

PURCHASE ORDER – TERMS AND CONDITIONS

1. SUPPLY

- 1.1. **Agreement to Supply:** The Supplier will supply or provide the Goods and Services to the Purchaser within Working Hours (unless agreed otherwise), in accordance with the Purchase Order, including any Requirements, this Agreement and Good Industry Practice.
- 1.2. **Priority of terms:** By accepting this Purchase Order, the Supplier agrees that Greater Wellington's Standard Terms and Conditions of Purchase apply to this transaction to the exclusion of any other terms, including any terms attached to or referenced in the Supplier's quote, invoice, or other documents.
- 1.3. **Compliance:** The Supplier and its Personnel will comply with all Laws, applicable to the supply of the Goods and/or Services.
- 1.4. **Inspections, Consents, Permits and Approvals:** The Supplier will, at its cost, obtain or undertake all necessary inspections, licences, consents, approvals or permits required to supply, Deliver or install any Goods and/or Services to the Purchaser.

2. CHARGES

- 2.1. **All Inclusive:** The Charges are the total maximum payable by the Purchaser to the Supplier for the Goods and/or Services. Charges include the Cost and, only where agreed in the Purchase Order, Expenses.
- 2.2. **What Charges include:** Unless otherwise stated in the Purchase Order, the Charges for the Goods and/or Services include all of the following:
 - (a) costs of shipping, carriage and freight;
 - (b) insurance charges;
 - (c) customs duties and clearance charges; and
 - (d) other costs incurred by the Supplier in delivering the Goods or Services to the Purchaser.

2.3. Taxes

- (a) The Charges exclude GST.
- (b) Except for any GST payable by the Purchaser, all taxes, levies and duties payable in connection with this Agreement under any Law are to be paid by the Supplier and not passed on to the Purchaser.
- (c) The Purchaser may deduct from any payments to be made to the Supplier any withholding taxes or other deductions that it is required by Law to make.

2.4. Agreed in Advance:

- (a) If the Charges are not specified in the Purchase Order, then the Supplier must confirm the Charges with the Purchaser before the supply of the Good or Services.
- (b) The Purchaser will not be bound to pay for Goods or Services unless the Purchaser has agreed to the Charges in writing before the Goods or Services are supplied.

3. PAYMENT

- 3.1. **Valid Tax Invoice:** The Supplier must provide the Purchaser with a Valid Tax Invoice.
- 3.2. **Requirements:** Invoices that are not Valid Tax Invoices will not be processed for payment and will be returned to the Supplier for resolution.
- 3.3. **Submission:** Invoices must be emailed to the Purchaser's accounts division at accounts@gw.govt.nz with copy to the Purchaser's Personnel responsible for the purchase as advised in the Purchase Order.
- 3.4. **Payment:**
 - (a) The Purchaser will pay a Valid Tax Invoice by the 20th calendar day of the month following the date the invoice was issued. The Purchaser's obligation to pay is subject to clauses 3.5, 3.6, 17.3 and 17.8.
 - (b) Payment will be made by direct credit to the bank account nominated by the Supplier.
- 3.5. **Dispute:** The Purchaser must notify the Supplier within 10 Business Days of the date of receipt of a Valid Tax Invoice if the

Purchaser disputes any part of that invoice, and the Purchaser:

- (a) must pay the portion of the Valid Tax Invoice that is not in dispute (and the Supplier will provide a further Valid Tax Invoice for the undisputed amount if required); and
- (b) may withhold payment of the disputed portion until the dispute is resolved.

3.6. **Set-Off:** The Purchaser may deduct from, or set-off against, any debt owing to the Supplier under this Agreement any debt payable to the Purchaser under this Agreement, including any amount by which an invoice paid by the Purchaser is subsequently found to have overstated the amount properly payable.

4. VARIATION

4.1. **Variations:** A Variation must be agreed by both Parties and recorded:

- (a) in writing and signed by both parties; or
- (b) through an exchange of emails,

where the signatories or authors have delegated authority to approve a Variation.

4.2. **Variation Process:**

- (a) Should a Variation affect Charges or Delivery Dates, the Parties will negotiate any required changes in good faith.
- (b) Where such negotiation fails to reach agreement within 5 Business Days of the date of the initial Variation request, then the Purchaser may terminate its Purchase Order immediately in writing.

