while the Construction Work are being undertaken by Maximo. This includes the loss, theft, damage or destruction of any Client’s possessions left at Construction Site during the course of the contract for the Construction Work.
- 2.11 Maximo undertake to restore the Construction Site to its original state upon the completion of the Construction Work where it is reasonable to do and to an extent that is practical and reasonable in the circumstances.

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2.12 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.

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 Maximo as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Construction Work on the Client's behalf and/or to request any variation to the Construction Work on the Client's behalf (such authority to continue until all requested Construction Work have been completed or the Client otherwise notifies Maximo 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 Maximo 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 Maximo for all additional costs incurred by Maximo (including Maximo's profit margin) in providing any Construction Work, or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Errors and Omissions

4.1 The Client acknowledges and accepts that Maximo 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 Maximo 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 Maximo in respect of the Construction Work

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 Maximo; 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 Maximo not less than seven days prior written notice of any proposed change of ownership of the Client or Infrastructure Owner 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, change of trustees, or business practice). The Client shall be liable for any loss incurred by Maximo as a result of the Client's failure to comply with this clause.

5.2 Where any change of ownership has occurred, the Client will remain liable for the full payment of the Construction Work provided by Maximo, unless Maximo is provided with written instructions that the owner own shall be liable for such costs.

6. Quotations

6.1 Maximo shall reserve the right to re-measure and re-quote for the Construction Work where the Construction Site in a varied state from the time of the initial quotation to the time that the Construction Work is being undertaken including, but not limited to, where remedial work is to be performed to compensate for the progressed state of disrepair.

6.2 Maximo reserves the right to provide the Client with a re-quote for the Construction Work upon the time that Maximo becomes aware of the progressed state of disrepair including, but not limited to, where Construction Work undertaken expose rust, water damage, mould or rot.

6.3 Unless otherwise agreed to, any quotation shall not cover repair and damage to the Construction Work by:

- (a) any other contractor;
- (b) result of natural disaster; and/or
- (c) incorrect use.

6.4 Maximo provides that a single measure is considered in pricing per job, and any additional measures will be subject to additional charges.

6.5 Any quotations provided by Maximo shall be strictly valid for one month from the date on which the quotation is provided.

6.6 All Maximo pricing is based on a level (non-sloping) balcony unless otherwise stated.

6.7 Maximo assumes that installation of post shall be void of obstructions such as drains sprinklers and the like. Where such obstructions occur, the Contract may need to be a variation insofar is necessary to accommodate the obstruction.

6.8 Maximo does not take any responsibility for any damage caused by any cavities to the substrate.

6.9 Scaffolding and/or edge protection is to be provided by the client or builder, and is excluded in any quotation provided by Maximo.

7. Contract Price and Payment

7.1 At Maximo 's sole discretion the Contract Price shall be either:

- (a) as indicated on invoices provided by Maximo to the Client in respect of the Construction Work; or
- (b) Maximo 's quoted Contract Price (subject to clause 7.2) which shall be binding upon Maximo provided that the Client shall accept Maximo 's quotation in writing within fourteen days.

7.2 Maximo reserves the right to change the Contract Price:

- (a) if a variation to the Construction Work which are to be supplied is requested; or
- (b) if a variation to the Construction Work originally scheduled (including any applicable plans or specifications) is requested; or
- (c) where additional Construction Work are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, expose rust, water damage, mould or rot) which are only discovered on commencement of the Construction Work; or
- (d) in the event of increases to Maximo in the cost of labour or Construction Work which are beyond Maximo's control.

