

1. Definitions

“**Business Day**” means a day (other than a Saturday, Sunday or public holiday) when banks in Auckland are open for business.
 “**Buyer**” means a customer of the Seller.
 “**CGA**” means the Consumer Guarantees Act 1993.
 “**Conditions**” means these terms and conditions for the sale of goods or the supply of services or both.
 “**Consumer**” means a “consumer” as that term is defined in section 2 of the CGA and section 2 of the FTA.
 “**Contract**” means a binding contract for the sale of goods or the supply of services or both made by the Seller and the Buyer.
 “**Default Event**” has the meaning given to that term in clause 21(a).
 “**Emergency Call-out**” means the call-out service for emergency breakdowns of the Buyer’s plant or equipment provided by the Seller to the Buyer in accordance with these Conditions in connection with a Contract for the performance of the Services.
 “**Force Majeure Event**” means an event beyond the reasonable control of the Seller including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Seller or any other party), failure of a utility service or transport network, act of God, [pandemic and epidemic](#), war, riot, terrorism, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, default of suppliers or subcontractors, or pandemic.
 “**FTA**” means the Fair Trading Act 1986.
 “**Goods**” means the goods agreed to be sold by the Seller to the Buyer as detailed in the Order Acknowledgment.
 “**GST**” means goods and services tax.
 “**HSWA**” means the Health and Safety at Work Act 2015.
 “**Intellectual Property Rights**” means all copyright, database rights, semi-conductor topography rights, design rights, trademarks, trade names, patents, domain names and any other intellectual property rights of a similar nature (whether or not registered) subsisting anywhere in the world.
 “**Losses**” means:
 (a) any indirect, special or consequential loss or damage; or
 (b) loss of data or other equipment or property; or
 (c) economic loss or damage; or
 (d) incurring of liability for loss or damage of any nature whatsoever suffered by third parties (including in each case incidental and punitive damages); or
 (e) any loss of actual or anticipated profit, interest, revenue, anticipated savings or business or damage to goodwill.
 “**Order Acknowledgment**” has the meaning given to that term in clause 3(d).
 “**PPSA**” means the Personal Property Securities Act 1999.
 “**PPSR**” means the personal property securities register maintained under the PPSA.
 “**Purchase Order**” has the meaning given to that term in clause 3(c).
 “**Price**” has the meaning given to that term in clause 4(c).
 “**Security Interest**” has the meaning given to that term in the PPSA.
 “**Seller**” means Spirax Sarco Limited, a company incorporated in New Zealand under company number 130824.
 “**Services**” means the services agreed to be supplied by the Seller to the Buyer as detailed in the Order Acknowledgment.
 “**Specification for Goods**” means the specification for the Goods that is agreed in writing by the Seller and the Buyer.
 “**Specification for Services**” means the specification for the Services that is agreed in writing by the Seller and the Buyer.

2. General

(a) The Uniform Law on International Sales, the United Nations Convention on Contracts for the International Sale of Goods and the international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (INCOTERMS) shall be excluded. The construction, validity and performance of all Contracts shall be governed by New Zealand law and, without prejudice to the right of the Seller to take action against the Buyer in any other court of competent jurisdiction, any claim or dispute arising from the Contracts shall be subject to the exclusive jurisdiction of and be determined by the courts of New Zealand. The taking of proceedings in any one or more jurisdiction shall not preclude the Seller from taking proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.
 (b) The complete or partial invalidity or unenforceability of any provision in a Contract shall in no way affect the validity or enforceability of the remaining provisions in a Contract. Any such provision shall be deemed to be modified to the minimum extent necessary to make it valid or enforceable. If such modification is not possible, the relevant provision shall be deemed severed subject to such consequential modification as may be necessary for the purpose of such severance.
 (c) The headings used herein are for convenience only and shall not affect construction.
 (d) Words in the singular include the plural and vice versa.
 (e) Reference to a clause is to a clause in these Conditions unless the context requires otherwise.
 (f) Any reference to compliance with applicable laws, regulations and codes in these Conditions is a reference to the laws, regulations and codes of New Zealand unless otherwise expressly stated.
 (g) The Buyer shall be solely responsible for ensuring compliance, and obtaining any and all necessary permits, authorisations or similar under and for compliance, with all legislation, regulations, by-laws or rules having the force of law in connection with the purchase, storage, supply, importation, exportation, customs, customs clearance, use of the Goods and/or any other matter contemplated by or in connection with these Conditions.
 (h) The Buyer shall notify the Seller in writing of any direct or indirect change in the legal entity, ownership, directorship, and shareholdings involving more than 20% of the Buyer.
 (i) References to any statutory provision include any statutory provision which amends or replaces it, and any subordinate legislation made under it.

3. Formation of Contracts and Application of Terms and Conditions

(a) All Contracts shall be deemed to incorporate these Conditions.
 (b) Any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Seller and any variation of a Contract shall have no effect unless it is in writing and signed by the Seller and the Buyer (or their authorised representatives).
 (c) A prospective Buyer shall place its order for goods or services (or both) by completing the Seller’s purchase order standard form, if applicable, or by submitting its own purchase order form (in either case, such form is the “Purchase Order”). Each Purchase Order shall be deemed to be an offer by the prospective Buyer to buy the goods or services (or both) of the Seller that are identified in the Purchase Order subject to these Conditions.
 (d) The Purchase Order shall only be deemed to be accepted when the Seller issues to the prospective Buyer an order acknowledgement form which indicates acceptance of the prospective Buyer’s offer on these Conditions (the “Order Acknowledgment”). A Contract between the Seller and the Buyer shall come into existence at the time and on the date when the Seller delivers the relevant Goods or Services (or both) to the Buyer.
 (e) The Contract shall constitute the entire agreement between the Seller and the Buyer, and the Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller that is not set out in the Contract.
 (f) The Buyer shall ensure that the description of the goods or services (or both) ordered which is contained in its Purchase Order and any applicable specifications is complete and accurate.
 (g) These Conditions apply to the Contract to the exclusion of all other terms and conditions that the Buyer shall seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. These Conditions may be extended by additional terms and conditions issued by the Seller in writing and confirmed in the Order Acknowledgment.