5. INSPECTION, ACCEPTANCE OR REJECTION

5.1. **No deemed acceptance:** The signing of a Delivery Note or any other act of the Purchaser's Personnel acknowledging Delivery does not indicate the Purchaser's acceptance of any Goods or Services.

5.2. **Inspection:** The Purchaser or its nominated representative may inspect or undertake testing of Goods or Services (during manufacture or any other time, including

after Delivery) to verify compliance with any Requirements or any other description.

5.3. **Rejection:** If any of the Goods, Services or Deliverables do not comply with the Requirements or are otherwise defective in any way the Purchaser may, by written notice to the Supplier within a reasonable time after completing an inspection or Acceptance Testing, do any of the following at the Purchaser's option, but at the Supplier's cost:

- (a) require the Supplier to repair the Goods;
- (b) require the Supplier to replace the Goods or resupply the Services, or
- (c) reject the Goods or Services.

5.4. **Lack of Progress:** If the Buyer is not satisfied with the Supplier's progress in repairing, replacing or resupplying the Goods or Services, the Purchaser may either:

- (a) reject the Goods or Services by written notice to the Supplier, in which case clause 5.5 will apply; or
- (b) arrange for the Goods or Services to be repaired or resupplied by someone else, in which case the Supplier will reimburse all costs and expenses incurred by the Purchaser in doing so.

5.5. **Rejection of Goods:** If the Supplier receives a notice from the Purchaser rejecting Goods, it must:

- (a) remove any rejected Goods from the Purchaser's premises at its own risk within 15 Business Days of notice of rejection, and if the Supplier fails to do so the Purchaser may return the Goods and recover from the Supplier any cost and expense incurred; and
- (b) do either of the following the Purchaser elects in its notice of rejection:
 - i. provide a full refund of the price paid for the rejected Goods or Services, within 10 Business Days of the Purchaser electing to receive a refund; or

- ii. provide a credit for the price paid for the rejected Goods or Services, against the price payable for other Goods or Services.
- 5.6. **No limitation:** The Purchaser's rights under clauses 5.2 to 5.5 are in addition to, and do not limit, any other rights or remedies the Purchaser may have.

6. WARRANTIES

- 6.1. **Warranties, maintenance:** The Supplier must ensure that the Buyer is passed the benefit of any warranty or maintenance obligation (including a warranty from a manufacturer or any other person) that applies in relation to the Goods, Services or Deliverables or any part of the Good, Services or Deliverables as applicable.
- 6.2. **Satisfaction of Requirements:** The Goods, Services and/or Deliverables must (as applicable):
 - (a) be of merchantable quality and free from defects in design, materials or construction;
 - (b) comply with:
 - i. any Requirements;
 - ii. the description of the Goods, Services or Deliverables in the Purchase Order;
 - iii. any samples, patterns, drawings, plans and specifications the Supplier may have provided or referred to in the Purchase Order;
 - (c) be fit for the purposes for which they are intended to be used as communicated to, or that are or ought to be known by, the Supplier;
 - (d) be new and unused, unless the Purchaser has agreed otherwise in writing;
 - (e) be supplied with all due diligence, skill and care to be expected of persons fully qualified and experienced in their provision;
 - (f) be packaged so as to protect the contents and keep them clean, dry and in a new condition until they are first used, if appropriate; and

- (g) be free from any security interest, lien or encumbrance.

6.3. **Supplier Warranties:** The Supplier warrants that:

- (a) the Goods, Deliverables and/or the delivery of the Services do not breach any Law;
- (b) consumption of the Services and/or the supply and use of the Goods or Deliverables, for the purposes communicated to, or that are or ought to be known by, the Supplier, will not infringe the rights of any person;
- (c) full ownership of the Goods or Deliverables will pass to the Purchaser in accordance with this Agreement and no-one else has any rights in the Goods or Deliverables;
- (d) all Goods, Services and Deliverables supplied to the Purchaser comply with all the criteria specified in clause 6.2;
- (e) any documentation supplied with the Goods, Services or Deliverables is adequate (in terms of both quantity and quality) to enable the Purchaser to use and/or maintain the Goods, Services or Deliverables in the manner intended by the Purchaser; and
- (f) all information provided by the Supplier to the Purchaser is accurate.