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

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- 7.4 At Maximo 's sole discretion a deposit may be required and if requested, shall become due and payable at that time.
- 7.5 Time for payment for the Construction Work being of the essence, the Contract Price will be payable by the Client on the date/s determined by Maximo, which may be:
- (a) on completion of the Construction Work for minor jobs; or
 - (b) by way of progress payments in accordance with Maximo's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Construction Work delivered to and/or by Maximo but not yet installed;
 - (c) for certain approved Clients, due twenty days following the end of the month in which a statement is emailed to the Client (or preferred 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 days following the date of any invoice given to the Client by Maximo.
- 7.6 Where the Construction Work is to be completed in two stages, the Client acknowledges and accepts that payment shall be required on completion of each stage of the Construction Work, unless otherwise agreed with Maximo.
- 7.7 Where an Insurer has authorised Construction Work, and subsequent variations are requested by the Infrastructure Owner, the Insurer shall be invoiced for authorised Construction Work and the Infrastructure Owner shall be invoiced separately for any such variations.
- 7.8 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and Maximo.
- 7.9 Maximo may in its discretion allocate any payment received from the Client towards any invoice that Maximo determines and may do so at the time of receipt or at any time afterwards. On any default by the Client, Maximo may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Maximo, payment will be deemed to be allocated in such manner as preserves the maximum value of Maximo 's Purchase Money Security Interest (as defined in the PPSA) in the Construction Work.
- 7.10 Unless otherwise stated the Contract Price does not include GST. In addition to the Contract Price, the Client must pay to Maximo an amount equal to any GST The Client must pay for any supply of materials by Maximo 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 Contract Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Contract Price except where they are expressly included in the Contract Price.
- 8. Retention**
- 8.1 Maximo requests that no retentions are applied to any Contract with the Client.
- 8.2 However, where retentions are required, any retention held shall be in accordance with section 18 of the CCA.
- 8.3 Maximo confirms that there are no instruments in place for the holding of retention, and therefore Maximo relies on section 18C of the CCA in regard to default arrangement of retention.
- 9. Provision of the Construction Work**
- 9.1 Subject to clause 9.2 it is Maximo's responsibility to ensure that the Construction Work start as soon as it is reasonably possible.
- 9.2 The Construction Work's commencement date will be put back and the completion date extended by whatever time is reasonable in the event that Maximo claims an extension of time (by giving the Client notice) where completion is delayed by an event beyond Maximo 's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) notify Maximo for approval for Construction Work to be undertaken; or
 - (c) availability of the Construction Site to Maximo in a timely manner.
- 9.3 Maximo may undertake the Construction Work by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 9.4 Any time specified by Maximo for delivery of the Construction Work is an estimate only and Maximo will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Construction Work to be supplied and/ or undertaken at the time and place as was arranged between both parties. In the event that Maximo is unable to supply the Construction Work as agreed solely due to any action or inaction of the Client, then Maximo shall be entitled to charge a reasonable fee for re-supplying the Construction Work at a later time and date, and/or for storage of any material required to undertake the Construction Work.
- 10. Risk**
- 10.1 If Maximo retains ownership of the Construction Work then:
- (a) where Maximo is supplying materials for Construction Work only, all risk for the Construction Work shall immediately pass to the Client on delivery of the materials and the Client must insure the materials of the Construction Work on or before delivery. Delivery of the materials of the Construction Work shall be deemed to have taken place immediately at the time that either:
 - (i) the Client or the Client's nominated carrier takes possession of the materials of the Construction Work at Maximo 's address; or
 - (ii) the materials of the Construction Work are delivered by Maximo or Maximo's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
- 10.2 Notwithstanding the provisions of clause 10.1 if the Client specifically requests Maximo to leave materials of the Construction Work outside Maximo's premises for collection or to deliver the materials of the Construction Work to an unattended location then such materials of the Construction Work shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the materials of the Construction Work are insured adequately or at all. In the event that such materials of the Construction Work are lost, stolen, damaged or destroyed then replacement of the materials of the Construction Work shall be at the Client's expense.