4. Quotations and Purchase Orders

(a) Any quotation issued by the Seller shall not constitute an offer and is given on the basis that no Contract shall come into existence unless and until the Seller despatches an Order Acknowledgment to the Buyer.
 (b) Any quotation issued by the Seller is valid for a period of **30** Business Days only after the date of its issue, provided that the Seller has not previously withdrawn it by notice in writing to the Buyer.
 (c) Subject to clause 4(d) and 12(b), any Purchase Order accepted by the Seller shall be accepted on the basis that the Price for the goods or services (or both) (“Price”) shall be that set out in the Seller’s quotation on the condition that the Seller’s quotation is within its period of validity and notice of withdrawal in writing has not been issued by the Seller at the time of acceptance.
 (d) The Seller reserves the right to give in writing notice of the withdrawal of a quotation at any time within the period of validity of the quotation and before the Contract is formed. In the event that

the Seller changes the Price of any of the goods or services (or both) offered for sale or supply, any existing quotation in respect of those goods or services (or both) shall be deemed to be automatically withdrawn and the Seller shall issue a new quotation to the prospective Buyer.

- (e) The prices stated in the Seller’s quotations are exclusive of GST.
- (f) Clerical or transmission errors or omissions, whether in computation or otherwise, in any quotation, Order Acknowledgment or invoice shall be subject to correction by the Seller.
- (g) All Purchase Orders placed by a prospective Buyer shall be placed by fax, post or e-mail, or, where agreed in advance in writing by the Seller, by telephone or Seller’s electronic system for prospective Buyers to place orders and make payments.

SALE OF GOODS

5. The Goods

- (a) The Goods are described in the Specification for Goods. The Goods shall comply with the Specification for Goods in material respects. Any stated dimension or weight set out in the Specification for Goods is an estimate only.
- (b) All performance figures, descriptions (other than any description set out in the Specification for Goods), drawings and samples of Goods are approximate only being intended to serve merely as a guide. The Seller shall not be liable for their accuracy and they shall not form part of the Contract. No Contract shall be a contract by sample.
- (c) The Seller may alter the Specification for Goods:
 - (i) for the purpose of making changes to the Goods which it can establish to the reasonable satisfaction of the Buyer constitute improvements to the Goods; or
 - (ii) if required by any applicable statutory or regulatory requirements.
- (d) The Seller may increase the price of the Goods by giving notice in writing to the Buyer at any time before delivery, to reflect any increase in the cost of the Goods to the Seller that is due to:
 - (i) any factor beyond the control of the Seller (including foreign exchange fluctuations, increases in taxes and duties, and increases in the cost of acquiring or manufacturing the Goods);
 - (ii) any request by a Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Specification for Goods; or
 - (iii) any delay caused by any instructions of the Buyer in respect of the Goods or failure by the Buyer to give the Seller adequate or accurate information or instructions in respect of the Goods.
- (e) All drawings, designs, and quotations for which goods are not subsequently ordered by the Buyer shall remain the property of the Seller and be treated as confidential by the Buyer and not used in any way. The Seller shall have no liability in relation to any such drawings, designs or quotation.

6. Despatch and Delivery

- (a) For the purposes of this clause 6, the “Goods” shall mean the Goods in their entirety where delivery is not by instalments or, where delivery is by instalments, each instalment of the Goods.
- (b) Goods delivered within New Zealand will be on an Ex Works (EXW) basis (as defined in INCOTERMS 2010) with delivery taking place at the location stated by the Seller in the Order Acknowledgment (the “Point of Delivery”).
- (c) Any stated delivery date is an estimate and time for delivery shall not be of the essence. The Seller will use reasonable endeavours to meet any stated delivery date. If no date for delivery is specified, delivery shall be within a reasonable time.
- (d) The Seller shall not be liable for any Losses (as defined), caused directly or indirectly by any delay in the delivery of the Goods even if caused by the Seller’s negligence.
- (e) Any delay in the delivery of the Goods shall not entitle the Buyer to terminate or rescind the Contract unless such delay exceeds one hundred and eighty (180) days.
- (f) Delivery of the Goods shall be completed on the arrival of the Goods at the Point of Delivery. Risk in the Goods shall pass to the Buyer on completion of delivery of the Goods.
- (g) Except insofar as the Contract expressly provides otherwise, standard carriage and packaging is excluded in the price. Seller may select the method of delivery and charge the Buyer for the cost of carriage. Where the Goods are to be delivered at the Buyer’s request by any special or express means, the Seller will charge the Buyer the full cost of carriage. When any special packaging is required (whether at the Buyer’s request or because the Seller considers special packaging to be necessary), then the Seller will charge the Buyer the full cost of such packaging.
- (h) In contracting for carriage and/or insurance of the Goods in transit, if required by the Contract, the Seller shall be deemed to act solely as agent of the Buyer.
 - (i) The Buyer must:
 - (i) examine the Goods on delivery;
 - (ii) notify the Seller and any carrier in writing of any shortage or damage within four (4) Business Days after the date of delivery and in respect of non-delivery within ten (10) Business Days after the Goods would in the ordinary course of events have been received; and
 - (iii) in the case of short or damaged delivery give the Seller a reasonable opportunity to inspect the Goods,
 otherwise Goods shall be deemed accepted by the Buyer.
- (j) Any liability of the Seller for non-delivery of the Goods shall be limited to either delivering the Goods within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Goods.
- (k) The Seller may deliver the Goods by instalments, each instalment to be deemed to be a separate Contract. Without limiting the other provisions herein, no failure or defect in delivery in respect of any Contract or instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.
- (l) If for any reason the Buyer fails to accept delivery of any of the Goods within two (2) Business Days of the Seller giving notice to the Buyer that the Goods are ready, or the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations for the Goods when they are tendered by the Seller for delivery then, except where such failure is caused by a Force Majeure Event:
 - (i) delivery of the Goods shall be deemed to have been completed at 9.00 am on the second (2nd) Business Day after the day on which the Seller notified the Buyer that the Goods were ready;
 - (ii) risk in the Goods shall pass to the Buyer on completion of delivery; and
 - (iii) the Seller may store the Goods until delivery takes place, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurances). The Buyer shall be responsible for all Losses incurred by the Seller where the Buyer fails to accept delivery of Goods.
- (m) If the Buyer has not accepted delivery of the Goods within ten (10) Business Days from the date the Seller gives notice to the Buyer that the Goods were ready, the Seller may resell or otherwise dispose of part or all of the Goods.

