



**THIS CONTRACT AGREEMENT 2024**

**BETWEEN**

1. **The Gourmet Kitchen Company Limited (*Contractor*)**

and

2.

**IT IS AGREED** as follows:

1. The Contractor will perform and construct the Works described in this Contract.
2. The Principal will pay the Contractor the Contract Price plus Goods and Services Tax (if any) at the time(s) and in the manner provided in this Contract.
3. Each party shall carry out and fulfil its obligations as set out in this Contract.
4. This Contract comprises of the following documents (***Contract Documents***):
  - (a) The Quotation (Schedule 3);
  - (b) This Contract Agreement;
  - (c) Special Conditions of Contract (Schedule 1);
  - (d) Conditions of Contract (Schedule 2);
  - (e) The Drawings (Schedule 4);
  - (f) The following additional documents: \_\_\_\_\_

**SIGNED**

**Signed by** )  
**The Gourmet Kitchen Company Limited** )  
)

.....  
Name:

**Signed by** )  
)  
)

.....  
Name:

## SCHEDULE 1

### SPECIAL CONDITIONS OF CONTRACT

Clause and Title	Specific Condition
1. <b>Commencement Date:</b>	We aim to install this 150 days after the sign off of your plans. Due to uncontrollable shipping delays we are currently experiencing larger delays than usual. This is out of our control, however we will keep you posted as best we can. This could push out further.
2. <b>Due Date for Completion:</b>	
3. <b>Contract Price:</b>	
4. <b>Deposit:</b>	50% of total accepted quote
5. <b>Invoices:</b>	The Contractor will invoice the Principal in accordance with the schedule of prices following the completion of each section or item as set out in that schedule. 50% (of total accepted quotation on signing) 25% (on departure from factory) 20% (one week before arrival on site) 5% (following installation)  Note: if small details cannot be complete for any reason, any money withheld must be proportionate to the jobs left to complete. If the job could not be complete for reasons that are not the fault of Appletree Designs then no money can be withheld.
6. <b>Defects Liability Period:</b>	<b>2 Years</b>
7. <b>Project:</b>	
8. <b>Site:</b>	
9. <b>Works to be Performed:</b>	Design and supply of custom joinery as outlined in your quote: Note: Items are made out of solid hard wood and plywood. Any colour matching there may be some slight variation in colour.



**SCHEDULE 2**  
**CONDITIONS OF CONTRACT**

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## 1. Interpretation

### 1.1 Definitions

The following words and expressions in the Contract shall have the meanings set out below unless the context otherwise requires:

*Approved or Approval* means approved or authorised by the Principal.

*CCA* means the Construction Contracts Act 2002

*Confidential Information* means:

- (a) All professional advice or other information of a sensitive nature; and
- (b) All information about the parties, their businesses or clients gained during the duration of this Contract that is not already in the public domain; and
- (c) Does not include information that is public knowledge (other than through a breach of confidentiality).

*Contract* means the agreement between the Principal and the Contractor including the Contract Documents as set out in the Contract Agreement.

*Contractor* means the entity or person appointed by the Principal for carrying out the Works and includes any Subcontractor engaged by the Contractor. The Contractor shall remain in all respects an independent Contractor and not an employee, agent or partner of the Principal.

*Contract Price* means the price agreed between the Contractor and the Principal as set out in clause 3 of the Special Conditions of Contract or the Quotation and subject to such adjustment as may be made in accordance with the Contract.

*Day* means a calendar day.

*Drawings* mean the Drawings set out in Schedule 3 which describe the site, specifications, description of the Works.

*Due Date for Completion* means the date specified in clause 2 of the Special Conditions of Contract, subject to adjustment due to any Variation or matters outside of the parties control.

*HSWA* means the Health and Safety at Work Act 2015.

*Intellectual Property* means all intellectual property rights including (but not limited to) copyright, in all concepts, designs, drawings, quotations, specifications, plans, reports, models and documentation collated, prepared or created in any medium by the Contractor (or persons on behalf of the Contractor) in carrying out the



Services and provided to the Client in connection with the Project but not including the Client's Intellectual Property.

*Materials* mean any item, plant, equipment or goods that are supplied by the Contractor in connection with the Works.

*Month* is the period of 30 days from the end of any other day.

