

1. **AGREEMENT**
 - 1.1. These terms and conditions for the delivery and/or provision of Goods and/or Services (as amended by us from time to time) (**Terms**) and the Application Form (if completed) are the terms and conditions on which Sunshade Group Limited trading as Douglas Outdoor, Douglas, Rainbow Shade, and Douglas Auto and Marine (**we, us, our**) will provide Goods and/or Services to or for you (**Agreement**).
 - 1.2. Acceptance of any instructions from you for the supply of Goods or provision of Services shall constitute acceptance of these Terms.
 - 1.3. We may change these Terms at any time by updating them on our website (douglassinnovation.nz). Unless stated otherwise, any change takes effect immediately. You are responsible for ensuring that you are familiar with the latest Terms.
 - 1.4. You agree that these Terms shall continue to apply until the earlier of the Goods and/or Services being completed in full or termination occurring under clause 11.
 - 1.5. Your instructions to provide Goods and/or Services cannot be cancelled or varied without our consent. You will pay the cost of any variations or cancellations.
 - 1.6. In the event that conflict arises between these Terms, the Application Form and/or a Proposal, these Terms will prevail. Any other trade arrangement, agreement, or course of dealing between you and us that is at variance with these Terms will have no effect except where expressly by us in writing.
2. **DEFINITIONS AND INTERPRETATION**
 - 2.1. In this Agreement, unless the context otherwise requires:
 - Application Form** means the application for credit (which is available to business customers only) form signed or otherwise accepted by you;
 - CCA** means the Construction Contracts Act 2002;
 - Goods** means any goods provided, supplied and/or manufactured by us, and includes components, materials, equipment, products and other items and will include without limitation shade covers, louvres, outdoor screens and outdoor furniture covers;
 - Guarantor** means the person or entity listed as guarantor on the Proposal or Application Form who agrees to be liable for your debts on a principal debtor basis;
 - Force Majeure Event** means any event or circumstance (whether arising from natural causes, human agency or otherwise) that is beyond our reasonable control, including (without limitation) pandemic, strikes, lockouts or other labour disputes, riot, civil commotion, fire, flood, drought, loss or delay at sea, civil breakdown or war (whether declared or not);
 - PPSA** means the Personal Property Securities Act 1999;
 - Property** means the "Physical Address" specified in the Application Form or Proposal where the Goods and/or Services are to be delivered and/or provided, or an address otherwise advised by you;
 - Proposal** means a written offer from us to you to supply Goods and/or Services as contemplated by clause 5; and
 - Services** means all services, recommendations and advice provided from time to time by us to you, and will include, without limitation, all contracting and maintenance services;
 - You, your** means the person or entity signing an Application Form or specified in the Proposal and any person acting with ostensible authority on behalf of the party named in the Application Form or Proposal.
 - 2.2. A reference to any legislation includes a modification and re-enactment of, legislation enacted in substitution for, and regulation, order-in-council and other instrument from time to time issued or made under, that legislation.
3. **OUR WARRANTIES AND RESPONSIBILITIES**
 - 3.1. In supplying the Goods and performing the Services we will:
 - (a) use due care, skill and judgment;
 - (b) comply with all relevant legal and professional obligations; and
 - (c) devote such time, attention and resource to the Services as is required to ensure that our obligations are discharged to the required professional standards.
- 3.2. Upon completion of the Goods and Services, we will provide you with all relevant documentation such as specific product warranties, relevant technical information and maintenance instructions as applicable.
- 3.3. We warrant that all our employees and contractors are police vetted and are cleared to work in childcare centres, schools and kindergartens.
- 3.4. We provide a 12-month warranty on all Goods manufactured by us. We will not be liable for any loss suffered by you as a result of:
 - (a) any inappropriate storage or treatment, or any mis-use of the Goods by you;
 - (b) failure by you to properly maintain any Goods;
 - (c) failure by you to follow any instructions or guidelines provided by us;
 - (d) failure by you to allow us proper access to the Property for the purposes of providing the Services and Goods, and inspecting and remedying any alleged defects;
 - (e) any use of any Goods otherwise than for any application specified in the Proposal;
 - (f) the continued use of any Goods after any defect becomes apparent or should have become apparent to a reasonably prudent operator or user; or
 - (g) fair wear and tear, any accident or act of God or event that occurs which is otherwise outside of our reasonable control.