7. Title

- (a) Title to the Goods shall remain with the Seller and shall not pass to the Buyer until the Seller has received full payment of the Price and all other amounts payable by the Buyer in connection with the Contract. Receipt by the Seller of any cheque or other bill of exchange or any promissory note shall not be deemed to be payment or conditional payment until the same has been honoured or cleared, and until such time shall not prejudice or affect the rights, powers or remedies of the Seller in relation to the Buyer and/or the Goods.
- (b) Where the Price is not paid in full prior to delivery of any Goods to the Buyer:
 - (i) the relationship between the Buyer and the Seller shall be one of principal and agent;
 - (ii) the Buyer will hold the Goods as bailee for the Seller;
 - (iii) the Buyer shall not use the Goods as security or pledge or otherwise dispose of the Goods except as expressly permitted by the Seller;
 - (iv) the Seller may at any time terminate any agreement relating to the Goods and the bailment without notice to the Buyer and may thereupon take possession of the Goods;
 - (v) where the Goods are stored by the Buyer, the Buyer must store the Goods separately and clearly identify them as belonging to the Seller. If the Goods are installed or affixed to other objects, the Seller will be given full ownership of such new goods or objects;
 - (vi) where the Buyer sells Goods, the Buyer does so as agent of the Seller;
 - (vii) where the Goods are disposed of, the monies resulting from the disposal and all other proceeds received in respect of the Goods, including insurance proceeds will be held separately on trust for the Seller;
 - (viii) where the Goods are disposed of, the Buyer may only dispose of the Goods in the ordinary course of its business on commercially reasonable terms;
 - (ix) the Buyer hereby:
 - (aa) grants a security interest in favour of the Seller in the Goods supplied to the Buyer under the Contract as security for:
 - (bb) the Price for the Goods;

- (cc) all other amounts payable under these Conditions in connection with the purchase, delivery and commissioning of the Goods in accordance with the relevant provisions of these Conditions;
 - (dd) undertakes to promptly do all things which the Seller may reasonably require to enable the Seller to obtain the full benefit of the Security Interest;
 - (ee) agrees to, and to assist the Seller to, comply with all relevant requirements of laws and regulations relating to the creation, registration, maintenance and protection of security interests generally with respect to the Security Interest; and
 - (ff) undertakes not to permit the Goods to become a fixture on real property.
- (x) the Buyer shall:
- (aa) keep the Goods insured between the passing of risk in the Goods and title to the Goods against all risks with a reputable insurer which has been approved by the Seller for their full price, and ensure that the Seller's interest in the Goods is noted on the insurance policy until title in the Goods passes to the Buyer. If the Buyer fails to insure the Goods the Seller may do so instead on behalf of the Buyer, who shall reimburse the Seller on demand. Until title in the Goods passes to the Buyer, the Buyer shall hold in trust for the Seller the policy and proceeds of insurance;
 - (bb) notify the Seller immediately if a Default Event occurs;
 - (cc) give the Seller such information relating to the Goods as the Seller may require from time to time; and
 - (dd) not dispose of, charge or encumber the Goods or any interest in the Goods or purport to do so, but the Buyer may resell the Goods to an independent third party on arm's length terms in the ordinary course of its business.

(c) The Buyer irrevocably permits the Seller or any person authorised by the Seller in writing, upon giving reasonable notice to enter the Buyer's premises or premises where the Goods are reasonably believed by the Seller to be held on the Buyer's behalf for the purpose of examining or recovering the Goods. The Buyer also agrees to indemnify and hold the Seller harmless for reasonable costs of removal, enforcement, and legal action in respect of the removal of any Goods.

(d) The Seller may apply any payments received from or on behalf of the Buyer in reduction of any amounts owing by the Buyer in such order and manner as the Seller thinks fit despite any direction to the contrary, and whether before or after the occurrence of a Default Event.

7.2 The Buyer waives its right to receive a verification statement in respect of any financing statement relating to the Security Interest pursuant to section 148 of the PPSA.

7.3 To the extent permitted by law, the Buyer and the Seller contract out of Part 9 of the PPSA in that:

- (a) the rights and obligations contained in sections 114(1)(a), 125, 129, 132, 133 and 134 of the PPSA do not apply between the Buyer and the Seller;
- (b) the Buyer waives its rights contained in sections 121 and 131 of the PPSA; and
- (c) the Buyer's rights referred to in section 107(2)(c), (d), (h) and (i) of the PPSA do not apply between the Seller and the Buyer.

7.4 The Buyer charges in favour of the Seller any land that it owns (or acquires after the date of this agreement) as security for any and all monies owed to the Seller and hereby authorises and consents to the Seller registering a caveat over the land if the Buyer defaults in making payment of any amounts owing to the Seller.

8. Warranty for Goods

(a) Subject to clause 8(iii)(b), the Seller warrants that on delivery, and for a period of [12] months from the date of delivery the Goods shall:

- (i) conform with the Specification for Goods; and
 - (ii) be free from material defects in material or workmanship.
- (iii) Subject to the remainder of this clause 8, the Seller warrants that if the Buyer returns the Goods within the relevant warranty period for such Goods (as set out in either clause 8(a) or 8(iii)(b)) and on the Seller's examination such Goods prove defective as to material or workmanship or as to compliance with the relevant Specification for Goods the Seller shall:
- (iv) give notice to the Buyer that such Goods prove defective as to material or workmanship or as to compliance with the relevant Specification for Goods; and
 - (v) following giving notice thereof to the Buyer;
 - (aa) with respect to Goods which have been manufactured by the Seller, make good the defect without charge by (at the Seller's option) repairing the defective Goods, replacing defective components of the defective Goods, or replacing the defective Goods (in their entirety) as the Seller in its discretion considers appropriate; or
 - (bb) with respect to Goods which have been supplied, but not manufactured by the Seller, and to the extent that it is entitled to do so, assign or at its discretion use its reasonable endeavours otherwise to make available to the Buyer, at the Buyer's expense and on the basis of an indemnity (secured if appropriate) against all Losses that may be incurred by the Seller in relation thereto, the benefit of any obligations and warranties which relate to such defect which the Seller may be owed by the manufacturer and/or supplier of the Goods or any part or component thereof.

(b) The above warranties shall apply except where the defect in the Goods:

- (i) has been caused wholly or partly by deterioration of the Goods which is necessarily incidental to the transit of the Goods;
- (ii) has been caused while the Goods were at the Buyer's risk by:
 - (aa) willful default or negligence by the Buyer or its employees, agents, consultants or subcontractors;
 - (bb) the occurrence of an accident;
 - (cc) failure by the Buyer to follow the Seller's instructions in relation to the storage, use, installation, commissioning or maintenance of the Goods;
 - (dd) failure by the Buyer to follow good trade practice;
 - (ee) the Buyer altering or repairing such Goods without the consent in writing of the Seller; and/or
 - (ff) fair wear and tear, negligence or by any abnormal conditions such as (without limitation) water hammer, corrosive attack or excessive dirt in the system, RFI or electrical supply failure.

(c) Except as provided in this clause 8, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranties set out in this clause 8.

(d) The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Seller under clause 8(b)(e).