*PPSA* means the Personal Property Securities Act 1999.

*Principal* means the party named as the Principal in the Contract Agreement.

*Project* means the Principal's Project as set out in clause 7 of the Special Conditions of Contract.

*Quotation* means any quote provided by the Contractor and approved by the Principal (whether or not provided prior to the entry into this Contract) which sets out the estimated Contract Price and Works in relation to the proposed Project and which is deemed to form part of the Contract.

*Schedule of Prices* means the schedule of rates (if any) submitted by the Contractor which shows prices payable for sections or items of the Works and which is deemed to form part of the Contract or where relevant, the Schedule of Prices may be set out and form part of the Quotation provided by the Contractor.

*Site* is the land and other places provided or made available by the Principal where the Contractor is to perform the Works or to which Materials are to be delivered and any other land and places provided by the Principal conditionally for the purposes of the Contract otherwise than merely for the purposes of access as may be specifically designated in the Contract as forming part of the Site.

*Special Conditions of Contract* means the special conditions and terms as set out in Schedule 1 of this Contract.

*Subcontractor* is any person (other than the Contractor) to whom any part of the Contract has been subcontracted to by the Contractor for completion and the legal representatives, successors and assigns of such person.

*Variation* means any variation pursuant to clause 6 and any other matter which is stated to be a Variation or to be treated as if it was a Variation of the Contract.

*Working Day* is a day other than a Saturday, Sunday, or statutory holiday on which banks are generally open for business in Wellington.

*Works* mean the works set out in clause 9 of the Special Conditions of Contract, the Quotation and Drawings, including where relevant (but not limited to) all supply and installation to be done under the Contract and all design work where required in connection with the Project.

**1.2 Document**

A reference to a document is to that document as amended, novated or replaced from time to time.

**1.3 Headings**

Clause headings are for ease of reference only and do not affect its interpretation.

**1.4 Parties**

A reference to a party to this Contract or another document includes that party's successors and permitted substitutes or assigns.

**1.5 Plural and Singular**

Words importing the singular number include the plural and vice versa.

**1.6 Sections, Clauses and Schedules, Drawings and Quotations**

References to sections, clauses, Schedules, Drawings and Quotations are references to this Contract's sections, clauses, Schedules, Drawings and Quotations.

**1.7 Statutes and Regulations**

References to any statutory provision will include any statutory provision which amends or replaces it and any subordinate legislation made under it.

**1.8 Schedules, Drawings and Quotations**

The Schedules, Drawings and Quotations to this Contract form part of this Contract.

**1.9 Negative Obligations**

Any obligation not to do anything will be deemed to include an obligation not to permit or cause that thing to be done.

**1.10 Assignment**

References to assignments will include reference to sales, assignments, transfers, mortgages, pledges, charges or any other dispositions or alienations (whether of legal or of beneficial interests).

## **2. Contractor's Obligations**

### **2.1 *Commencement of the Works***

The Contractor agrees to carry out the Works using a degree of skill, care and diligence reasonably expected from a Contractor carrying out similar Works. The Contractor shall perform the Works and supply the Materials as specified in the Contract Documents and agrees to comply with all reasonable instructions from the Principal. The Contractor shall provide all Materials, labour, plant, and anything else required to perform the Works.

### **2.2 *Risk Management***

The Contractor shall take every practical precaution not to damage the Works or any other property or injure any person.

### **2.3 *Health & Safety***

The Contractor shall be familiar with and comply with its obligations under the HSWA and relevant regulations, including taking all reasonably practicable steps to ensure the safety of workers and others in and around the Site. The Principal agrees to comply with the Contractor's health and safety requirements.

### **2.4 *Access for the Principal***

The Contractor shall co-operate with and take all reasonable steps to avoid inconvenience to the Principal, and the Principal's agents, employees and other contractors. In particular, the Contractor shall allow the Principal and its agents access at any reasonable time(s) to any places where the Works are being performed.

## **3. The Principal's Obligations**

### **3.1 *Possession of Site***

The Principal agrees to give possession of the Site on the Commencement Date as set out in clause 1 of the Special Conditions of Contract for the purpose of allowing the Contractor to perform the Works.