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- 10.3 Where Maximo gives advice or recommendations to the Client, or the Client's agent, regarding the suitability of products for the repair or undertaking of any Construction Work, and such advice or recommendations are not acted upon then Maximo shall require the Client or their agent to authorise commencement of the Construction Work in writing. Maximo shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Construction Work
- 10.4 The Client acknowledges that any colours and textures are manually matched to existing features and availability of materials for the Construction Work is achieved to the best of Maximo's ability and is done with reasonable care and skill. As such variations of colour and texture are inherent and may have varying patchiness and unevenness (including, but not limited to, pinto effect, measles effect and lapping, etc.). Maximo shall not be liable for any loss, damages or costs howsoever arising resulting from any variation of the colour or texture between different batches of materials for the Construction Work or mix design.
- 10.5 Whilst Maximo shall endeavour to match existing finishes, an exact match cannot be guaranteed due to factors beyond Maximo's control.
- 10.6 The Client accepts that where any remedial work has been performed as part of the Construction Work, some evidence of the work may be apparent and shall not be considered by Maximo as a defect.
- 10.7 The Client shall indemnify Maximo from all responsibility for any colour, aggregate, or texture variations of objects that are in the Construction Work which are outside of Maximo's control regarding materials for the Construction Work supplied by Maximo's supplier companies.
- 10.8 Maximo shall not be liable for any defect in the materials of the Construction Work if the Client does not follow Maximo's recommendations, including (but not limited to):
- (a) suitable cleaning instructions of the Construction Work; and
 - (b) time and frequency for future repairs.
- 10.9 Maximo shall not be held responsible for any damage to the Construction Work caused by other tradesmen, outside agents or heavy vehicles. Where the Client requests Maximo to repair such damage then Maximo reserves the right to charge the Client for any costs incurred in rectifying such damage.
- 11. Dimensions, Plans and Specifications**
- 11.1 All customary industry tolerances shall apply to the dimensions and measurements of the Construction Work, unless Maximo and the Client agree otherwise in writing.
- 11.2 Maximo shall be entitled to rely on the accuracy of any industry specifications and other information provided by the Client.
- 11.3 The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, Maximo accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 11.4 If the giving of a quotation for the supply of the Construction Work to be undertaken involves Maximo's estimating measurements and quantities, it shall be the responsibility of the Client to verify the accuracy of Maximo's estimated measurements and quantities, before the Client places an order, or accepts such quotation.
- 11.5 Should the Client require any changes to Maximo's estimated measurements and quantities, the Client shall request such changes in writing before placing an order, or accepting the quotation.
- 12. Documents and Construction Work Supplied by the Client**
- 12.1 The Client:
- (a) warrants that any materials supplied by the Client for Construction Work to be undertaken by Maximo, and the content or methods therein are accurate and/or suitable to be used for the purpose for which the materials were created;
 - (b) agrees to provide explicit instructions of the materials use, application methods and specifications as the time of supplying the materials Maximo's use;
 - (c) agrees that it is reasonable for Maximo to rely on the documentation provided with any materials supplied by the Client;
 - (d) agrees to supply Maximo with the required quantity of the materials as Maximo may reasonably need to perform the Construction Work to completion.
- 12.2 The Client agrees that all materials supplied by the Client or the Client's nominated representative will:
- (a) be supplied in accordance with all legislative requirements;
 - (b) be suitable for their inclusion into the Construction Work to be provided by Maximo;
 - (c) be completed to Maximo's requirements.
- 12.3 Maximo may, where Maximo believes that any materials supplied by the Client, the Client's nominated representative or any third party employed by the Client are defective, require that the defective materials be to be removed, repaired or replaced, the costs of which shall be the Client's responsibility.
- 12.4 Notwithstanding clause 12.3 Maximo shall have no liability whatsoever in terms of the performance of, or suitability of, any materials supplied by either the Client or any third-party representative of the Client.
- 12.5 In the event that the Client undertakes or employs any third party to undertake any Constructions at the Construction Site whilst Maximo is undertaking the Construction Work then the Client must ensure that the Client and/or any third party so employed:
- (a) is appropriately licensed for the Construction Work being undertaken, and will provide evidence of the same upon request by Maximo;
 - (b) does not interfere with the progress of Construction Work by Maximo;
 - (c) holds all relevant insurances as Maximo is required to hold or as are otherwise required under this Contract;
 - (d) co-operates with all requests or directives of Maximo in relation to the timeliness and co-ordination of the Construction Work to be performed;
 - (e) co-operates as may be reasonably expected with all other persons on the Construction Site;
 - (f) discusses any Construction Site issues directly with Maximo's directors and/or authorise project manager, and not with any of Maximo's employees.