(e) To the maximum extent permitted by law, the warranties provided by the Seller in this clause 8 shall replace all other representations or warranties (statutory, express or implied) and all such representations and warranties (except any which may not be lawfully excluded) are expressly excluded, including, without limitation, the implied warranties of merchantability and fitness for any particular purpose. The Seller acknowledges that certain legislation in New Zealand, including the CGA and the FTA, provide Consumers with guarantees and rights which cannot be excluded, restricted or modified. Nothing in these Conditions excludes, restricts or modifies, or is intended to exclude, restrict or modify any guarantee, condition, warranty, right or liability implied by law (including any guarantee, condition, right or liability imposed under the CGA or the FTA) which cannot lawfully be excluded, restricted or modified.

9. Returns

(a) The Seller shall not refund the Buyer for any amounts paid by the Buyer in the event that the Buyer returns the Goods (or part thereof) except with the Seller's prior consent in writing. Where such consent is given, the Buyer agrees to pay to the Seller a minimum handling charge of thirty per cent (30%) of the invoiced value.

(b) To qualify for any refund, the Goods must be appropriately packed to protect them from being damaged in transit and be received by the Seller in a saleable condition within twenty-two (22) Business Days of delivery to the Buyer. The term "Goods" within this clause 9(b) has the meaning set out within clause 6(a).

10. Health and Safety

10.1 The Buyer shall (and shall procure that any employee, contractor, agent or representative using or operating the Goods on its behalf shall) read and familiarise themselves with manuals, operating instructions, safety data sheets and/or any other material and guidance supplied by the Buyer (Materials). Where the Buyer resells the Goods, the Buyer is responsible for ensuring that the Goods are supplied to the ultimate end user with all relevant Materials supplied to the Buyer by the Seller.

10.2 The Buyer shall (and shall procure that any employee, contractor, agent or representative using or operating the Goods on its behalf shall) operate the Goods and/or use and handle the Goods strictly in accordance with the Materials supplied by the Seller.

The Buyer shall be solely responsible for and shall keep the Seller indemnified against all Losses

incurred by the Seller in relation to any use of the Goods other than in strict accordance with the Materials.

10.3 The Buyer acknowledges that certain Goods supplied by the Seller may be hazardous substances for the purposes of the Health and Safety at Work Act 2015 (HSWA) and is aware of and will comply with its responsibilities under the HSWA in relation to hazardous substances.

11. Export Sales

(a) Where goods are supplied for export from New Zealand the provisions of this clause 11 shall apply, and where there is any conflict between the provisions of this clause 11 and any other Conditions, the provisions of this clause 11 shall prevail.

(b) Charges for the cost of export deliveries and documentation shall be as stated in the Contract.

(c) Unless otherwise agreed between the Seller and the Buyer in writing, payment shall be made by the Buyer by an irrevocable letter of credit satisfactory to the Seller, established by the Buyer in favour of the Seller immediately upon receipt of the Order Acknowledgment and confirmed by a New Zealand bank acceptable to the Seller. The letter of credit shall be for the Price payable for the Goods (together with any tax or duty payable) to the Seller and shall be valid for six months. The Seller shall be entitled to immediate cash payment on presentation to such New Zealand bank of the documents set out in the letter of credit.

(d) Except where specifically agreed in writing to the contrary, delivery to a Buyer outside New Zealand will be in accordance with the "Ex Works" rule from the international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (INCOTERMS). In the case of deliveries outside New Zealand the Seller does not accept any liability for damage to the Goods during transit, or marine or war risks unless otherwise specifically agreed by the Seller.

(e) The party which is exporting, in the case of exports, or the party which is importing, in the case of imports, will be responsible for obtaining all necessary licences, or other governmental authorisations required in connection with any export, re-export, or imports, as the case may be, under the Contract. The parties will co-operate with each other in securing any such licenses or authorisations as may be required and each will provide such statements, certificates and assurances regarding transfer, use, disposition, end-use, source of supply, nationalities and re-export of the Goods as may be required in connection with each party's application for any required license or governmental authorisation.

(f) Any government fees or charges in connection with obtaining such licenses or authorisations will be the responsibility of the party which is exporting, in the case of exports, and the party which is importing, in the case of imports, the Goods.

(g) The Buyer undertakes not to:

- (i) offer the Goods for resale in any country where the Buyer knows the export of the Goods is prohibited by the US Government, the UK Government, the UN, the EU or any other relevant organisation; or
- (ii) offer to sell the Goods to any person the Buyer knows or suspects will subsequently resell the Goods into a country where export of the Goods is prohibited by the US Government, the UK Government, the UN, the EU or any other relevant organisation.

(h) The Buyer will indemnify the Seller for all liabilities, loss, damages, costs and expenses awarded against or incurred by the Seller arising out of or in connection with any breach of the Buyer's obligations contained in clause 11(g).

(i) The Buyer agrees to provide the Seller with any information the Seller reasonably requires concerning the destination and use of the Goods, to allow the Seller to comply in full with any relevant export legislation.

SUPPLY OF SERVICES

12. Period of Supply

(a) Unless otherwise specified in the Order Acknowledgment, the agreement for the supply of the Services shall be for a period of one (1) year from the date the Seller issues an Order Acknowledgment to the Buyer in accordance with clause 3(d) (the "Term for Services").

(b) The Seller reserves the right to increase its Price for the Services at any time during the Term for Services. The Seller will give the Buyer notice in writing of any such increase not less than eight (8) weeks before the proposed date of the increase. If such increase is not acceptable to the Buyer, it shall notify the Seller in writing within two (2) weeks of the Seller's notice and the Seller shall have the right, without limiting its other rights or remedies, to terminate the Contract by giving four (4) weeks' notice in writing to the Buyer.

13. Performance of Services

(a) The Seller agrees to provide the Services in accordance with the Specification for Services in all material respects, and to supply as necessary spare or replacement parts and/or consumables, to the Buyer's plant and/or equipment at the sites(s) specified in the Seller's Order Acknowledgment.

(b) If the Seller agrees to supply spare or replacement parts and/or consumables, such supply will be strictly on the basis of these Conditions.

(c) Any stated performance date is an estimate only and time for performance of the Services shall not be of the essence. The Seller shall use reasonable endeavours to meet any stated performance date. If no date for performance is specified, the Services shall be performed within a reasonable time.

(d) The Seller shall not be liable for any Losses (as defined), caused directly or indirectly by any delay in the performance of the Services even if caused by the Seller's negligence.

(e) Subject to clause 13(g), any delay in the performance of the Services shall not entitle the Buyer to terminate or rescind the Contract unless such delay exceeds one hundred and eighty (180) days.

(f) Subject to clause 13(g), the Seller's liability for non-performance of Services shall be limited to either performing the Services within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice submitted to the Buyer for the Services.