6.4. **Warranty Regime:** Where a warranty issue arises, the Supplier warrants that:

- (a) it will investigate any Defect identified by either party in the Goods or Deliverables, which is raised and notified to the Supplier in writing within the Warranty Period;
- (b) it will promptly resolve any Defect it is required to investigate pursuant to clause 6.4(a) and
- (c) resolution of a Defect under clause 6.4(b) will be undertaken at no additional cost to the Purchaser.

7. HEALTH, SAFETY AND EMPLOYMENT

7.1. **Premises:** If the Supplier is at the Purchaser's premises, the Supplier must observe the Purchaser's policies and procedures, including those relating to health and safety, and security requirements, as provided to the Supplier.

7.2. **Health, Safety and Security:** The Supplier must:

- (a) consult and cooperate with the Purchaser regarding the Parties' overlapping obligations under, and what is required from the Supplier to assist the Buyer to comply with the HSW Act as it relates to, or affects, the Agreement;
- (b) comply, and ensure that its Personnel comply, with their obligations under the HSW Act as it relates to, or affects, the Agreement;
- (c) comply with all reasonable directions of the Purchaser relating to health, safety, and security; and
- (d) report any of the following that applies to the Supplier or the Buyer, or relates to or affects the Agreement:
 - i. notifiable injury, illness, incident or event, or any notice issued under the HSW Act or any other health and safety legislation; and
 - ii. Protective Security Incident.

7.3. **Employment standards:** The Supplier must:

- (a) comply with its obligations under the Employment Relations Act 2000, Minimum Wage Act 1983, Wages Protection Act 1983, Holidays Act 2003 and the Parental Leave and Employment Protection Act 1987; and
- (b) report any instances where the Supplier is being investigated by the Labour Inspectorate, or where the Supplier has been found by the Labour Inspectorate, Employment Relations Authority, or the Employment Court to have breached any of the legislation referenced in clause 7.3(a).

8. DELIVERY AND DOCUMENTATION

8.1. **Delivery:** The Supplier must Deliver the Goods or Services to the Purchaser to or at the Site by the Delivery Date (on time deliver is essential).

8.2. **Site:** Where no Site is specified by the Purchaser, the Supplier must contact the Purchaser to obtain instructions.

8.3. **Delay:** Immediately on becoming aware of any actual or possible delay in Delivery of the Goods or Services, the Supplier must:

- (a) notify the Purchaser promptly in writing;
- (b) advise the Purchaser what remedial steps have been taken to rectify the situation;
- (c) advise the date on which the Goods and/or Services are likely to be Delivered; and
- (d) on request, provide progress reports on expected Delivery dates and such other information reasonably required by the Purchaser.

8.4. **Delivery dockets:** A Delivery Docket must accompany all Goods Delivered to the Purchaser.

8.5. **Inspection and testing:** Where inspection certificates, testing or other documentation must be provided by the Supplier, either by Law or on the request of the Purchaser:

- (a) copies of such documents must accompany Goods when Delivered;
- (b) the originals must be provided to the appropriate contact in the Purchaser's purchasing department.

9. OVERSEAS SUPPLIERS:

9.1. **Direct Consignment:** A Supplier located outside of New Zealand and supplying or consigning Goods direct to the Purchaser must advise the Purchaser by email of:

- (a) airfreight flight details or sea freight vessel name;
- (b) the estimated time of arrival of the Goods at the relevant Port of entry into New Zealand.

9.2. **Airfreight.** The Supplier must provide copies of the following to the Purchaser by email on shipment of the Goods:

- (a) the Airwaybill;
- (b) packing lists;
- (c) copies of commercial invoices; and
- (d) any other documents required for customs clearance purposes.

9.3. **Seafreight.** The Supplier must provide copies of the following to the Purchaser by email:

- (a) the Bill of Lading;
- (b) packing lists;
- (c) commercial invoices; and
- (d) any other requested documentation,

with original copies couriered direct to the Purchaser for the attention of the Purchaser's contact as specified in the Purchase Order.

9.4. **Survey:** Where specified in the Purchase Order, shipments will be subject to a pre-shipment survey by a surveyor approved by the Purchaser, at the expense of the Supplier.

9.5. **Convention Not Applicable:** Unless otherwise agreed in writing, overseas Suppliers agree that the United Nations Convention on the International Sale of Goods will not apply.

