
Comber Design Limited T/A COMBER AND COMBER Interiors – Terms & Conditions of Trade

1. Definitions

- 1.1 "C.C.I." means Comber Design Limited T/A COMBER AND COMBER Interiors, its successors and assigns or any person acting on behalf of and with the authority of Comber Design Limited T/A COMBER AND COMBER Interiors.
- 1.2 "Client" means the person/s buying the Goods 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 "Goods" means all Goods for sale or hire and/or Services supplied by C.C.I to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Documentation" means any documents, designs, drawings or other materials provided, utilised or created incidentally by C.C.I in the course of it conducting, or providing to the Client, any Services.
- 1.5 "Fee" means the Fee payable (plus any Goods and Services Tax (GST) where applicable) for the Goods as agreed between C.C.I and the Client in accordance with clause 5 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 the Goods.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and C.C.I.
- 2.3 The Client accepts and acknowledges that C.C.I's reserves the right to appoint at C.C.I's discretion a project manager or managers to oversee the Services up to and including completion, the Client accepts that this party may be subject to change without notice, during the course of the contract.
- 2.4 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.
- 2.5 These terms and conditions may be meant to be read in conjunction with C.C.I's Stage-It Form, and:
 - (a) where the context so permits, the terms 'Services' shall include any supply of Goods for hire, as defined therein; and
 - (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

3. Authorised Representative

- 3.1 The Client acknowledges that C.C.I shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to C.C.I, that person shall have the full authority of the Client to order any Services and/or to request any variation thereto on the Client's behalf. The Client accepts that they will be solely liable to C.C.I for all additional costs incurred by C.C.I (including C.C.I's profit margin) in providing any Services or variation/s requested thereto by the Client's duly authorised representative.

4. Change in Control

- 4.1 The Client shall give C.C.I 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 C.C.I as a result of the Client's failure to comply with this clause.

5. Fee and Payment

- 5.1 At C.C.I's sole discretion the Fee shall be either:
 - (a) as indicated on any invoice provided by C.C.I to the Client; or
 - (b) the Fee as at the date of provision of the Services according to C.C.I's current hourly rate; or
 - (c) C.C.I's quoted Fee (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 C.C.I reserves the right to change the Fee:
 - (a) if a variation to the Services (including any variation to the Client's brief or specifications i.e. where 1, 3 or 6 hour design packages are chosen and additional time is necessary due to Client's requests, then such time is subject to the Client's hourly rate as per clause 5.1(b)) is requested or required due to changes in regulations, etc.; or
 - (b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, limitations to accessing the site, safety considerations, prerequisite work by a third party not being completed, change of design, availability of specialty items ordered or other stock availability, hidden pipes and wiring in walls etc.) which are only discovered on commencement of the Services; or
 - (c) in the event of increases to C.C.I in the cost of labour or materials, which are beyond C.C.I's control; or
 - (d) where additional costs are incurred by C.C.I due to unexpected delays such as the receipt of approvals or permits, or access to the site not being available as was agreed or when pre-arranged;
 - (e) all additional Services shall be charged as per clause 5.1(b).
- 5.3 Variations will be charged for on the basis of C.C.I's quotation, and will be detailed in writing, and shown as variations on C.C.I's invoice. The Client shall be required to respond to any variation submitted by C.C.I within ten (10) working days. Failure to do so will entitle C.C.I to add the cost of the variation to the Fee. Payment for all variations must be made in full at the time of their completion.
- 5.4 At C.C.I's sole discretion a non-refundable deposit may be required.
- 5.5 Time for payment for the Goods being of the essence, the Fee will be payable by the Client on the date/s determined by C.C.I, which may be:
 - (a) on delivery of the Goods;
 - (b) before delivery of the Goods;
 - (c) by way of instalments/progress payments in accordance with C.C.I's payment schedule;
 - (d) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (e) the date specified on any invoice or other form as being the date for payment; or