(g) If the Seller's performance of the Services is prevented or delayed by the Buyer or by the failure of the Buyer to perform any of its obligations under the Contract ("Buyer Default") then upon the Seller giving the Buyer notice in writing that there has been a Buyer Default:

- (i) the Seller shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Buyer remedies the Buyer Default and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent that the Buyer Default prevents or delays the Seller's performance of the Services;
- (ii) the Seller shall not be liable for any Losses incurred by the Buyer arising directly or indirectly from the Seller's failure or delay in performing the Services; and
- (iii) the Buyer shall reimburse the Seller on demand for all Losses incurred by the Seller arising directly or indirectly from the Buyer Default.

(h) The Seller reserves the right, at the Seller's discretion, to employ subcontractors to perform all or any part of the Services (including, without limitation, to commission, install, maintain or repair any parts or equipment) on behalf of the Seller.

(i) The Seller warrants that in providing the Services it will exercise reasonable care and attention and that it will comply with all applicable laws and regulations. However the Seller excludes liability for all Losses arising directly or indirectly out of any failure or diminution in performance of the Buyer's plant or equipment caused by the plant or equipment, or any part thereof:

- (i) being used or operated otherwise than in accordance with any applicable installation, maintenance or operational instructions; or
- (ii) being used or operated otherwise than in accordance with the Seller's instructions or recommendations; or
- (iii) having been adjusted, changed or altered in any way by the Buyer or any third party since the date of installation or commissioning of the plant or equipment or the date of the immediately preceding visit by the Seller's employee or sub-contractor.

(j) The Buyer warrants to the Seller that the Buyer's plant and equipment is supplied with water at a quality that complies with BS 2486:1997 and is compliant with any additional requirements in writing notified by the Seller to the Buyer in respect of the Buyer's plant and equipment. The Seller excludes all liability for Losses arising directly or indirectly out of any failure or diminution in performance of the Buyer's plant or equipment or any part thereof which is caused directly or indirectly by a breach by the Buyer of this warranty.

(k) With regard to the testing of safety and relief valves as part of the Services, the effective seat area must be determined to carry out the test. The Buyer shall inform the Seller of the effective seat area or the Seller shall calculate the effective seat area based on data obtained from engineering drawings supplied by the valve manufacturer or the Buyer. The Buyer shall use its best endeavours to ensure the accuracy of the information regarding the effective seat area provided to the Seller as such information is critical to test accuracy. The Seller shall accept no liability for

Losses arising directly or indirectly from erroneous test results caused directly or indirectly by incorrect information regarding the effective seat area being provided.

- (l) The Seller reserves the right to replace at the Buyer's cost the Buyer's plant or equipment or any part thereof which is unserviceable or inefficient as the Seller considers reasonably necessary in order to fulfil its obligations to provide the Services in accordance with the specification set out in the Order Acknowledgment.
- (m) Alternatively, the Seller may charge the Buyer for the reconditioning of any part of the Buyer's plant or equipment that, in the reasonable opinion of the Seller, cannot be suitably or economically repaired on site. The Seller will provide the Buyer with an estimate of reconditioning charges for each item and if the Buyer does not agree to have the item(s) reconditioned, the Seller reserves the right to amend the scope of the Services as in its absolute discretion it considers necessary.

14. Access to Buyer's Site(s)

- (a) The Buyer shall co-operate with the Seller in all matters relating to the Services and shall provide the Seller with such information as the Seller may reasonably require in order to perform the Services. The Buyer shall ensure that such information is accurate in all material respects.
- (b) The Buyer shall obtain and maintain any necessary authorisations, licences, permissions, and consents which may be required before the date upon which the Services are due to start.
- (c) The Buyer shall permit the Seller, its employees, agents, consultants and subcontractors full and free access to the Buyer's site(s) and to the Buyer's plant and equipment which is the subject of the Contract, subject to the Seller and its employees, agents, consultants and subcontractors complying with the Buyer's reasonable requirements as to site safety and security (including all health and safety policies). If, at the time of any pre-arranged visit the Seller's employees, agents, consultants and subcontractors are unable to gain access to the Buyer's site(s) or plant or equipment in order to supply the Services, the Seller reserves the right to charge for the time spent attending at the Buyer's site(s) and for the cost of carrying out any subsequent visit.
- (d) If reasonably required by the Seller, the Buyer shall make available to the Seller a secure storage area at the Buyer's site(s) for storage of the Seller's service equipment and shall keep all materials, equipment, documents and other property of the Seller (the "Seller Service Equipment") in such storage area in safe custody and at the Buyer's risk. The Buyer shall not dispose of the Seller Service Equipment other than in accordance with the Seller's instructions in writing.
- (e) Prior to any visits by the Seller's employees, agents, consultants or subcontractors, the Buyer will:
 - (i) strip back any pipe lagging;
 - (ii) supply and erect suitable scaffolding (if required) to allow working access to the Buyer's plant and equipment; and
 - (iii) supply any necessary lifting equipment and required operators.
- (f) Following any visits by the Seller's employees, agents, consultants or subcontractors, the Buyer will be responsible for the reinstatement of any pipe lagging and the dismantling of any scaffolding erected.
- (g) The Buyer will provide the Seller's employees, agents, consultants and subcontractors with all specialist safety clothing or equipment as may be necessary to meet the Buyer's obligations under the HSWA and any internal health and safety and environmental policies (excluding hard hat, safety glasses, overalls and protective shoes which will be provided by the Seller).
- (h) The Buyer will procure that the Seller's employees, agents, consultants and subcontractors are covered by the Buyer's third party liability insurance policy of an amount of not less than [six million dollars (NZ\$6,000,000)] per occurrence whilst such employees or subcontractors are on the Buyer's premises.
- (i) Emergency Call-outs are intended for genuine emergency breakdown of the Buyer's plant or equipment which is the subject of the Contract only and will be charged by the Seller to the Buyer at the appropriate daily rate specified in the Order Acknowledgment. Each Emergency Call-out will be charged as one (1) additional day of Services over and above the number of days specified in the Order Acknowledgment for the supply of the Services.
- (j) The Buyer acknowledges and agrees that the Seller shall at no time own, occupy or control (or be deemed to control) any part of the Buyer's premises and/or hold or be fixed with any duties or liabilities under the HSWA or common law in relation to any part of the Buyer's premises.