10. OWNERSHIP AND RISK - GOODS

10.1. **Risk:** Risk on Goods passes to the Purchaser on the date those Goods have been Delivered.

10.2. **Ownership of Goods:** The Purchaser will own the Goods on the earlier of:

- (a) the date the Purchaser has paid for the Goods or Services;
- (b) when they are Delivered to the Purchaser.

10.3. **Rejected Goods:** Ownership and risk in any Goods rejected by the Buyer under clause 5.5 will pass back to the Supplier as follows:

- (a) if the Purchaser has paid the price for those rejected Goods, once the Supplier has provided a refund or

credit in accordance with clause 5.5; and

- (b) in all other cases, when the Goods are collected from the place to which they were delivered.

10.4. **Replaced Goods:** Ownership of any Goods replaced by the Supplier under clause 5.3 will pass back to the Supplier once the Supplier has delivered the replacement Goods.

11. INSURANCE

11.1. **Insurance Required:** The Supplier must hold Appropriate Insurance and maintain that insurance cover for term of this Agreement and for a period of three years from the Date of Delivery.

11.2. **Certificates:** The Supplier must provide a certificate confirming the nature of the insurance cover and providing that each policy is current within 10 Business Days of any request from the Buyer.

12. CONFLICTS OF INTEREST

12.1. **Avoiding conflicts of interest:** The Supplier:

- (a) warrants that as at the date of the Purchase Order, it has no Conflict of Interest in providing the Goods or Services or entering into this Agreement; and
- (b) must do its best to avoid situations that may lead to a Conflict of Interest arising.

12.2. **Obligation to tell Buyer:**

- (a) The Supplier must tell the Purchaser promptly, in writing, if any Conflict of Interest arises in relation to the Services or this Contract.
- (b) If a Conflict of Interest does arise the Parties must discuss, agree and record in writing whether it can be managed and, if so, how it will be managed.
- (c) Each Party must pay its own costs in relation to managing a Conflict of Interest.

13. INFORMATION MANAGEMENT

13.1. **Information and Records:** The Supplier must:

- (a) keep and maintain Records in accordance with prudent business practice and all applicable Laws;
- (b) make sure the Records clearly identify all relevant time and Expenses incurred in providing the Goods and/or Services;
- (c) make sure the Records are kept safe and are easy to access;
- (d) give information to the Purchaser relating to the Goods or Services that the Purchaser reasonably requests, in a format that is usable by the Purchaser, and within a reasonable time of the request;
- (e) co-operate with the Purchaser to provide information promptly if the information is required by the Buyer to comply with an enquiry, or its statutory, parliamentary or other reporting obligations make its Records available to the Purchaser during the term of the Agreement and for 7 years after the Delivery Date (unless already provided to the Purchaser earlier); and
- (f) make sure that Records provided by or created for, the Purchaser are securely managed and destroyed on their disposal.

14. INTELLECTUAL PROPERTY RIGHTS

14.1. Ownership of Intellectual Property Rights:

- (a) Pre-existing Intellectual Property Rights remain the property of their owner.
- (b) New Intellectual Property Rights in Deliverables become the property of the Purchaser when they are created, and the Supplier agrees to do all things necessary to give effect to this clause 14.1(b);
- (c) New Intellectual Property Rights that are not in the Deliverables will become the property of the Party that created them.

14.2. Licence: The Supplier grants to the Purchaser a perpetual, non-exclusive, worldwide, transferable, sub-licensable and royalty-free licence to use, for any purpose, all Intellectual Property Rights in

the Services and Deliverables that are not owned by the Purchaser to:

- (a) receive the full benefit of the Services and Deliverables, and
- (b) use, copy, modify and distribute any Deliverables.

14.3. IPR warranties: The Supplier warrants that:

- (a) it is legally entitled to grant the licence in clause 14.2; and
- (b) the Buyer's:
 - i. use of Goods;
 - ii. anything provided by the Supplier and incorporated in the Services and/or Deliverables, for the purposes communicated to, or that are or ought to be known by, the Supplier,
 will not infringe the rights, including Intellectual Property Rights, of any third party.

14.4. No Cap: The Supplier's liability for breach of the warranties in clause 14.3 is not subject to any limitation or cap on liability that may be stated elsewhere in this Agreement.