- 3.5. Where Goods are not manufactured by us and are subject to separate manufacturer warranties, we will (to the extent that we are able to do so by law) make such warranties available to you.
4. **YOUR WARRANTIES AND RESPONSIBILITIES**
 - 4.1. The cost of obtaining any permits or building consents required in connection with the installation or provision of the Goods and Services is not included in the Proposal. If you require assistance with the relevant applications, the cost to do so will be the council fees plus an hourly rate of \$150 plus GST for time incurred excluding assistance with PS1 producer statements or other engineering certifications and inspections, the cost of which will be additional.
 - 4.2. Where a consent is required and you have failed to obtain it, we may immediately cease work until such time as the consent is granted. We will be immediately entitled to charge for all work undertaken to the date that work ceased.
 - 4.3. You must provide to us all necessary plans, specifications and other information reasonably required for us to provide the Goods and/or Services. We are entitled to rely on the accuracy of that information provided and, subject to us undertaking the usual checks expected of a professional providing Goods and/or Services in the industry, we will not be obliged to confirm or verify the accuracy of such information. In the event that any of this information provided by you is inaccurate, we accept no responsibility for any loss, damages, or costs resulting from this inaccurate information.
 - 4.4. You warrant that you have the right to grant us access to the Property to carry out and/or deliver the Goods and/or Services and to authorise us to carry out any work being done on any building as part of the Services..
 - 4.5. If you engage other contractors while we are performing and/or delivering the Goods and/or Services, you will be responsible for coordinating their work so as not to interfere with ours. Should we be delayed due to the actions of your other contractors we may in our discretion, charge an additional fee for lost time based on our standard hourly rates.
 - 4.6. Where you obtain the Goods for the purposes of trade or business, you acknowledge that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by us to you.
5. **PROPOSALS, PRICE AND CHARGES**
 - 5.1. Where we give a Proposal, unless otherwise agreed, the Proposal will be valid for thirty (30) days from the date of issue. We reserve the right to withdraw any Proposal prior to your acceptance of it.
 - 5.2. Proposals are based on and will include the cost of labour, materials and equipment, travel, freight, duties, taxes, variable and fixed expenses at the end date of Proposal.
- 5.3. You acknowledge and agree that a Proposal may be altered by us if:
 - (a) your original requirements are changed or added to by you;
 - (b) any plans, specifications or information provided by you and relied upon by us for the purpose of providing Proposal prove to be inaccurate or unreliable;
 - (c) any other change or variation is recommended by us and/or requested by you;
 - (d) conditions outside of our control cause delays to either the commencement or completion of work covered under this Agreement; or
 - (e) unknown or unforeseen conditions or problems are discovered after commencement of work.
- 5.4. The Proposal is provided on the basis that no hard digging (i.e. through rock and/or concrete rubble) or removal of excess soil from the Property is required and on the basis that adequate supports for the fittings at the positions identified is provided. Where additional work is required to rectify these matters, there will be additional costs.
- 5.5. Where no Proposal is given, all prices will be those applied by us at the date of delivery and/or provision of the Goods and/or Services.
- 5.6. All prices, rates, fees and charges are exclusive of goods and services tax and any other applicable taxes and duties (unless specified otherwise) which will be payable by you in addition to the quoted or otherwise applicable price for the Goods and/or Services.
6. **PAYMENT**
 - 6.1. We may at our sole discretion require you to pay a deposit before we provide any Goods and/or Services to you. Deposits are non-refundable unless we agree otherwise.
 - 6.2. If specified in the Proposal, we may at our sole discretion require you to make progress payments at set intervals prior to the final supply of the Goods and Services.
 - 6.3. Subject to the CCA, we will issue tax invoices/payment claims to you either on completion of the provision of the Goods and/or Services or on a regular basis at our discretion.
 - 6.4. You must pay each tax invoice/payment claim we issue in full and without deduction or set-off by the date specified in that invoice/payment claim (**Due Date**) unless we agree otherwise.