GENERAL

15. Payment and Other Buyer Obligations

- (a) In respect of the Goods, subject to clause 15(d) the Seller shall invoice the Buyer for the full Price of the Goods on or at any time after the despatch of the Goods.
- (b) In respect of the Services, the Seller shall invoice the Buyer for the Services either monthly or quarterly as set out in the Contract.
- (c) In the event that the Buyer chooses to purchase additional Goods or Services from the Seller that are not set out in the Contract but which are related to the Contract, the terms of such Contract will be deemed to apply to such additional Goods or Services and the Seller will invoice the Buyer for such Goods and Services pursuant to clauses 15(a) or 15(b), as appropriate, under the original Purchase Order number unless otherwise agreed between the parties.
- (d) The Seller may in its absolute discretion agree in writing to the Buyer paying for the Goods in instalments, or may agree in writing to extend credit to the Buyer in respect of the payment for Goods. In the event that the Seller agrees to payment by instalments or extends credit in respect of the payment by the Buyer for Goods, the Seller shall invoice the Buyer monthly for agreed instalments of the Price. The Seller may in its absolute discretion by notice in writing to the Buyer withdraw (with immediate effect) the Buyer's right to credit or to pay for the Goods by instalments.
- (e) The Buyer shall pay each invoice submitted by the Seller:
 - (i) within the earlier of thirty (30) days of the date of the invoice or such other period of time after the date of the invoice as has been agreed in the Contract; and
 - (ii) in New Zealand dollars (or such other currency as the Seller may from time to time agree in writing) to a bank account nominated in writing by the Seller.
- (f) Time is of the essence in relation to payment.
- (g) All amounts payable by the Buyer under the Contract are exclusive of GST chargeable from time to time. Where any taxable supply for GST purposes is made under the Contract by the Seller to the Buyer, the Buyer shall, on receipt of a valid GST invoice from the Seller, pay to the Seller such additional amounts in respect of GST as are chargeable on the supply of the Services or the Goods at the same time as payment is due for the supply of the Services or the Goods.
- (h) The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless required by law.
- (i) No payment shall be deemed to have been received until the Seller has received cleared funds.
- (j) All payments payable to the Seller under the Contract shall become due immediately on its termination despite any other provision.
- (k) If the Buyer fails to pay the Seller any sum due pursuant to the Contract by the due date for payment:
 - (i) the Buyer shall pay interest to the Seller on the amount owing on the due date at the higher rate of either:
 - (aa) **1.5%** per month; or
 - (bb) **4%** per annum above the 90-day retail lending base rate of [HSBC] (as varied from time to time),calculated on a daily basis and accruing in the same manner until payment of the overdue amount and any interest is made in full to the Seller.
 - (ii) the Seller may, in its absolute discretion and without liability to the Buyer, suspend performance of its obligations under the Contract and under any or all other Contracts between the Seller and the Buyer or terminate the Contract and any or all other Contracts between the Seller and the Buyer with immediate effect.
- (l) If the Buyer pays any amount to the Seller without apportioning it between specific debts or liabilities, the amount paid shall be apportioned as the Seller thinks fit. The Seller may attribute the entirety of an amount paid to one or more specific items in respect of which payment is due, rather than to all the items in respect of which payment is due.
- (m) The Buyer shall comply with all applicable laws, statutes, regulations and codes from time to time in force, including those related to data protection and to anti-bribery and corruption. [Buyer must comply with the requirements of the United Kingdom Bribery Act 2010 \(the "Act"\) and shall not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2, or 6 of the Act if such activity, practice or conduct had been carried out in the United Kingdom. Additionally, Buyer shall comply, and shall ensure compliance of any party with which it subcontracts complies, with the requirements of the United Kingdom Modern Slavery Act \(2015\), including ensuring that all forms of forced labour are eliminated from its business.](#)

16. Cancellation

- (a) No Contract shall be cancelled by the Buyer except with the Seller's prior consent in writing.
- (b) In the event of the Seller agreeing to the Buyer cancelling all or any part of the Contract, the Seller may, without prejudice to any other rights against the Buyer which it may have, require the Buyer to pay a cancellation charge. Any cancellation charge will correspond to the type of contract being cancelled. Contracts for bespoke Goods manufactured by the Seller to the Buyer's specifications may be subject to a cancellation charge of 100% of the Price of the Contract after the Order Acknowledgment has been sent.
- (c) In the event that the Seller agrees to cancellation of a Contract in respect of the supply of Goods or Services (or both) which have been ordered to comply with the Buyer's special requirements, the Buyer shall be liable for all costs incurred by the Seller up to the time of cancellation of the Contract in addition to payment of a cancellation charge pursuant to clause 14(b).

17. Intellectual Property

- (a) The Buyer acknowledges that:
 - (i) the Intellectual Property Rights in the Goods and any materials prepared by the Seller or on its behalf which relate to the Goods and their development (including, without limitation, drawings, designs, samples, models and similar items) (the "Goods Materials") are the property of the Seller or the third party manufacturers of the Goods (as applicable);
 - (ii) nothing in these Conditions or in a Contract shall be construed as conferring any licence or granting any rights in favour of the Buyer in the Intellectual Property Rights in the Goods or the Goods Materials. The Buyer may re-sell the Goods subject to the Seller's right to control the use of its trade marks within the European Economic Area or jurisdiction into which the Goods are sold and the Buyer shall assist the Seller as required in preventing parallel importers from diluting the Seller's rights; and
 - (iii) any goodwill in any trade marks affixed or applied to the Goods shall enure to the sole benefit of the Seller or any other owner of the trade marks from time to time.
- (b) The Buyer shall not repackage the Goods and shall not without the Seller's prior consent in writing allow any trade marks of the Seller or other words or marks applied to the Goods to be obliterated, obscured or omitted or add any additional marks or words.
- (c) The Buyer shall not use (other than pursuant to these Conditions or a Contract) or seek to register any trade mark or trade name (including any company name) which is identical to, confusingly similar to, or incorporates any trade mark or trade name which the Seller owns or claims rights in anywhere in the world.
- (d) If at any time it is alleged that the Goods infringe the rights of any third party or if, in the Seller's reasonable opinion, such an allegation is likely to be made, the Seller may at its option and its own cost:
 - (i) modify or replace the Goods in order to avoid the infringement; or
 - (ii) procure for the Buyer the right to continue using the Goods; or
 - (iii) repurchase the Goods at the Price paid by the Buyer, less depreciation at the rate the Seller applies to its own equipment.
- (e) The Buyer shall promptly notify the Seller of:
 - (i) any actual, threatened or suspected infringement of any of the Intellectual Property Rights in the Goods or the Goods Materials (or both) which comes to the Buyer's notice; and
 - (ii) any claim by any third party that comes to the Buyer's notice that the sale or advertisement of the Goods or the use of the Goods Materials (or both) infringes the rights of any person.
- (f) The Buyer agrees (at the Seller's request and expense) to do all such things as may be reasonably required to assist the Seller in taking or resisting any proceedings in relation to any infringement or claim referred to in clause 17(e), and the Buyer shall not make any admissions or statements in respect of or compromise any such claim other than with the prior written consent of the Seller.
- (g) In the event of any claim, proceeding or suit by a third party against the Buyer alleging an infringement of such party's rights by any of the Intellectual Property Rights in the Goods or the Goods Materials (or both), the Seller shall defend the claim, proceeding or suit at the Seller's expense, subject to:
 - (i) the Buyer promptly notifying the Seller in writing of any such claim, proceeding or suit; and
 - (ii) the Seller being given sole control of the defence of the claim, proceeding or suit, and provided that the Seller shall not be liable and shall not defend the claim, proceeding or suit to the extent that such infringements arise out of or in connection with modifications to the Goods or the Goods Materials (or both) made by anyone except the Seller or its authorised representative, or out of use or annexation of the Goods or the Goods Materials (or both) with or to products or third party materials not specified or expressly approved in advance in writing by the Seller, or where the claim, proceeding or suit arises from the Seller's adherence to the Buyer's requested changes to the Specification for Goods or from infringing items of the Buyer's origin, design or selection.
- (h) The Seller shall reimburse the Buyer with an amount equal to any liability assessed against the Buyer by final judgment on account of an infringement described in clause 17(g).
- (i) All Intellectual Property Rights in the or arising out of the or in connection with the Services shall be owned by the Seller.
- (j) All Intellectual Property Rights in the materials, equipment, documents and other property of the Seller are the exclusive property of the Seller or of its licensors and shall be returned to the Seller on demand.