15. CONFIDENTIALITY

15.1. Protection of Confidential Information:

Each Party agrees to not use or disclose the other Party's Confidential Information to any person or organisation other than:

- (a) to the extent that use or disclosure is necessary for the purposes of providing the Goods or Services, or in the case of the Purchaser, using the Goods or consuming the Services;
- (b) if the other Party gives prior written approval to the use or disclosure;
- (c) if the use or disclosure is required by law (including under the Local Government Official Information and Meetings Act 1987), Ministers, parliamentary convention or any other regulation, rules or policy that is binding on that Party; or
- (d) if the information has already become public, other than through

a breach of the obligation of confidentiality by one of the Parties.

15.2. **Obligation to inform staff:** Each Party will ensure that its Personnel:

- (a) are aware of the confidentiality obligations in this Contract, and
- (b) do not use or disclose any of the other Party's Confidential Information except as allowed by this Contract.

15.3. **Security:** Each Party will:

- (a) put in place and maintain adequate security measures to safeguard the other Party's Confidential Information from unauthorised access or use by third parties;
- (b) notify the other Party if it becomes aware of any suspected or actual unauthorised use, copying or disclosure of the other Party's Confidential Information; and
- (c) comply with any reasonable direction of the other Party in relation to any suspected or actual breach of the obligations in this clause 15 as the other Party reasonably requests.

16. DISPUTE RESOLUTION

16.1. **Negotiation:** The Parties agree to use their best endeavours to resolve any dispute that may arise under this Contract. The following process will apply to disputes:

- (a) Party will notify the other if it considers a matter is in dispute;
- (b) the Parties will attempt to resolve the dispute through negotiation;
- (c) if the Parties have not resolved the dispute within 10 Business Days of notification, they will refer it to the Parties' senior managers for resolution; and
- (d) if the senior managers have not resolved the dispute within 10 Business Days of it being referred to them, the Parties shall refer the dispute to mediation or, if agreed by the parties, some other form of alternative dispute resolution.

16.2. **Mediation:** If a dispute is referred to mediation, the mediation will be conducted:

- (a) by a single mediator agreed by the Parties or if they cannot agree, appointed by the Resolution Institute;
- (b) on the terms of the Resolution Institute Mediation Rules; and
- (c) at a fee to be agreed by the Parties or if they cannot agree, at a fee determined by the Resolution Institute.

16.3. **Costs:** Each Party will pay its own costs of mediation or alternative dispute resolution under this clause 16.

16.4. **Effect of dispute:** If there is a dispute, each Party will continue to perform its obligations under this Agreement as far as practical given the nature of the dispute.

16.5. **Taking court action:** Each Party agrees not to start any court action in relation to a dispute until it has complied with the process described in clause 16.1, unless that Party requires urgent relief from a court.

17. ENDING THIS AGREEMENT

17.1. **Supplier's request to terminate:** At any time during the term of this Agreement the Supplier may notify the Purchaser that it wishes to terminate this Agreement. The Purchaser will, within 20 Business Days following receipt of the Supplier's Notice, notify the Supplier whether, in its absolute discretion, it consents to the Supplier's Notice of termination.

17.2. **Consent:** If the Purchaser:

- (a) consents, the Agreement will be terminated on a date that is mutually agreed between the Parties; or
- (b) does not consent, the Agreement will continue in full force as if the Supplier's Notice requesting termination had not been given.

17.3. **Purchaser's termination for convenience:**

- (a) The Purchaser may terminate this Agreement at any time by giving not less than 10 Business Days' notice to the Supplier.

- (b) If the Purchaser terminates the Agreement under this clause or clause 4.2(b) then, subject to all other clauses of this Agreement, the Purchaser will pay the Supplier for all Goods provided and/or Services performed up to the date of termination and any costs incurred by the Supplier as a direct result of the early termination.

17.4. **Buyer's termination for cause:** The Buyer may terminate this Agreement immediately, by giving written notice, if the Supplier:

- (a) becomes bankrupt or insolvent;
- (b) has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed;
- (c) becomes subject to any form of external administration;
- (d) ceases for any reason to continue in business;
- (e) does something or fails to do something that, in the Purchaser's opinion, results in damage to the Purchaser's reputation or business;
- (f) has a Conflict of Interest that in the Buyer's opinion is so material as to impact adversely on the delivery of the Goods, Services, and/or Purchaser; or
- (g) provides information to the Purchaser that is misleading or inaccurate in any material respect.