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- (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by C.C.I.
- 5.6 Payment may be made by bank cheque, electronic/on-line banking, eftpos, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and C.C.I.
- 5.7 The Client shall not be entitled to set off against, or deduct from the Fee, any sums owed or claimed to be owed to the Client by C.C.I nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.8 Unless otherwise stated the Fee does not include GST. In addition to the Fee the Client must pay to C.C.I an amount equal to any GST C.C.I must pay for any supply by C.C.I under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Fee. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Fee except where they are expressly included in the Fee.
- 6. Delivery of Goods**
- 6.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at C.C.I's address; or
- (b) C.C.I (or C.C.I's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 6.2 At C.C.I's sole discretion the cost of delivery is included in the Fee.
- 6.3 C.C.I may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.4 Any time specified by C.C.I for delivery of the Goods is an estimate only and C.C.I 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 Goods to be delivered at the time and place as was arranged between both parties. In the event that C.C.I is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then C.C.I shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7. Extension of Contract Period**
- 7.1 C.C.I shall be entitled to claim an extension to the term of the contract in the event of delays resulting from any matter whatsoever which is not entirely under the control of C.C.I. These matters shall include, but are not limited to delays caused by:
- (a) response(s) to information request(s) made by C.C.I to the Client, or any third party, not being available when expected or required;
- (b) approval authorities response times for requests for preliminary decisions, information;
- (c) changes to the design brief being requested by the Client;
- (d) time taken by any approval authority for the granting of relevant approvals or permits;
- (e) assessment area not being available as was agreed or when pre-arranged;
- (f) any other variation to the contract.
- 8. Nominated Consultants**
- 8.1 C.C.I may, acting solely as agent on behalf of the Client, engage third-party consultants, to which the following shall apply:
- (a) C.C.I shall be entitled to enter into contracts with such advisors in the name of the Client;
- (b) the Client shall be responsible for all payments to such advisors, unless payment is made by C.C.I on behalf of the Client as per clause 5.2.
- 8.2 C.C.I does not warrant the accuracy or quality of the consultant's work, or warrant that the recommendations of the consultants are appropriate or adequate, or are fit for their purpose, or that they are not given negligently. The Client agrees that they shall not make any demand on C.C.I or commence any legal proceedings against C.C.I, and C.C.I shall have no liability, whether in negligence or otherwise, to the Client in relation to any services performed by the consultants.
- 9. Risk**
- 9.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 9.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, C.C.I is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by C.C.I is sufficient evidence of C.C.I's rights to receive the insurance proceeds without the need for any person dealing with C.C.I to make further enquiries.
- 9.3 If the Client requests C.C.I to leave Goods outside C.C.I's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 9.4 C.C.I shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, C.C.I accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 9.5 Goods with natural elements in the products may have naturally occurring variations in colour and shade tones, markings, and veining and may vary from colour samples provided. C.C.I gives no guarantee (expressed or implied) that colour samples will match the Goods supplied. C.C.I will make every effort to match colour samples to the Goods supplied but will not be liable in any way whatsoever for colour samples differing from the Goods supplied.
- 9.6 The Client acknowledges and accept that:
- (a) whilst fabric manufacturers make every effort to match dye lots, colours or shade may vary between batches of product and/or between sales samples and actual product supplied; and
- (b) fabric manufacturers cannot guarantee to produce perfectly uniform patterned product, therefore there is no guarantee that patterned product will match perfectly when installed; and
- (c) the installation process for fabric may require seams and cross-joins and that the appearance of these may be affected by light source and in particular the construction of the chosen product.
- 9.7 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 C.C.I will make every effort to match sales samples to the finished Goods C.C.I accepts no liability whatsoever where such samples differ to the finished Goods supplied.

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- 9.8 Timber is a hygroscopic material subject to expansion and contraction, therefore C.C.I will accept no responsibility for gaps that may appear in the flooring during prolonged dry periods.
- 9.9 The Client acknowledges that Goods 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.