### **3.2 *Contractor Default***

If for any reason whatsoever, the Contractor fails to perform and construct the Works to the standard and or time specified, the Principal has the right to have the Works carried out by any means, including but not limited to having the work carried out by others, and the Principal is entitled to deduct any costs incurred by such means, from any moneys due, or which may become due, to the Contractor.

### **3.3 Warranties**

The Principal warrants:

- (a) To provide all information requested by the Contractor in relation to the Project as soon as reasonably practicable;
- (b) Where the Project relates to a property or dwelling, that the Principal owns the property or dwelling or is authorised by the owner of the property or dwelling to carry out the Project; and
- (c) That the Principal will take responsibility for all Materials delivered on site before and after installation;

### **3.4 Principal Acknowledgements and Agreements**

The Principal acknowledges and agrees:

- (a) That the Principal is responsible for ensuring the Site (and kitchen area) is:
  - (i) free from all other trades-persons or contractors during the installation unless agree with us prior.
  - (ii) ready for installation once the Materials are delivered. For the avoidance of doubt, this includes the removal of the existing kitchen (if relevant), any plumbing and electrical works required and the levelling of floors and walls.
- (b) The nature of working with timber is that hairline cracks may appear in some joins and such hairline cracks are deemed acceptable by the Principal for this type of kitchen and that no claims will be made against the Contractor in relation to this. Please note it is not advised that timber kitchens be installed over underfloor heating. This can dry out the wood and cause excessive movement. It is the Principals responsibility to disclose this.
- (c) Where any walls are to be painted, the Principal must have completed such painting prior to the installation of the kitchen and in the event that the painting has not been completed, the Contractor will not be able to complete the Works and installation.
- (d) Our products are made of painted or stained timber, which inherently requires a degree of care to maintain its appearance and integrity. It is essential to note that while we strive to provide high-quality products, painted surfaces, including timber, are susceptible to chipping, denting and bruising under certain conditions. This is not indicative of an inferior product but rather an inherent characteristic of the material used. We

### **3.5 *Principal to Pay Extra Costs***

- (a) If the Contractor is required to return to the Site to complete the Works due to the Site not being ready for installation, appliances missing or completion of the installation, any additional costs and expenses incurred by the Contractor as a result will be borne by the Principal and treated as a Variation.

### **3.6 *Materials Not Refundable***

- (a) The Principal acknowledges that all Materials are not refundable. The Contractor reserves its right to charge the Principal any additional costs or expenses incurred as a result of a change of mind (including the cost of all Materials already ordered on behalf of the Principal for the Project) and to treat any change to the Materials as a Variation.

## **4. *Design Work***

### **4.1 *Provisions that Apply to Design Work***

If the scope of the Works includes design work, the parties agree that the following provisions will apply:

- (a) The Contractor will carry out the design work to the Principal's requirements as set out in the Drawings and Quotations or otherwise where required in connection with the Project.
- (b) The Contractor will provide a copy of the design work to the Principal for approval.
- (c) Upon approving the design work, the Principal agrees that the Contractor's design work:
  - (i) meets the Principal's specific requirements; and
  - (ii) is fit for purpose.

## **5. *Invoicing and Payment***

### **5.1 *Invoices***

The Contractor shall invoice the Principal for the Contract Price in the frequency set out in clause 5 of the Special Conditions of Contract and for any Variations.

## **5.2 Deposit**

Upon signing this Contract, the Principal agrees to pay the Deposit as set out in clause 4 of the Special Conditions of Contract or if no deposit is specified, 50% of the total value.

## **5.3 Time for Payment**

The Principal agrees to pay all invoices received from the Contractor and any required Deposit within five (5) Working Days and in cleared funds by direct debit (**Due Date**). If the Principal fails to make payment by the Due Date, the Contractor may provide written notice to the Principal advising that all Works will be suspended until payment has been made in full.

## **5.4 Interest for Late Payment**

Where the Principal fails to make any payment by the Due Date, the parties acknowledge that the Contractor may require the Principal to pay interest on any amount which is more than twenty (20) days overdue. Interest will be calculated at the rate of 2% per month on the overdue amount, calculated daily from the Due Date until the date on which payment of the overdue amount is made in full.