 - 6.5. You must pay all amounts payable to us by direct credit to our bank account number provided on the tax invoice/payment claim.
 - 6.6. If payment is not received by the Due Date:
 - (a) we will be entitled to charge interest on all amounts outstanding at a rate of 2.75% per month compounding (calculated on a daily basis) on any amount outstanding from the Due Date to the date we received payment in full; and
 - (b) we may suspend provision of Goods and/or Services. Work will resume when the overdue payment has been made in full, and all costs and losses incurred in suspending and resuming work will be a variation.
 - 6.7. Subject to the CCA, where you have given notice to us pursuant to clause 7.6 you shall be entitled to withhold payment of any disputed amount until the dispute has been resolved in accordance with these Terms. All other amounts due shall be paid in accordance with the payment terms as set out in these Terms and the applicable Invoice and you shall not be entitled to withhold payment of any undisputed amounts.
7. **DELIVERY AND ACCESS**
 - 7.1. We will endeavour to provide the Goods and/or Services to you within reasonable time of our Proposal being accepted and/or your instruction to provide Goods and/or Services, however you acknowledge that any dates we provide for the provision of Goods and/or Services are estimates only and that the late delivery or provision of Goods and/or Services does not entitle you to any discount or any right to cancel this Agreement to the maximum extent permitted by law.
 - 7.2. Where we have specified that Goods are on backorder, such Goods will be supplied as soon as they are available unless we have received prior written notice of cancellation from you.

- 7.3. Unless we otherwise agree in writing, any Goods supplied by us will be delivered to the Property.
- 7.4. If you fail to supply adequate access to perform the Services or are not in a position to accept or take delivery of the Goods, we may charge you further amounts as we consider reasonably necessary to cover the additional costs incurred arising from such failure.
- 7.5. Risk in any Goods we supply passes to you immediately on delivery to the Property (or pick up where you have purchased the Goods from our physical store).
- 7.6. You shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify us of any all alleged defect, shortage in quantity, damage or failure to comply with the description or Proposal. You shall afford us or our agent an opportunity to inspect the Goods within a reasonable time following delivery if you believe the Goods are defective in any way. If you shall fail to comply with this clause the Goods shall be conclusively deemed to be free from any defect or damage.
- 7.7. For defective Goods, which we have agreed in writing that you are entitled to reject, our liability shall be limited in accordance with clause 12.1 provided that you have complied with the timeframe in 7.6.
You will ensure that the Goods are adequately insured for full replacement value from the time that risk in the Goods passes to you under this Agreement. If required by us, you will also take out contract works insurance for the performance of Services at the Property. The level and type of insurance cover is subject to our approval and must be approved by us prior to commencement of the Services.
- 8. TITLE AND SECURITY INTEREST**
- 8.1. We are the legal and beneficial owner of any Goods until any amount owing to us by you for such Goods has been paid in full.
- 8.2. You grant to us a continuing security interest in any Goods and all your present and future rights to those Goods and all proceeds from any sale, loss, theft or other disposition of them as security for payment of all amounts you owe us (**Security**).
- 8.3. We may register our Security on the Personal Property Securities Register. You must do all things we may reasonably require to ensure we have a perfected first ranking Security, including giving us at least 14 days' notice in writing before you change your name or any of your other details that may have a material affect on us under this Agreement.
- 8.4. You waive your right to:
- receive a statement of account under section 116 of the PPSA;
 - receive notice of the secured party's proposal to retain personal property under section 120(2) of the PPSA;
 - object to the secured party's proposal to retain any secured property under section 121 of the PPSA;
 - not have goods damaged when the secured party (or any person on its behalf) removes an accession under section 125 of the PPSA;
 - be reimbursed for damage caused where the secured party (or any person on its behalf) removes an accession under section 126 of the PPSA;
 - refuse permission to remove an accession under section 127 of the PPSA;
 - receive notice of the removal of an accession under section 129 of the PPSA; and
 - apply to court for an order concerning the removal of an accession under section 129 of the PPSA.
- 8.5. You waive your rights to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to the security interest created by the security documents.