10. Client's Responsibilities

- 10.1 Unless otherwise agreed in writing between C.C.I and the Client, it is the Client's responsibility to:
- (a) 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 C.C.I and the Client, any additional costs will be invoiced to the Client as an extra;
 - (b) have all areas clean and clear to enable scheduled work to be completed in accordance with the schedule of installation;
 - (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 C.C.I in this regard;
 - (d) provide C.C.I with a suitable free power source within eight (8) metres of the work area.

11. Access

- 11.1 The Client shall ensure that C.C.I has clear and free access to the work site at all times to enable them to undertake the Services. C.C.I shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of C.C.I.

12. Compliance with Laws

- 12.1 The Client and C.C.I shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 12.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 12.3 The Client agrees that the site will comply with any worksafe guidelines regarding health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

13. Title

- 13.1 C.C.I and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid C.C.I all amounts owing to C.C.I; and
 - (b) the Client has met all of its other obligations to C.C.I.
- 13.2 Receipt by C.C.I 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.
- 13.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 13.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to C.C.I on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for C.C.I and must pay to C.C.I the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for C.C.I and must pay or deliver the proceeds to C.C.I on demand.
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of C.C.I and must sell, dispose of or return the resulting product to C.C.I as it so directs.
 - (e) the Client irrevocably authorises C.C.I to enter any premises where C.C.I believes the Goods are kept and recover possession of the Goods.
 - (f) C.C.I may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of C.C.I.
 - (h) C.C.I may commence proceedings to recover the Fee of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

- 14.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Client to C.C.I for Services – that have previously been supplied and that will be supplied in the future by C.C.I to the Client.
- 14.2 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 C.C.I may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, C.C.I for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of C.C.I; and
 - (d) immediately advise C.C.I of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

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- 14.3 C.C.I and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 14.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 14.5 Unless otherwise agreed to in writing by C.C.I, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 14.6 The Client shall unconditionally ratify any actions taken by C.C.I under clauses 14.1 to 14.5.

15. Security and Charge

- 15.1 In consideration of C.C.I agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, 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).
- 15.2 The Client indemnifies C.C.I from and against all C.C.I's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising C.C.I's rights under this clause.
- 15.3 The Client irrevocably appoints C.C.I and each director of C.C.I as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.

16. Client's Disclaimer

- 16.1 The Client hereby disclaims any right to rescind, or cancel any contract with C.C.I or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by C.C.I and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

17. Defects

- 17.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify C.C.I of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford C.C.I an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which C.C.I has agreed in writing that the Client is entitled to reject, C.C.I's liability is limited to either (at C.C.I's discretion) replacing the Goods or repairing the Goods.
- 17.2 Goods will not be accepted for return other than in accordance with 17.1 above, and provided that:
- (a) C.C.I has agreed in writing to accept the return of the Goods; and
 - (b) the Goods are returned at the Client's cost within fourteen (14) days of the delivery date; and
 - (c) C.C.I will not be liable for Goods which have not been stored or used in a proper manner; and
 - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 17.3 Subject to clause 17.1, non-stocklist items or Goods made to the Client's specifications are not acceptable for credit or return.

18. Warranty

- 18.1 Subject to the conditions of warranty set out in clause 18.1 C.C.I warrants that if any defect in any workmanship of C.C.I becomes apparent and is reported to C.C.I within one (1) month of the date of delivery (time being of the essence) then C.C.I will either (at C.C.I's sole discretion) replace or remedy the workmanship.
- 18.2 The conditions applicable to the warranty given by 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 any Goods; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by C.C.I; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods 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 C.C.I shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without C.C.I's consent.
 - (c) in respect of all claims C.C.I 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.
- 18.3 For Goods not manufactured by C.C.I, the warranty shall be the current warranty provided by the manufacturer of the Goods. C.C.I shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

19. Consumer Guarantees Act 1993

- 19.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by C.C.I to the Client.