17.5. **Termination for breach:**

- (a) If a Party breaches this Agreement (defaulting Party), the non-defaulting Party may give a default notice to the defaulting Party (**default Notice**).
- (b) A default Notice must state:
 - i. the nature of the breach, and
 - ii. the time and date by which it must be remedied.
 - iii. the period allowed to remedy the breach must be reasonable given the nature of the breach.

- (c) The non-defaulting Party may terminate this Agreement immediately by giving a further Notice to the defaulting Party if the defaulting Party does not remedy the breach as required by the default Notice.

- (d) If the Purchaser gives a default Notice to the Supplier, the Purchaser may also:

- i. withhold any payment of Charges due until the breach is remedied as required by the default Notice; and/or
- ii. if the breach is not remedied as required by the default Notice, deduct a reasonable amount from any Charges due to reflect the reduced value of the Goods or Services to the Purchaser.

17.6. **Supplier's obligations:**

- (a) On giving or receiving a Notice of termination, the Supplier must immediately do everything reasonably possible to reduce its losses, costs and expenses arising from the termination of this Agreement.

On termination or expiry of this Agreement, the Supplier must, if requested by the Purchaser, promptly return or securely destroy all Confidential Information and other material or property belonging to the Purchaser.

17.7. **Accrued rights:** The termination or expiry of this Contract does not affect any rights of a Party which:

- (a) arose prior to the date of termination or expiry; or
- (b) relate to any breach of this Agreement that arose prior to the date of termination or expiry.

17.8. **Purchaser's rights:** Subject to clause 17.3(b) if this Agreement is terminated the Purchaser:

- (a) will only be liable to pay Charges that were due for the Goods or Services delivered before the effective date of termination; and

- (b) may recover from the Supplier or set off against sums due to the Supplier, any Charges paid in advance for Goods, Services or Deliverables that have not been provided.

17.9. Handing over Services:

- (a) The Supplier will provide all reasonable assistance and cooperation necessary to facilitate a smooth handover of the Services to the Purchaser or any person appointed by the Purchaser during the term of this Agreement and for a period of 10 Business Days after date of termination or expiry.
- (b) If required by the Purchaser, the Supplier will provide additional assistance to support any replacement supplier to deliver the Services, for a period of up to 3 months from the date of termination or expiry at a reasonable fee to be agreed between the Parties, based on the Charges.

18. EXTRAORDINARY EVENT

- 18.1. No liability:** Neither Party will be liable to the other for any failure to perform its obligations under this Agreement to the extent the failure is due to an Extraordinary Event.
- 18.2. Obligations of affected Party:** A Party who wishes to claim suspension of its obligations due to an Extraordinary Event must notify the other Party as soon as reasonably possible. The Notice must state:
- (a) the nature of the circumstances giving rise to the Extraordinary Event;
 - (b) the extent of that Party's inability to perform under this Agreement;
 - (c) the likely duration of that non-performance; and
 - (d) what steps are being taken to minimise the impact of the Extraordinary Event on the performance of this Agreement.
- 18.3. Termination:** If a Party is unable to perform any obligations under this

Agreement for 20 Business Days or more due to an Extraordinary Event, the other Party may terminate this Agreement immediately by giving written notice.

19. NOTICES

19.1. Requirements: All Notices must be:

- (a) in writing and delivered by hand or sent by post, courier or email to the recipient Party's address as stated in the Purchase Order, and
- (b) signed, or in the case of email sent, by the appropriate manager or person having authority to do so.

19.2. Receipt of Notices: A Notice will be considered to be received:

- (a) if delivered by hand or sent by courier, on the date it is delivered;
- (b) if sent by post within New Zealand, on the 5th Business Day after the date it was sent;
- (c) if sent by post internationally, on the 9th Business Day after the date it was sent; or
- (d) if sent by email, at the time the email enters the recipient's information system and it is not returned undelivered or as an error, but a Notice received after 5pm on a Business Day or on a day that is not a Business Day will be considered to be received on the next Business Day.