## **5.5 Enforcement Costs**

The parties agree that any costs and expenses incurred by the Contractor in relation to the collection and recovery of overdue amounts may be passed onto the Principal. The parties further acknowledge that the Contractor may pass on any overdue amounts to a debt collection agency and that the Principal is responsible for all associated costs.

## **5.6 Payment Claims under the Construction Contracts Act 2002**

### **(a) Notice of Intention to Claim**

Where the nature of the Services is such that it is covered by the CCA and the Contractor wishes to submit a payment claim pursuant to the CCA, the Contractor shall first give the Principal no less than seven (7) Working Days prior written notice to such effect. Where the Contractor has issued a payment claim pursuant to the CCA, the provisions of the CCA will apply.

### **(b) Payment Schedule**

Where a Contractor has submitted a payment claim under the CCA in respect of a progress payment, the Principal may respond to such a payment claim by issuing a payment schedule to the Contractor. The Principal shall provide the payment schedule to the Contractor by no later

than the tenth (10<sup>th</sup>) day of the month immediately following the month during which the relevant payment claim was received by the Principal.

(c) *Payment Date*

Payment of the scheduled amount set out in any payment schedule will be made by the tenth (10<sup>th</sup>) of the month immediately following the month during which the Principal issued the relevant payment schedule to the Contractor.

(d) *Deductions by the Principal*

The Principal shall be entitled to deduct such amounts which are required by the terms of the Contract or by law from the amount claimed in any payment claim.

## **6. Variations**

### **6.1 *Principal's May Request Variations***

The Principal may request a Variation to the Project, including any variation to the scope, time of supply or scale of the Works or Materials. All Variation requests must be submitted to the Contractor in writing (**Variation Request**).

### **6.2 *Contractor to Respond to Principal's Variation Request***

Upon receipt of a Variation Request under clause 6.1, the Contractor will respond to the Principal as soon as reasonably practicable but no later than five (5) Working Days and advise the Principal of any resulting change in the Due Date for Completion and the Contract Price where possible or where this is not possible the proposed charges on a time attendance basis.

### **6.3 *Parties Must Agree to Variation***

Following the Contractor's response, the parties must agree in writing on the Variation(s) to the Project, any change in the Due Date for Completion and the Contract Price or proposed charges (as the case may be).

### **6.4 *Additional Services Required***

The Principal also agrees and acknowledges that if there are additional services required for the Project that fall outside the Services (for example, modifications required due to walls and floors not being straight and level), then the Contractor will advise the Principal of the additional services required and obtain the Principal's written approval to carry out all additional services. Any approved additional services will be treated as a Variation and will be charged as quoted or otherwise based on our hourly rate of \$145.00 plus GST.

## **7. Commencement and Completion**

### **7.1 *Date of Commencement***

The parties agree that the Works will commence on the Commencement Date as set out in clause 1 of the Special Conditions of Contract.

### **7.2 *Date for Completion***

- (a) The Due Date for Completion in respect of the Works shall be the date stated in clause 2 of the Special Conditions of Contract.
- (b) The parties acknowledge that the Due Date of Completion is an estimate only and there may be factors outside the control of either party which may mean the Project is not able to be completed by this date and that the Principal will have no claim against the Contractor due to any resulting delay. The parties further agree that the Due Date of Completion will be extended as reasonably necessary to take into account any factors outside the control of either party.

### **7.3 *Principal to Take Possession upon Completion***

The Contractor will notify the Principal in writing when all Works have been completed under this Contract and the Principal agrees to take possession and responsibility for the Works (other than for material defects) from the date of receipt of the Contractor's notice under this clause.

### **7.4 *All Outstanding Amounts Payable***

The parties agree that once the Contractor notifies the Principal that all Works have been completed under clause 7.3, the Contractor will invoice the Principal for all outstanding amounts due under the Contract and the Principal will pay such amounts in accordance with the Contract.

## **8. Liability and Insurance**

### **8.1 *Liability***

- (a) The parties agree that they are only liable to the other party for reasonably foreseeable damages, losses, liabilities or expenses caused directly by a breach of the Contract.
- (b) Except as provided for under clause 8.1(a), the parties agree that they are not liable to the other party for any claims, damages, liability, losses or expenses (including indirect, consequential or special loss or loss of profit) however arising, in relation to the Project.