18. Trade Prohibitions

- (a) The Buyer undertakes to the Seller that the Buyer shall not re-sell or otherwise supply the Goods to a third party which is the subject of any statutory trade prohibition of the United States of America or a member state of the European Union ("Sanctioned Third Party").
- (b) Without prejudice to clause 18(a), if the Seller shall have notice of or reasonable grounds to believe that the Buyer intends to re-sell or otherwise supply the Goods to a Sanctioned Third Party the Seller may upon giving notice thereof to the Buyer refuse to deliver the whole or any part of the Goods and shall have no liability to the Buyer for such refusal.

19. Limitation and Exclusion of Liabilities

- (a) The Buyer warrants and represents that it is not a Consumer.
- (b) Where the Buyer supplies the Goods in trade to a person acquiring them for business purposes, it must be a term of the Buyer's contract with the purchaser that the CGA or any amending or substituting legislation does not apply in respect of such Goods.
- (c) The Buyer warrants it is acquiring the Goods and/or Services for business purposes and that the CGA does not apply to the supply of the Goods and/or Services.
- (d) The Buyer declares and warrants that the credit to be provided under a Contract (if any) is to be applied for business purposes and not for personal, domestic or household purposes. The Buyer shall be required to provide a declaration to that effect to the Seller in connection with its [credit application] under section 14 Credit Contracts and Consumer Finance Act 2003.
- (e) The Buyer agrees to indemnify the Seller against any liability or cost incurred by the Seller under the CGA or any amending or substituting legislation as a result of any breach by the Buyer of the obligations contained in these Conditions. Nothing in these Conditions is intended to have the effect of contracting out of the provisions of the CGA or any amending or substituting legislation, except to the extent permitted by the CGA and these Terms and Conditions are to be modified to the extent necessary to give effect to that intention.
- (f) Subject to and without limiting clause 19(g) or any other clause, the Seller shall not be liable to the Buyer whether in Contract, tort (including negligence), breach of statutory duty, or otherwise, for any Losses (as defined) arising directly or indirectly out of or in connection with any contract for the supply of Goods and/or Services (or that part of a contract which relates to Goods and/or Services).
- (g) Notwithstanding any other terms of these Conditions the Seller does not limit or exclude its liability for fraud or fraudulent misrepresentation or for death or personal injury resulting from its negligence or the negligence of its employees, agents or subcontractors.
- (h) Subject to and without limiting clause 19(g) or any other clause, the Seller's total liability to the Buyer in respect of all other loss arising out of or in connection with any contract for the supply of Goods and/or Services (or that part of a contract which relates to Goods and/or Services), whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the value of the Contract which gave rise to buyer's claim.
- (i) The Buyer acknowledges and agrees that the limited warranties and all limitations and exclusions of the Seller's liability set out in these conditions are reasonable and are reflected in the price of the Goods or Services (or both) (as applicable) and the Buyer shall accept risk or insure accordingly (or both).
- (j) The Seller shall have no responsibility for any Losses incurred by the Buyer in the event that any information in any quotation or Order Acknowledgment is applied in connection with products other than the Goods and Services.

(k) This clause 19 shall survive the termination or cancellation of the Contract.

20. Force Majeure

- (a) The Seller shall not be liable to the Buyer as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.
- (b) If the Force Majeure Event prevents the Seller from providing any of the Services or Goods (or both) for more than forty-four (44) Business Days, the Seller shall, without limiting its other rights or remedies, have the right to terminate the Contract with the Buyer immediately by giving notice in writing to the Buyer.