- 8.6. You agree that you will protect our interest in the Goods. In particular, you will put in place appropriate security precautions to protect the Goods from loss, damage and destruction including arranging suitable insurance, not permit any other security interest to be attached to the Goods and not change the physical appearance of the Goods.
- 8.7. We may on reasonable prior notice enter your Property or any site or premises where the Goods are located and remove them if we believe they are at risk.
- 9. COLLECTION AND USE OF INFORMATION**
- 9.1. You agree that we may collect, retain and use information about you (collected directly from you and from others) for the purposes of:
- providing Services to you;
 - assessing your creditworthiness;
 - sending tax invoices/payment claims to you and to recover money owed to us, associated companies or contractors;
 - marketing to you any Goods and/or Services available from us, unless you tell us not to; and
 - exercising or enforcing any right that we have under this Agreement or at law.
- 9.2. You authorise us to disclose any information obtained for the purposes set out in clause 9.1, including sharing it with associated companies, contractors and with credit reference agencies and collection agencies.
- 9.3. You may ask to see any information held by us as long as it is readily retrievable, and you may ask for any details that are wrong to be corrected.
- 9.4. You authorise us to photograph, video or otherwise record our workmanship and the result of the works to use for the purposes of our business including advertising.
- 10. HEALTH AND SAFETY**
- 10.1. We are responsible for providing a safe workplace for our employees, agents and contractors and for any other persons affected by our business operations. To assist us to comply with our obligations you:
- will advise us as soon as you are aware of any hazards arising at the Property, including those which you consider are unrelated to the Goods and/or Services; and
 - comply with all our directions and instructions in respect to health and safety matters at the Property while the Services are being carried out by us.
- 11. DEFAULT/TERMINATION**
- 11.1. Without prejudice to our rights or remedies under this Agreement or at law, but subject to our obligations under the CCA, if you fail to pay any amount owing to us, or you breach this Agreement and the breach is not capable of remedy or remedied within fifteen days, or you become insolvent, commit an act of bankruptcy, enter into or are likely to enter into any arrangement with your creditors or in the case of a company do any act that would render you liable to be liquidated, or if a resolution is passed or proceedings commenced for the liquidation or voluntary administration of you or if a receiver is appointed in respect of all or part of your assets, then:
- we may immediately cancel this Agreement and cease the delivery and/or provision of Goods and/or Services;
 - any amounts payable by you to us whether due for payment or not, will become immediately due payable;
 - we may repossess any Goods without notice;
 - we may retain all or part of any deposit paid by you to cover our reasonable costs and/or as compensation for the early termination of the Agreement; and
 - you agree that:
 - you will, upon receiving a written request from us and at your own cost and expense, promptly deliver all or any of the Goods to us. If you fail to deliver the Goods upon request, we may, during business hours enter into any place where the Goods are located and remove the Goods;
 - subject to us taking all due skill and care, we will not be liable for any damage caused by our entry and repossession of the Goods;
 - in the case of installed Goods, subject to us taking all due skill and care, we will not be responsible for any damage caused in both entering the premises where the Goods are thought to be held or in the removal of any installed Goods;
- (iv) we may sell or any of the Goods without giving prior notice of the sale to you; and
- (v) if you (or any other person) resell the Goods or any part of them or if they become constituent parts of any other Goods sold by you before payment is made to us for them, then you will ensure that you hold the sale proceeds for us on trust.
- 11.2. You will pay all of our costs and expenses, including any debt collection costs and all reasonable legal costs and expenses (on a solicitor/own client basis together with disbursements) as a result of your late payment and/or incurred by us in enforcing or attempting to enforce our rights and remedies under this Agreement or at law.
- 12. LIABILITY**
- 12.1. Notwithstanding any other provision of this Agreement, our liability arising out of, or in connection with, this Agreement in respect of any claim whether under contract, tort (including negligence) or on any other basis, is limited to the maximum extent permitted by law at our option to:
- in relation to Goods, replacing the Goods of supplying equivalent Goods, or the cost of replacing the Goods or supplying equivalent Goods, or repairing the Goods or the cost of repairing the Goods;
 - in relation to Services, supplying the Services again or paying the cost of having the Services supplied again.