- (c) Where our liability cannot be excluded, any liability will be limited to the remedies under any applicable law and will in no circumstances exceed the Contract Price paid under the Contract.

## **8.2 Contractor Not Liable**

The parties acknowledge and agree that the Contractor is not liable for any reason if:

- (a) The Contractor is unable to complete the Project by the Due Date for Completion if this is due to factors outside of the Contractor's control; and
- (b) There are variations in colour and/or tonality of any final Materials provided to the Principal from the sample products shown (for example, any wood and fabric materials). This is because certain Materials are made of natural materials meaning the Contractor has no control over the final colour or tonality and that certain climate conditions can cause a variation in colour or tonality if the Materials purchased at different times.

## **8.3 Liability Reduced for Contribution**

If either party is found liable to the other (whether in contract, tort or otherwise) and the claiming party has contributed to the loss or damage, the liable party will only be liable to the proportional extent of its own contribution.

## **8.4 Where Parties are in Trade**

The parties acknowledge and agree that where both parties are in trade and the Services are supplied and acquired in trade, section 43 of the Consumer Guarantees Act 1993 ("Consumer Guarantees Act") or section 5D of the Fair Trading Act 1986 ("Fair Trading Act") will apply to this Contract (as applicable). The parties further agree that it is fair and reasonable for the parties to be bound by this clause and that:

- (a) The provisions of the Consumer Guarantees Act will not apply; and
- (b) Section 9 (misleading conduct), 12A (unsubstantiated representations), 13 (false or misleading representations) or 14 (false representations and other misleading conduct in relation to land) of the Fair Trading Act will not apply to either party's conduct or representations.

## **8.5 Defective Workmanship Insurance**

- (a) *Contractor to Insure*

The Contractor shall, without limiting its liability under clause 8.1, effect or hold defective workmanship insurance for a total sum of \$100,000.00.

(b) *Period of Insurance*

The Contractor shall keep the Public Liability insurance in full force and effect up until the end of the Defects Liability Period, or if loss or damage occurs prior to the end of the Defects Liability Period, until all defects are remedied during the Defects Liability Period or the date when the Principal resumes occupation and use of any part of the Works, whichever is later.

**8.6 Works Insurance**

(a) *Principal to Insure*

The Principal must have their own contract works policy arranged by either you the principle or by your contracted builder and the kitchen will be included as part of the principle supplied goods.

Principle supplied goods are goods that the principle supplies to their contractor (builder) for free for incorporation into the contract works and in addition to the estimated contract price.

(b) *Included Risks*

The insurance cover shall include for the cost of removal, disposal and preparation for replacement works, the associated professional fees and supervision costs, the value of items to be incorporated into the Works, but which are not part of the Contract Price and the increased cost of replacing the damaged work arising from increased costs of Materials and labour occurring since the acceptance of the Contractor's Drawings and Quotations.

(c) *Period of Insurance*

The Principal shall keep the works insurance in full force and effect up until the end of the Defects Liability Period, or if loss or damage occurs prior to the end of the Defects Liability Period, until all defects are remedied during the Defects Liability Period or the date when the Principal resumes occupation and use of any part of the Works, whichever is later.

(d) *Insurance before Commencement*

If required by the Contractor at any time and from time to time, the Principal shall produce evidence from the insurer that the insurance remains in full force and effect.

(e) *Notice of Cancellation*

Where possible, the insurance policy must contain a requirement that the insurance shall not be cancelled for non-payment of premiums without five (5) Working Days' notice in writing to that effect from the insurer to both the Contractor and the Principal.

(f) *Sub-Contractors To Be Covered*

Where possible, the Principal shall ensure that any sub-contractors are covered by the works insurance.

## (g) The Contractor agrees to having Public Liability insurance. The goods are fully insured for loss and damage to the value of the project, from factory to site, or its final destination. If goods are requested to go into storage – that is then deemed as final destination and the Contractor's insurance ceases at that point. The principal will then need to get their own in insurance. Moving items from storage to site is at customer's risk and the contractor is not liable for any damage that may result with this move. It is important that all storage is dry and insulated excess heat or cold can amplify timber movement.