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- 12.6 In the event that the Client or the Client's third party representatives do not comply with clauses 12.3 or 12.5 then Maximo may require the non-compliant party to either leave and/or stay off the Construction site as Maximo may so direct for the duration of the Contract.
- 12.7 If the Client breaches this clause then Maximo may (at Maximo's sole discretion) either:
- carry on the Construction Work without incorporation of any Client supplied Construction Work;
 - suspend the carrying out of the Construction Work as per clause 9.2.
 - terminate this Contract in accordance with clause 25.
- 13. Client's Responsibilities**
- 13.1 It is the Client's responsibility to:
- ensure that the Construction Site contracted for the Construction Work to be undertaken is available for Maximo as scheduled;
 - have the Construction Site in an appropriate condition to enable scheduled work to be completed as determined by Maximo; and
 - make Construction Site available on the agreed date and time.
- 13.2 If the Construction Work is interrupted by the failure of the Client to adhere to the work schedule agreed to between Maximo and the Client, any additional costs will be invoiced to the Client as an extra.
- 13.3 The Client acknowledges that in the event that **methamphetamines** or any other toxic substances are discovered in or at the Construction Site that it is the Client's responsibility to ensure the safe removal of the same, and that the Construction Work shall not be carried out until such removal is completed. The Client further agrees to indemnify Maximo against any costs incurred by Maximo as a consequence of such discovery. Under no circumstances will Maximo handle the removal of methamphetamines or any other toxic substance product.
- 14. Access**
- 14.1 The Client shall ensure that Maximo has clear and free access to the Construction Site at all times to enable them to undertake the Construction Work. Maximo shall not be liable for any loss or damage to the Construction Site unless due to the negligence of Maximo.
- 15. Compliance with Laws**
- 15.1 The Client and Maximo shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Construction Work, including any WorkSafe guidelines regarding health and safety laws relating to construction work and any other relevant safety standards or legislation.
- 15.2 Notwithstanding clause 15.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") Maximo agrees at all times comply with sections 29 and 34 of the "HSW Act" with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the worksite or if in the event that they may be acting as a subcontractor for the Client's where the Client has engaged a thirty party head contractor.
- 15.3 The parties acknowledge that the provisions of the Constructions Contracts Act 2002 ("CCA") while supersede the provisions of this Contract where the CCA and this Contract are in conflict. Notwithstanding, this Contract shall supersede the CCA where the CCA allows for specific provision to be contract out of with the agreement of parties (with agreement being determined by the acceptance of the Contract).
- 15.4 Where the Client has supplied products for Maximo to complete the Construction Work, the Client acknowledges that it accepts responsibility for the suitability of purpose, quality and any faults inherent in those products. However, if in Maximo's opinion, it is believed that the products supplied will not conform to regulations, then Maximo shall be entitled, without prejudice, to halt the Construction Work until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 7.2.
- 15.5 The Client shall obtain (at the expense of the Client) all licenses, approvals, applications and permits that may be required for the Construction Work (unless otherwise agreed in writing by Maximo and the Client).
- 16. Contracts and Commercial Law Act 2017**
- 16.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- Where Maximo has provided Construction Work, Maximo is entitled at law to a lien on the Construction Work for any amount; and
 - Where the amount due for Construction Work remains unpaid for two months or more after the Construction Work should have been paid, Maximo may recover and sell the materials of Construction Work by auction.
- 16.2 This remedy is in addition to all other remedies provided by law to Maximo.
- 17. Personal Property Securities Act 1999 ("PPSA")**
- 17.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - a security interest is taken in all Construction Work and/or collateral (account) – being a monetary obligation of the Client to Maximo for Construction Work – that have previously been supplied and that will be supplied in the future by Maximo to the Client.
- 17.2 The Client undertakes to:
- sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Maximo may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - indemnify, and upon demand reimburse, Maximo for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Construction Work charged thereby;
 - not register, or permit to be registered, a financing statement or a financing change statement in relation to the Construction Work and/or collateral (account) in favour of a third party without the prior written consent of Maximo; and

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(d) immediately advise Maximo of any material change in its business practices of undertaking Construction Work which would result in a change in the nature of proceeds derived from such sales.