21. Default and Indemnity

- (a) For the purposes of these Conditions a "Default Event" shall be one or more of the following:
 - (i) any default or breach by the Buyer under the Contract including a failure to make payment;
 - (ii) the Buyer becomes insolvent, is adjudicated bankrupt, or otherwise unable to pay its debts as they fall due;
 - (iii) the Buyer ceases or threatens to cease to carry on its business;
 - (iv) a receiver, liquidator, official assignee, administrator or statutory manager of the Buyer's or the Buyer's assets is appointed;
 - (v) the Buyer enters into any composition or arrangement with its creditors;
 - (vi) the Buyer fails to pay any judgment of any court which is not stayed within five working days of the judgment;
 - (vii) a change in the effective control and/or management of the Buyer;
 - (viii) any other event which in the sole discretion of the Seller gives rise to concern as to the timely payment of the Buyer's debts; and
 - (ix) the Goods are 'at risk' (as that term is defined in the PPSA).
- (b) If a Default Event occurs, the Seller, without prejudice to any other rights and remedies it has at law or in equity may, at any time thereafter, suspend or terminate the Contract, and payment for the Goods delivered and any money owing by the Buyer to the Seller shall immediately become due and payable.
- (c) Any suspension of the Contract by the Seller shall not prevent the Seller from terminating the Contract during the period of suspension.
- (d) The Buyer agrees that, if a Default Event occurs, the Seller (and its employees or agents) as agent of the Buyer may:
 - (i) without prior notice, enter upon any land or premises where the Seller believes the Goods are kept in order to take possession of and/or remove them. The Buyer agrees to procure all other rights (including consents) necessary to enable, and to indemnify the Seller (and its employees and agents) against any liability incurred in connection with, such entry, taking of possession and removal.
 - (ii) sell or dispose of any Goods in such manner and generally on such terms and conditions as the Seller thinks fit, and, in each case, otherwise do anything the Buyer could do in relation to the Goods and apply proceeds. The Seller and the Buyer agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods if and only for so long as the Seller is not the secured party with priority over all other secured parties in respect of those Goods.
- (e) If at the time of a Default Event all or any of the Goods have been lost, damaged or destroyed in circumstances that entitle the Buyer to claim reimbursement pursuant to any insurance policy, then the Buyer hereby authorises the Seller to act in all respects as the Buyer in making or pursuing the claim, and hereby assigns to the Seller all legal and equitable title to the proceeds of the claim, which proceeds are to be credited towards the amounts owed.
- (f) The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercises any rights, powers or remedies after the occurrence of a Default Event, including under this clause 21.
- (g) All costs, claims, proceedings, damages and expenses of or incurred by the Seller as a result of any such action contemplated by this clause 21 together with transportation, storage charges and legal costs (as between solicitor and own client) shall be payable by the Buyer upon demand. Any suspension of the Contract by the Seller shall not prevent it terminating the Contract during the period of suspension.
- (h) The Buyer acknowledges that the Seller continues to supply the Buyer on the condition that all payments received by the Seller from the Buyer are valid and are made in the ordinary course of the Buyer's business.
- (i) The Buyer further acknowledges that the Seller receives all payments in the ordinary course of the Buyer's business, in good faith and in the reasonably held belief as to the validity of those payments unless and until the Buyer gives notice in writing to the Seller:
 - (i) that the Buyer is unable to pay its debts; and
 - (ii) that the Buyer's intention or purpose in making such payment is to enable the Seller to receive more towards the satisfaction of its debt than it would otherwise have received or have been likely to have received in any liquidation of the Buyer,
 - (iii) and until receipt of such notice all payments received from the Buyer are deemed to be made in the ordinary course of the Buyer's business.
- (j) The Seller is given and may exercise all or any of the rights and remedies referred to in these Terms and Conditions without prejudice to any other rights and remedies that may be available to it, and no failure or neglect to act or pursue any right or remedy available to the Seller in any way prejudice its right to exercise that or any right or remedy.
- (k) Notwithstanding the passing of time since the Default Event the Seller can invoke the provisions of this clause 21 at any time.

22. Dispute Resolution

- (a) Any dispute arising out of or in connection with these Conditions or the Contract including, but not limited to, any dispute or difficulty arising in connection with the interpretation, application and/or effect of any of these Conditions or restrictions imposed or any procedure to be followed under the Contract and/or arising out of the termination or cancellation of the Contract or any provisions hereof ("Dispute"), except where an interdict or urgent relief is sought from a court of competent jurisdiction, or where otherwise provided in the Contract, such Dispute shall be dealt with in accordance with this clause 22.
- (b) Where a party believes a Dispute has arisen, that party shall give notice immediately to the other party setting out details of the Dispute. The parties will endeavour in good faith to resolve the Dispute between themselves within fourteen (14) days of the receipt of the notice.
- (c) Where the parties cannot resolve the Dispute in accordance with clause 22(b), arbitration may be commenced by a party giving written notice to the other party stating the subject matter and details of the Dispute and requiring the Dispute to be referred to arbitration.
- (d) The arbitrator shall be appointed by the parties, or failing agreement within fourteen (14) days after, and exclusive of, the date the written notice was given shall be appointed at the request of a party by the president or vice-president for the time being of the New Zealand Law Society or the nominee of such president or vice-president ("Arbitrator").
- (e) The arbitration shall be conducted as soon as possible in Auckland, New Zealand.
- (f) The Arbitration Act 1996 shall not apply.
- (g) Save as specifically provided in this clause 22, the Arbitrator shall act as an arbitrator and not as an expert.
- (h) The parties shall use their best endeavours to procure that the decision of the Arbitrator shall be given as soon as possible.
- (i) Should the Arbitrator deem it necessary to obtain technical advice of any matter relating to the dispute, he/she shall be entitled to obtain advice from a technical expert who is agreed by the Seller in the relevant field.
- (j) The Arbitrator's decision may include an award as to legal costs and expenses of the parties in connection with the Dispute.
- (k) The Arbitrator's decision shall be final and binding on the parties.
- (l) This clause 22 constitutes an irrevocable consent by the parties to any proceedings for the duration of the Contract and neither of the parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause.
- (m) Neither party shall commence legal proceedings against the other, except for injunctive relief, before following the procedure set out in this clause 22.
- (n) This clause is severable from the rest of these Conditions and shall survive termination or cancellation of the Contract.

23. Confidentiality

- (a) Each of the Seller and the Buyer (the "Receiving Party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("Disclosing Party"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party

may obtain. The Receiving Party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause 23 as though they were a party to the Contract. The Receiving Party may also disclose such of the Disclosing Party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 23 shall survive termination or cancellation of the Contract.

24. Notices

- (a) Any notice required to be in writing can be given by way of personal delivery, post, facsimile or email, and will be deemed to be received unless the contrary is proven:
 - (i) in the case of personal delivery, at the time of delivery;
 - (ii) in the case of a letter where the country of origin and the country of destination are the same, on the third Business Day after posting the letter by pre-paid mail;
 - (iii) in the case of a letter where the country of origin and the country of destination are different, on the tenth Business Day after posting the letter by pre-paid mail;
 - (iv) in the case of a facsimile, at the time of successful transmission; and
 - (v) in the case of an email, at the time it is sent.
- (b) However, despite the foregoing, if receipt is after 5pm on a Business Day or any time on a non-Business Day, then it is deemed to have been received at 9am on the next Business Day.

25. Miscellaneous

- (a) The Seller's rights under these Conditions are in addition to any other rights which the Seller may have under the general law or otherwise.
- (b) If the Buyer comprises two or more persons, their obligations are joint and several.
- (c) The Buyer shall not assign, transfer, mortgage, charge, sub-contract, or otherwise dispose of or deal in any Contract or any rights or obligations (or both) (as applicable) thereunder in whole or in part without the Seller's prior consent in writing. Any such action purported to be taken by the Buyer without the Seller's prior consent in writing shall be void.
- (d) The Seller may at any time assign, transfer, mortgage, charge, sub-contract or otherwise dispose of or deal in its rights or obligations (or both) (as applicable) under any Contract or any part of it to any entity.
- (e) A waiver by the Seller of any right under the Contract or law will only be effective if it is in writing. Any failure or delay by the Seller in exercising, or any partial exercise by the Seller, of any right or remedy under the Contract or by law shall not constitute a waiver of that or any other right or remedy. No single exercise by the Seller shall prevent the further exercise of that or any other right or remedy.
- (f) Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall no way affect the other terms of the Contract.
- (g) No term of the Contract shall be enforceable by any person that is not a party to it.
- (h) This clause 25 shall survive termination or cancellation of the Contract.