**9. Retention of Title****9.1 Contractor to Retain Title in Materials**

The parties acknowledge that unless agreed in writing, title to all Materials will not pass to the Principal until the Principal has satisfied all its obligations under this Contract, including the obligation to pay all monies due to the Contractor for the Works.

**9.2 Principal's Obligations in relation to the Materials**

Until title to the Materials passes to the Principal under clause 9.1, and where the Contractor does not have possession of the Site, the Principal will:

- (a) Hold the Materials as a bailee (where possible);
- (b) Clearly designate the Materials as the Contractor's property and store any Materials in such a way that they are identified as the Contractor's and not the Principal's (where possible); and
- (c) Maintain the Materials in good order and condition and preserve the Materials in their present form.

**9.3 Contractor's Right to Re-Take Possession and Right of Entry**

- (a) Without prejudice to the Contractor's other rights and remedies under this Contract, the Contractor is entitled to re-take possession of any Materials if full payment is not received by the contractor after the job is complete.
- (b) The Principal grants to the Contractor an irrevocable right and authority to enter onto the Site or any other place where such Materials are situated and to take and resell the Materials and to retain the proceeds from such sale. Any shortfall arising from such sale will be a debt due and owing by the Principal to the Contractor.

## **10. Personal Property Securities Act 1999**

### **10.1 Security Interest over Materials**

The Principal acknowledges that the Contractor's retention of title in clause 9 gives rise to a security interest in all present and after acquired Materials supplied by the Contractor to the Principal to secure the Principal's performance of its obligations under the Contract.

### **10.2 Principal's Undertakings**

The Principal undertakes to:

- (a) Promptly do all things, execute all documents and/or provide any information which the Contractor may reasonably require to enable the Contractor to perfect and maintain the perfection of its security interest (including by registration of a financing statement);
- (b) Give the Contractor no less than fourteen (14) days prior written notice of any proposed change in its name and/or any other change to its details (where relevant); and
- (c) Immediately on request by the Contractor (and at the Principal's expense) obtain from any third party such agreements and waivers of any security interest that third party has in the Materials, to ensure that at all times the Contractor has a first priority security interest in the Materials.

### **10.3 PPSA Agreements**

The Principal waives its rights to receive a copy of any verification statements under the PPSA and agree that as between the Contractor and Principal:

- (a) The Principal will have no rights under (or by reference to) sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA; and
- (b) Where the Contractor has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.

## **11. Intellectual Property**

### **11.1 Contractor to Retain Ownership of Intellectual Property**

The parties agree that unless otherwise agreed in writing, the Contractor will retain ownership of all Intellectual Property created and produced in relation to the Project and this Contract.

### **11.2 Principal's Licence to Use Intellectual Property**

Where all amounts owing to the Contractor have been paid by the Principal in full under this Contract, the Contractor grants the Principal a royalty-free licence to use the Intellectual Property created and produced in relation to the Project and this Contract for the purpose of maintaining and using any Materials and the Project deliverables.

### **11.3 No Unauthorised Use or Disclosure**

The Principal undertakes to not use the Intellectual Property created and produced in relation to the Project and this Contract for any other person or to disclose this Intellectual Property to any other person except with the Contractor's prior written consent.

## **12. Termination or Suspension**

### **12.1 Grounds for Termination**

If either party (where relevant):

- (i) Commits an act of bankruptcy;
- (ii) Enters into any scheme of arrangement or compromise with its creditors;
- (iii) Is or is deemed to be insolvent; or
- (iv) Goes into liquidation or receivership,

then the other party may terminate the Contract immediately by notice in writing and upon termination under this clause, the Contractor shall be entitled to reasonable payment for any Works completed and Materials supplied to date after taking into account amounts already paid. Payment of such an amount shall be taken and accepted by the Contractor in full payment and satisfaction of all claims and demands under the Contract.

## **12.2 Default by the Contractor**

If the Contractor:

- (a) Without reasonable cause suspends the Works and/or supply of Materials;
- (b) Has failed to perform the Works materially in accordance with the Contract or has otherwise breached its obligations under the Contract; or
- (c) Abandons the Contract prior to the completion of the Works or has become incapable of complying with its obligations under the Contract, then the Principal may, if the Contractor has not remedied the default within ten (10) Working Days of receiving written notice from the Principal of such default:
  - (i) immediately take over the Works or arrange for another contractor to take it over and continue the Works until the Contractor has shown the ability to remedy the default, or
  - (ii) terminate the Contract by written notice.