17.3 Maximo and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

17.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.

17.5 Unless otherwise agreed to in writing by Maximo, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.

17.6 The Client shall unconditionally ratify any actions taken by Maximo under clauses 17.1 to 17.5.

17.7 Subject to any express provisions to the contrary (including those contained in this clause 16), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

18. Security and Charge

18.1 The Client irrevocably appoints Maximo and each director of Maximo as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 18 including, but not limited to, signing any document on the Client's behalf.

19. Defects in the Construction Work

19.1 The Client shall inspect the Construction Work upon completion and shall within seven days of completion (time being of the essence) notify Maximo of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Maximo an opportunity to inspect the Construction Work within a reasonable time following completion if the Client believes the Construction Work are defective in any way. If the Client shall fail to comply with these provisions the Construction Work shall be presumed to be free from any defect or damage. For defective Construction Work, which Maximo has agreed in writing that the Client is entitled to reject, Maximo's liability is limited to either (at Maximo's discretion) replacing the Construction Work or repairing the Construction Work.

19.2 Construction Work will not be accepted for return other than in accordance with 19.1 above.

20. Returns

20.1 Returns will only be accepted provided that:

(a) the Client has complied with the provisions of clause 19.1; and

(b) Maximo has agreed in writing to accept the repairs of the Construction Work; or

(c) Maximo has agreed in writing to accept the return of the materials for the Construction Work; and

(d) Maximo will not be liable for Construction Work which have not been stored or used in a proper manner; and

(e) the materials of the Construction Work 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.

20.2 Maximo will not accept the return of the materials of the Construction Work for credit.

20.3 Maximo may (in its discretion) accept the return of Construction Work for credit but this may incur a handling fee of ten percent (10%) of the value of the returned materials for the Construction Work plus any freight.

20.4 Returned materials for the Construction Work may (at Maximo's sole discretion), incur restocking and handling fees.

20.5 Non-stocklist items or materials of the Construction Work made to the Client's specifications are under no circumstances acceptable for credit or return.

21. Warranties

21.1 Maximo's product warranty is for a period of five years.

21.2 Additionally, Maximo's workmanship has a one-year warranty period.

21.3 For materials of the Construction Work not manufactured or ordinarily supplied by Maximo, the warranty shall be the current warranty provided by the manufacturer of the materials for the Construction Work. Maximo 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 for the Construction Work.

21.4 To the extent permitted by statute, no warranty is given by Maximo as to the quality or suitability of the materials for the Construction Work for any purpose and any implied warranty, is expressly excluded. Maximo shall not be responsible for any loss or damage to the materials for the Construction Work, or caused by the Construction Work, or any part thereof however arising.

21.5 In the case of second-hand materials for the Construction Work, the Client acknowledges that full opportunity to inspect the same has been provided and accepts the same with all faults and that no warranty is given by Maximo as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. Maximo shall not be responsible for any loss or damage to the materials for the Construction Work, or caused by the Construction Work, or any part thereof however arising.

22. Consumer Guarantees Act 1993

22.1 If the Client is acquiring the Construction Work or materials thereof 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 Construction Work by Maximo to the Client.

23. Intellectual Property

23.1 Where Maximo has designed, drawn, written plans or a schedule of the Construction Work, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in Maximo, and shall only be used by the Client at Maximo's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of Maximo.