20. GENERAL

20.1. Assignment and Sub-Contracting:

- (a) The Supplier shall not assign or sub-contract any of their obligations under the Purchase Order or Agreement without the Purchaser's written consent which will not be unreasonably withheld.
- (b) Clause 20.1(a) does not apply to sub-contracts for generally available materials, components and products made to a standard specification that are customarily sold on an "ex-stock" or "off the shelf" basis or for any part which the manufacturers are named in the Purchase Order.

- (c) The Supplier will be responsible for all work done and Goods and/or Services supplied by all sub-contractors.
- 20.2. **Entire Agreement:** Except where there is a current written and executed agreement between the Supplier and the Purchaser related to the Goods and/or Services, the Goods and/or Services are supplied under this Agreement. Supplier terms and conditions do not apply.
- 20.3. **Clauses that remain in force:** The clauses that by their nature should remain in force on expiry or termination of this Contract do so, including clauses: 6 (Warranties), clause 11 (Insurance), 13 (Information Management), 14.3 (IPR Warranties), 15 (Confidentiality), 16 (Dispute Resolution), 17 (Ending this Contract), 19 (Notices), 20 (General) and 21 (Definitions).
- 20.4. **New Zealand law, currency and time:** This Contract will be governed and interpreted in accordance with the laws of New Zealand. All money is in New Zealand dollars, unless the Purchase Order specifies a different currency. Dates and times are New Zealand time.
- 20.5. **No derogatory remarks:** Each Party undertakes not to publicly make objectionable or derogatory comments about the Goods or Services, this Contract, the other Party or any of the other Party's Personnel, and to ensure that its Personnel do not do so.
- 20.6. **Precedence:** Unless otherwise stated, in the event of inconsistency, the order of precedence of the documents comprising the Agreement shall be as follows:
 - (a) the Purchase Order;
 - (b) these terms and conditions;
 - (c) the Requirements;
 - (d) any other document attached to or referred to in the Purchase Order.
- 20.7. **Publication:** The Supplier must obtain the Purchaser's prior written approval before making reference to the Purchaser or this Agreement in its publications, public statements, promotional material or promotional activities.
- 20.8. **Severance:** If any part of this Agreement is held to be unlawful or unenforceable, in

whole or in part, the remainder of the Agreement shall stand in full force and effect.

- 20.9. **Variations:** No changes to this Agreement, including changes to Charges, Goods, Services, and/or Requirements, will be binding on the Purchaser unless it is a valid Variation.
- 20.10. **Waiver:** If a Party does not immediately enforce its rights under this Agreement that:
 - (a) does not mean that the other Party is released or excused from any obligation to perform at the time or in the future; and
 - (b) does not prevent that Party from exercising its rights at a later time.
- 20.11. **Working Hours:** 9am to 5pm on any Business Day.

21. DEFINITIONS

Acceptance means an acknowledgement in writing by the Purchaser that it is satisfied that the Goods, Services and/or Deliverable(s) meet its requirements and are free from patent or reasonably discoverable Defects.

Agreement means the Purchase Order and these terms and conditions and any Specifications and other documents referred to in the Purchase Order.

Appropriate Insurance means public liability and professional indemnity insurance, and insurance against all other risks for which the Goods and Services would normally be insured, in amounts and against risks that are commercially prudent taking into account the nature of the Goods and Services being provided by the Supplier under this Agreement.

Business Day means a day (other than Saturday, Sunday or a public holiday) on which registered banks are open for business in Wellington.

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is marked by either Party as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence';

- (c) is provided by either Party or a third party 'in confidence', or
- (d) either Party knows or ought to know is confidential.

Conflict of Interest:

- (a) A Conflict of Interest arises if a Party or its Personnel's personal or business interests or obligations do or could conflict or be perceived to conflict with its obligations under this Agreement, such that the Party's or its Personnel's independence, objectivity or impartiality can be called into question.
- (b) A Conflict of Interest may be:
 - i. actual: where the conflict currently exists;
 - ii. potential: where the conflict is about to happen or could happen; or
 - iii. perceived: where other people may reasonably think that a person is compromised.

Costs means the amount payable to the Supplier for the Goods or Services as specified in the Purchase Order excluding any Expenses.

Defect means in respect of any Goods or Deliverables, any failure of those Goods or Deliverables to meet the Requirements or the requirements specified in clause 6.2, other than a failure that is caused by a Defect Limitation.