## **12.3 Discretion to Terminate**

Either party is permitted to terminate the Contract at their sole discretion by giving at least one (1) month written notice to the other party.

## **12.4 Suspension**

If an event occurs which:

- (a) Is beyond the control of either party (and for the avoidance of doubt includes an epidemic); and
- (b) Is neither directly or indirectly caused by either party; and
- (c) Prevents the performance of the Services and/or supply of Materials (where relevant) under the Contract,

then all Services and supply of Materials will be suspended until it becomes practicable to recommence the Services and/or supply of Materials. For the avoidance of doubt, such events will not include personal events such as ill-health, lack of funding or resources.

## **12.5 Consequences of Suspension**

Where an event occurs under clause 12.4:

- (a) The Due Date of Completion will be extended as reasonable in the circumstances to take into account the suspension and the Principal will have no claim against the Contractor in relation to such extension of the Due Date of Completion;
- (b) If the suspension under clause 12.4 continues for longer than four (4) months, then the Contract may be terminated by either party giving written notice to the other and neither party shall have any claim against the other party except for any default or breach which occurred prior to the suspension;
- (c) Any suspension under clause 12.4 (other than for the default of the Contractor) will be treated as a Variation; and
- (d) For the avoidance of doubt, despite any suspension under this clause, the Principal must pay all amounts owing to the Contractor (including any invoices) for Services carried out and Materials supplied up until the suspension in accordance with the terms of the Contract.

#### **12.6 Expiry or Premature Termination**

Upon the expiry or premature termination of this Contract for whatever reason:

- (a) Subject to clause 12.5, such expiry or termination will be without prejudice to the rights and remedies of either party in respect of any breach of this Contract by the other party, where such breach occurred prior to the termination of this Contract;
- (b) The provisions of this Contract which are required to give effect to this clause, with special reference to liability (including any exclusions and limitations of liability) and payment provisions will remain in full force and effect;
- (c) Each party will promptly return to the other all documents, Materials and other items belonging to the party and in its possession or under its control at the time of termination (including the Contractor's equipment and plant which may be located at the Site);
- (d) If clause 7.3 applies, the full Defects Liability Period will continue to apply;
- (e) The Contractor is entitled to invoice the Principal for all Services carried out and all Materials supplied to date in accordance with the terms of the Contract; and
- (f) The Principal must pay any reasonable costs that the Contractor incurs solely because of the early termination of the Contract including the costs of all Materials ordered on behalf of the Principal for the Project (unless such termination is a result of the Contractor's default).

## **13. Confidentiality**

### **13.1 Confidentially Obligations**

The parties agree to:

- (a) Keep all Confidential Information relating to either party confidential and to only use such Confidential Information for the purposes it was made available for; and
- (b) Not disclose the Confidential Information relating to either party without the other party's prior written approval unless such disclosure is necessary for the purposes of the Project or the Works to disclose it to any appropriate third party, or as required by law.

## **14. Disputes**

### **14.1 Payment Disputes**

In the case of a payment dispute under this Contract, the parties acknowledge that the Contractor may seek the determination of and adjudication of the dispute under the Construction Contracts Act 2002.

### **14.2 Amicable Negotiation Preferred**

The parties agree to act in good faith to resolve any dispute which arises under this Contract by amicable negotiation or other appropriate alternative dispute resolution technique.

### **14.3 Mediation**

In the event that the parties are unable to settle a dispute between themselves within fifteen (15) Working Days, either party may refer the dispute to mediation. The parties must appoint a mediator within five (5) Working Days of the dispute being referred to mediation. If the parties cannot agree on a mediator, then the mediator shall be appointed by the President for the time being of the New Zealand Law Society.

### **14.4 Arbitration**

In the event that the parties do not reach an agreement in mediation within fifteen (15) Working days of the appointment of a mediator, either party may refer the dispute to arbitration by a single arbitrator pursuant to the Arbitration Act 1996. The arbitrator must be agreed on between the parties within five (5) working days of the dispute being referred to arbitration. If the parties cannot agree on an arbitrator, then the arbitrator will be appointed by the President for the time being of the New Zealand Law Society.