20. Intellectual Property

- 20.1 If during the course of providing the Services, C.C.I develops, discovers, or first reduces to practice a concept, product or process which is capable of being patented, then:
- (a) such concept, product or process shall be and remain the property of C.C.I, and the Client shall not use, infringe or otherwise appropriate the same without first obtaining the written consent of C.C.I;
 - (b) the Client shall be entitled to a royalty free licence to use the same during the course of the Services.

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- 20.2 The Client warrants that all designs, specifications or instructions given to C.C.I will not cause C.C.I to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify C.C.I against any action taken by a third party against C.C.I in respect of any such infringement.
- 20.3 The Client agrees that C.C.I may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which C.C.I has created for the Client.

21. Default and Consequences of Default

- 21.1 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 C.C.I's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2 If the Client owes C.C.I any money the Client shall indemnify C.C.I from and against all costs and disbursements incurred by C.C.I in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, C.C.I's collection agency costs, and bank dishonour fees).
- 21.3 Further to any other rights or remedies C.C.I may have under this contract, if a Client has made payment to C.C.I, 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 C.C.I under this clause 21 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 21.4 Without prejudice to C.C.I's other remedies at law C.C.I shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to C.C.I shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to C.C.I becomes overdue, or in C.C.I'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 C.C.I;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

22. Cancellation

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

23. Privacy Act 1993

- 23.1 The Client authorises C.C.I or C.C.I'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 C.C.I from the Client directly or obtained by C.C.I 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.
- 23.2 Where the Client is an individual the authorities under clause 23.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 23.3 The Client shall have the right to request C.C.I for a copy of the information about the Client retained by C.C.I and the right to request C.C.I to correct any incorrect information about the Client held by C.C.I.

24. Settlement of Disputes

- 24.1 In the event of any dispute, both C.C.I and the Client shall confer at least once to attempt to resolve such dispute. Should the two parties then not be able to resolve the dispute within thirty (30) days of one party first sending to the other written notice by certified mail of such dispute, it shall be and is hereby submitted to arbitration. The arbitration should be 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.

25. Unpaid Seller's Rights

- 25.1 Where the Client has left any item with C.C.I for repair, modification, exchange or for C.C.I to perform any other service in relation to the item and C.C.I has not received or been tendered the whole of any monies owing to it by the Client, C.C.I shall have, until all monies owing to C.C.I are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 25.2 The lien of C.C.I shall continue despite the commencement of proceedings, or judgment for any monies owing to C.C.I having been obtained against the Client.

26. Hired Goods

- 26.1 The Goods shall at all times remain the property of the C.C.I and is returnable on demand by the C.C.I. In the event that the Goods are not returned to the C.C.I in the condition in which it was delivered the C.C.I retains the right to charge the Client the full cost of repairing the Goods. In the event Goods is not returned at all the C.C.I shall have right to charge the Client the full cost of replacing the Goods.
- 26.2 The Client shall;
- (a) keep the Goods in their own possession and control and shall not assign the benefit of the Goods nor be entitled to take a lien over the Goods.
 - (b) not alter or make any additions to the Goods including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Goods or in any other manner interfere with the Goods.
 - (c) keep the Goods, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by the C.C.I to the Client.
- 26.3 The Client accepts full responsibility for the safekeeping of the Goods and the Client agrees to insure, or self-insure, the C.C.I's interest in the Goods and agrees to indemnify the C.C.I against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Goods. Further the Client will not use the Goods nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 26.4 The Client accepts and acknowledges that C.C.I shall be entitled to request from the Client, any lost hire Fees C.C.I would have otherwise been entitled to for the Goods, under this, or any other hire agreement in the event that the Client's property is sold prior to the end of the hire period.

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 Christchurch Courts of New Zealand.
- 27.3 C.C.I 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 C.C.I of these terms and conditions (alternatively C.C.I's liability shall be limited to damages which under no circumstances shall exceed the Fee of the Goods).
- 27.4 Neither party shall assign or sub-contract all or any part of their rights and obligations under this agreement without the written consent of the other party.
- 27.5 The Client agrees that C.C.I may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for C.C.I to provide Goods for sale or hire to the Client.
- 27.6 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.
- 27.7 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.