- 12.2. We will not be liable for any physical or financial injury, loss or damage, or consequential loss or damage, of any kind including any loss of profits arising out of any defect in the Goods or Services, or the supply, installation or use of the Goods or Services, or arising out of our negligence, or in any way whatsoever, to the maximum extent permitted by law.
- 12.3. Our liability will be reduced proportionately to the extent that any act or omission by you may have contributed to the loss, liability or cost.
- 12.4. Any claim made against us by you must be notified to us within 12 months from the date the event giving rise to the claim arose.
- 12.5. We do not accept any liability whatsoever for loss or damage resulting from defects in designs prepared by you or a third party. Any such defects discovered by us will be brought to your attention however, if you chose to proceed with a defective design you must confirm the same in writing. You indemnify us against any loss or liability arising from the defect in design.
- 12.6. Should we encounter unforeseen or hidden problems or unsuitable conditions (including but not limited to problems underground, behind wall or roof space, under the floor, or worn, damaged or corroded fittings) when providing the Services, we will contact you and provide you with an estimate of further costs to complete the work. You will then have the option of accepting the further costs, or terminating the Agreement on the provision that you will pay us for all work and costs incurred to the date of termination.
- 13. FORCE MAJEURE**
- 13.1. Notwithstanding any other provision of this Agreement, non-performance by us of any of our obligations under this Agreement will be excused, without liability for non-performance, during the time and to the extent that such performance is prevented, wholly or substantially, by a Force Majeure Event. Subject to this clause, performance of any obligation affected by a Force Majeure event will be resumed as soon as reasonably possible after the termination or abatement of the Force Majeure Event. If, by reason of a Force Majeure Event, we are unable to perform any material obligation under this Agreement for a period of 60 days after the occurrence of the Force Majeure Event, we may terminate the supply of Goods or Services by giving written notice to you.
- 14. Intellectual Property**
- 14.1. Where we have designed or drawn plans and specifications relating to the Goods for you,

then all rights in the designs, plans, schedule of work, computer code, software, products, systems, copyright, trade marks or other registered or unregistered intellectual property rights (**Intellectual Property**) relating to any of the Goods or Services provided shall remain vested in us and shall only be used by you at our discretion and in accordance with these Terms.

- 14.2. You must advise us immediately if you become aware of any unauthorised use or attempted use by any person of our Intellectual Property rights.

15. GENERAL

- 15.1. All notices or other communications to be given under this Agreement will be given at your "Postal Address", "Physical Address" or "Email Address" provided in the Application Form or otherwise advise to us in writing.
- 15.2. If any provision of this Agreement is invalid or unenforceable for whatever reason, the remaining provisions will remain in full force and extent.
- 15.3. To the maximum extent permitted by law, this Agreement and any Application Form and Proposal contains all of the terms and conditions of the contract between you and us.
- 15.4. You may not assign or transfer any of the rights or obligations under this Agreement to any other person however we are able to assign or sub-contract any part of the provision of the Goods and Services which is to be performed under this Agreement at our discretion.
- 15.5. Each party will promptly do everything reasonable required to give effect to this Agreement.
- 15.6. If, at any time, we do not enforce any term of this Agreement or grant you time or other indulgence to comply with our obligations, we will not be construed as having waived that term or our rights to later enforce that term or any other term.
- 15.7. Clause 3, 4, 12, 13 and 15.3 and all other clauses by which by their nature survive termination, will survive termination.
- 15.8. This Agreement is subject to and governed by laws of New Zealand. Any dispute will be determined by the exclusive jurisdiction of the New Zealand Courts.

16. CONSTRUCTION CONTRACTS ACT

- 16.1. All orders for Goods and/or Services that fit within the meaning of a Construction Contract pursuant to section 5 of the CCA are subject to the CCA and this clause.
- 16.2. You:
- (a) acknowledge that we are entitled to progress payments in accordance with sections 16 and 17 of the CCA; and
 - (b) will make payment on the due dates for payment as defined in section 18 of the CCA.
- 16.3. Notwithstanding any other clause of this Agreement, we may issue Payment Claims as defined in section 20 of the CCA.
- 16.4. In the event of a dispute the parties will resolve the matter using the binding fast track process in Part 3 of the CCA.