#### **14.5 *No Right to Suspend Obligations***

No dispute arising under this Contract gives either party the right to suspend their obligations under this Contract subject only to where the nature of the Services is such that it is covered by the CCA, nothing in clause 14 will affect the Contractor's rights under the CCA.

### **15. Defects Liability**

#### **15.1 *Rectification of Material Defects***

The Contractor shall at its cost remove from the Site any improper Materials or make good any material defect in the Works arising from faulty Materials or workmanship upon receipt of written notice by the Principal at any time up to the end of the Defects Liability Period as set out in clause 6 of the Special Conditions of Contract or within ten (10) days of its expiration as a result of an inspection prior to such expiration.

#### **15.2 *Default by the Contractor***

If the Contractor fails to comply with its obligations under clause 15.1 within a reasonable time, the Principal may, at its discretion, cause such defects to be rectified and the cost thereof shall be paid by the Contractor or deducted by the Principal from money owed by it to the Contractor.

#### **15.3 *Alternative to Rectification***

The Principal may, at its discretion and in lieu of rectification, elect to retain defective Materials or workmanship and if the parties agree in writing, adjust the Contract Price accordingly.

#### **15.4 *Start Date and Duration***

The Defects Liability Period shall be the period as set out in clause 6 of the Special Conditions of Contract and calculated from the date of the Contractor's notice under clause 7.3.

### **16. General Provisions**

#### **16.1 *Governing Law***

This Contract shall be governed by the laws of New Zealand and the parties agree to accept the non-exclusive jurisdiction of the New Zealand Courts.

#### **16.2 *Notices and Service***

Any notice given under this Contract must be sent by email to the address of the relevant party set out below and as designated from time to time by the parties.

Service of such notices will be deemed to be received upon transmission provided that any notice sent by email after 5 pm on a Working Day will be deemed to have been received on the next Working Day.

**Contractor:**                    **The Gourmet Kitchen Company Limited**

Care of:                            Rachel Steinmetz

Email Address:                 rachel@appletrreedesigns.co.nz

**Principal:**

Care of:

Email Address:

### **16.3    *Relationship Between the Parties***

Nothing in this Contract constitutes or is deemed to constitute any party as the partner, agent, employee or officer of any other person, and no party shall make any contrary representation to any other person.

### **16.4    *Assignment Requires Consent***

Neither party may assign this Contract or any of their rights or obligations under this Contract at any time without first obtaining the other party's prior written consent.

### **16.5    *Discrepancies and Ambiguity***

In the event of any discrepancy, ambiguity, or uncertainty between any Contract Documents, the discrepancy shall be determined in the following order of precedence:

- (a)    The Quotation (Schedule 3);
- (b)    This Contract Agreement;
- (c)    Special Conditions of Contract (Schedule 1);
- (d)    The Drawings (Schedule 4);
- (e)    Conditions of Contract (Schedule 2);
- (f)    The following additional documents: \_\_\_\_\_

**16.6 Entire Contract**

This Contract records the entire arrangement between the parties relating to matters dealt with in this Contract and supersedes all previous arrangements, whether written, oral or both, relating to such matters.

**16.7 No Waiver**

A waiver by any party of a breach of any term, provision or condition of this Contract will not constitute a precedent for or bind that party to grant a waiver of any subsequent breach of the same or any other term, provision or condition of this Contract.

**16.8 Partial Invalidity**

If any provision of this Contract is or becomes invalid or unenforceable, that provision shall be deemed deleted from this Contract and such invalidity or unenforceability shall not affect the other provisions of this Contract, all of which shall remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provisions.

**16.9 Further Assurances**

Each party shall do all things and execute all documents reasonably required in order to give effect to the provisions and intent of this Contract.

**16.10 Amendment to Contract**

No amendment, addition or variation to this Contract will be effective unless agreed in writing by both parties.

**16.11 Counterpart**

This Contract may be executed in one or more counterpart copies (including emailed copies) which, read together, shall constitute one and the same document.

**SCHEDULE 3****THE QUOTATION**

**Sent via Xero on the:**



**SCHEDULE 4**

**THE DRAWINGS**

**Given/Sent on the:**