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- 23.2 The Client warrants that all designs, specifications or instructions given to Maximo will not cause Maximo to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Maximo against any action taken by a third party against Maximo in respect of any such infringement.
- 23.3 The Client agrees that Maximo may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which Maximo has created for the Client without the express written approval of Maximo.
- 24. Default and Consequences of Default**
- 24.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two percent (2%) per calendar month (and at Maximo's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 24.2 If the Client owes Maximo any money the Client shall indemnify Maximo from and against all costs and disbursements incurred by Maximo in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Maximo's collection agency costs, and bank dishonour fees).
- 24.3 Further to any other rights or remedies Maximo may have under this Contract, if a Client has made payment to Maximo, 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 Maximo under this clause 24, 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.
- 24.4 Without prejudice to Maximo's other remedies at law Maximo shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Maximo shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Maximo becomes overdue, or in Maximo'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 Maximo;
 - (c) 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 25. Cancellation**
- 25.1 Without prejudice to any other rights or remedies Maximo may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Client of such notice/s) then Maximo may suspend the Construction Work immediately. Maximo will not be liable to the Client for any loss or damage the Client suffers because Maximo has exercised its rights under this clause.
- 25.2 Maximo may cancel any contract to which these terms and conditions apply or cancel delivery of the Construction Work at any time before the Construction Work are commenced by giving written notice to the Client. On giving such notice Maximo shall repay to the Client any sums paid in respect of the Contract Price, less any amounts owing by the Client to Maximo for the Construction Work already undertaken. Maximo shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 25.3 In the event that the Client cancels the delivery of the Construction Work, the Client shall be liable for any and all loss incurred (whether direct or indirect) by Maximo as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 25.4 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.
- 26. Privacy Policy**
- 26.1 All emails, documents, images or other recorded information held or used by Maximo is Personal Information as defined and referred to in clause 26.2 and therefore considered confidential. Maximo acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Maximo acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Maximo that may result in serious harm to the Client, Maximo will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 26.2 The Client authorises Maximo or Maximo'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 Maximo from the Client directly or obtained by Maximo 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.
- 26.3 Where the Client is an individual the authorities under clause 26.2 are authorities or consents for the purposes of the Privacy Act 1993.
- 26.4 The Client shall have the right to request Maximo for a copy of the Personal Information about the Client retained by Maximo and the right to request Maximo to correct any incorrect Personal Information about the Client held by Maximo.

Initials: _____
Initials: _____

MAXIMO Limited– Terms & Conditions of Trade

27. General

- 27.1 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.
- 27.2 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.
- 27.3 Maximo 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 Maximo of these terms and conditions (alternatively Maximo's liability shall be limited to damages which under no circumstances shall exceed the Contract Price of the Construction Work).
- 27.4 Maximo may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 27.5 The Client cannot licence or assign without the written approval of Maximo.
- 27.6 Maximo may elect to subcontract out any part of the Construction Work he 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 Maximo's sub-contractors without the authority of Maximo.
- 27.7 The Client agrees that Maximo may amend their general terms and conditions for subsequent future contracts with the Client. The version of Maximo's terms of trade in use at the time of acceptance shall be enforced.
- 27.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 27.9 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.

28. Personal Guarantee

28.1 Where the Construction Work is provided under these Terms for a company or other entity (incorporated or unincorporated), the Client acknowledge that the natural person engaging Maximo is authorised to accept these Terms on behalf of the company or other entity. In addition, the natural person personally guarantees the due and punctual payment of all sums incurred under these Terms (including any costs and interest) and otherwise indemnify Maximo in the event that the Client is unable or fails to make payment.

29. Further Terms

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| Name of Client (entity or person): Date of Birth (if individual): Name of company representative(s): Postal Address: Address for Service: Contact telephone: Email: | <p>I declare that I am authorised to and do accept Maximo's Terms of Trade and that these Terms of Trade constitute a valid security agreement and credit application</p> <p>x _____ Signature of Client(s) (or representative of the Client(s))</p> <p>Date: _____</p> <p>I acknowledge that I am personally liable for any default of the Client in accordance with clause 24 above.</p> <p>x _____ Signature of Client(s)</p> <p>Date: _____</p> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|



Initials: _____
Initials: _____

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