Defect Limitation means any defect of or damage to any Goods, Service or Deliverable or breach of any warranty in this Agreement, if the defect, damage or breach was caused by or arose out of:

- (a) alterations, repairs or adjustments to Goods or Deliverables carried out contrary to the Supplier's directions; and
- (b) failure of the Purchaser to adhere to the obligations contained in this Agreement.

Deliverables means an output resulting from the delivery of the Services specified in the Purchase Order. A Deliverable may

be a document, a piece of equipment, goods or information or data stored by any means.

Delivery means:

- (a) the delivery of the Goods in good order; or
- (b) the timely provision of the Services, to Purchaser's full satisfaction, meeting all agreed Requirements, deadlines and **Deliver** and **Delivered** have consistent meanings.

Delivery Date means:

- (a) in relation to Goods, the required on Site date or dates;
- (b) in relation to Services the required date for completion of the Services or, where the Services are subject to milestone dates, the relevant milestone date,

as specified in the Purchase Order.

Delivery Docket means a delivery confirmation document that includes all information requested by the Purchaser.

Expenses means any actual and reasonable out-of-pocket costs incurred by the Supplier in the delivery of the Goods or Services and agreed to by the buyer in the Purchase Order.

Extraordinary Event means an event that is beyond the reasonable control of the Party immediately affected by the event (including where the Purchaser has failed to make due payment because of an event beyond its reasonable control). An Extraordinary Event does not include any risk or event that the Party claiming could have prevented or overcome by taking reasonable care.

Goods means the goods described in the Purchase Order.

Good Industry Practice means in relation to the Supplier's performance of the Services or supply of the Goods, the exercise of the skill, diligence, prudence, foresight and judgement which would be expected from a highly skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances, applying the standards and practices currently generally

applied in the New Zealand and all relevant Government requirements and guidelines.

GST means goods and services tax payable under the Goods and Services Tax Act 1985.

HSW Act means the Health and Safety at Work Act 2015.

Intellectual Property Rights All industrial and intellectual property rights whether conferred by statute, at common law or in equity, including, but not limited to copyright, trademarks, designs and patents.

Notice means a communication from one Party to the other that meets the requirements of clause 19.

Party means the Purchaser or the Supplier, and together they are the **Parties**.

Personnel means all individuals engaged by either Party in relation to this Agreement or the supply of Goods or Services. Examples include: the owner of the business, its directors, employees, subcontractors, agents, external consultants and co-opted or seconded staff.

Pre-existing Intellectual Property Rights means Intellectual Property Rights developed before the date of, or independently from, this Agreement.

Protective Security Incident means a security incident that is:

- (a) a breach of protective security policy or procedures;
- (b) an approach from anybody seeking unauthorised access to officials or official information; or
- (c) any other event that harms, or may harm, the security of the Purchaser and/or the Purchaser's Confidential Information.

Purchaser means the Wellington Regional Council, a regional council in accordance with the Local Government Act 2002.

Purchase Order means the written form used by the Purchaser to purchase the Goods and/or Services from the Supplier.

Requirements means any Purchaser requirements or specifications relating to

the Goods or Services attached to or referred to in the Purchase Order.

Services means the services described in the Purchase Order and includes an Deliverables.

Site means the location specified in the Purchase Order or other location agreed with the Purchaser.

Supplier means the person or entity as named in the Purchase Order who sells the Goods or Services to the Purchaser and its successors and permitted assigns.

Valid Tax Invoice means and invoice that:

- (a) clearly shows all GST due;
- (b) is in New Zealand currency or the currency stated in the Purchase Order;
- (c) is clearly marked Tax Invoice;
- (d) contains the Supplier's name, address, NZBN and GST number, if the Supplier is registered for GST;
- (e) contain the Purchaser's name and address and be marked for the attention of the Purchaser's contact as specified in the Purchase Order;
- (f) state the date the invoice was issued;
- (g) provide a description of the Goods or Services supplied, including the amount of time spent in the delivery if the delivery is based on an hourly fee rate;
- (h) contain the Purchaser's contract reference or purchase order number;
- (i) state the amount due, calculated correctly, and
- (j) be supported by GST receipts if Expenses are claimed, and any other verifying documentation reasonably requested by the Purchaser.

Variation means a change to any aspect of this Agreement that complies with clause 4.

Warranty Period means a 12 month period commencing on Acceptance of the last

Good or Deliverable supplied by the Supplier.