TERMS AND CONDITIONS

This Agreement is entered into between us and you, together the **Parties** and each a **Party**.

1. Supply of Goods

1.1 In consideration of your payment of the Price, we will supply the Goods in accordance with this Agreement, whether ourselves or through our Personnel.

1.2 If this Agreement expresses a time within which the Goods are to be supplied, we will use reasonable endeavours to provide the Goods by such time, but you agree that such time is an estimate only.

1.3 If agreed between the Parties in a relevant Order or in writing, we may assist in installation of the Goods.

1.4 All variations to the Goods must be agreed in writing between the Parties and will be priced in accordance with any schedule of rates provided by us, or otherwise as reasonably agreed between the Parties. If we consider that any instructions or directions from you constitute a variation to the nature of the Goods or the scope of our obligations under this Agreement, then we will not be obliged to comply with such instructions or directions unless agreed in accordance with this clause.

2. Delivery, Title and Risk

2.1 Title in the Goods will only pass to you on the date that you pay the Price in full in accordance with this Agreement.

2.2 If we are responsible for delivering the Goods to you, we will use reasonable endeavours to deliver the Goods by the time agreed between the Parties, and risk in the Goods will pass to you once we have delivered the Goods to the agreed delivery location. We will be responsible for the costs of delivery.

2.3 If you are responsible for collecting the Goods from us, you must collect the Goods by the time agreed between the Parties, and risk in the Goods will pass to you once you have collected the Goods from the agreed collection location. You will be responsible for the costs of collection.

2.4 Where Goods are supplied to you without payment in full, you:

(a) are a bailee of the Goods until title in them passes to you;

(b) irrevocably appoint us to be your attorney to do all acts and things necessary to ensure our retention of title to the Goods, including the registration of any security interest in our favour with respect to the Goods; and

(c) must not allow any other person to have or acquire any security interest in the Goods without our prior written consent.

3. Orders

3.1 During the Term, you may request us to supply the Goods by notifying us in writing or by any other process we specify (**Order Request**).

3.2 If we accept the Order Request, we will provide you with a formal Order, and once the Order is agreed by both Parties in writing it will be binding in accordance with the terms of this Agreement and the Order.

3.3 Each Order is subject to, and will be governed by, this Agreement and any other conditions expressly set out in the Order. To the extent of any ambiguity or discrepancy between an Order and this Agreement, the terms of the Agreement will prevail.

4. Price and Payment

4.1 You agree to pay us the Price and any other amounts due under this Agreement in accordance with the Payment Terms.

4.2 If any payment has not been made in accordance with the Payment Terms, we may (at our absolute discretion, and without prejudice to any of our rights or remedies under this Agreement or at Law):

(a) after a period of 5 Business Days from the relevant due date, cease supplying the Goods, and recover, as a debt due and immediately payable from you, our reasonable additional costs of doing so (including all recovery costs);

(b) charge interest at a rate equal to the Reserve Bank of New Zealand's cash rate, from time to time, plus 2% per annum, calculated daily and compounding monthly, on any such amounts unpaid after the relevant due date in accordance with the Payment Terms; and/or

(c) enter any premises where the unpaid Goods are stored or held, for the purpose of retrieving and taking possession of those Goods, and you agree to provide any access, items and consents required to enable us to do so.

4.3 When applicable, Goods and Services Tax under the *Goods and Services Tax Act 1985* (GST) payable will be clearly shown on our invoices. You agree to pay us an amount equivalent to the GST imposed on these charges.

4.4 Unless otherwise stated by us in writing, the Price is exclusive of any tax imposed by any government, state or local authority on the value

of goods and services, and includes goods and services tax, sales tax, use tax, indirect tax, value added tax, excise tax, customs tax, tariffs and duties (**Sales Tax**), which will be your responsibility to pay. If we are required to pay any Sales Tax in relation to the Goods supplied under this Agreement, the applicable Sales Tax will be set out in the invoice provided to you and the Price payable by you under this Agreement must be increased by the applicable Sales Tax. This clause 4.4 does not apply to any taxes imposed on our net income

5. Security Interest

5.1 You acknowledge and agree that:

(a) this Agreement is a 'security agreement' under the *Personal Property Securities Act 1999* (**PPSA**);

(b) this clause 5 creates a security interest in the Goods and any proceeds from any sale or disposal of the Goods, and we are a secured party in relation to the Goods and any such proceeds;

(c) we are entitled to register our interest on the relevant register as (at our discretion) a security interest, and if applicable, a 'purchase money security interest'; and

(d) you must (at your cost), where we request, take all steps that we consider necessary or desirable to assist us to register our security interest, to ensure our security interest in the Goods and the proceeds is enforceable, and to perfect, or better secure our position under this Agreement, or ensure our priority over all other security interests

5.2 Until such time as title in the Goods has passed to you as contemplated under clause 2.1, you must not allow any other person to have or acquire any security interest in the Goods, unless with our prior written consent.

5.3 You agree, to the extent permitted by Law, that you will have no rights under the following provisions of Part 9 of the PPSA to:

(a) receive a notice under section 114(1)(a);

(b) receive a statement of account under section 116;

(c) receive notice of any proposal by us to retain collateral under section 120(2);

(d) object to any proposal by us to retain collateral under section 121;

(e) not have goods damaged in the event that we were to remove an accession under section 125;

(f) refuse permission to remove an accession under section 127;

(g) receive notice of the removal of an accession under section 129;

(h) apply to a court for an order concerning the removal of an accession under section 131; and

(i) reinstate the Agreement under sections 133 and 134.

5.4 You further agree that where we have rights in addition to those under Part 9 of the PPSA, those rights will continue to apply.

5.5 You waive your right under the PPSA to receive a copy of any 'verification statement' (as that term is defined in the PPSA).

5.6 Nothing in this clause 5 is intended as an agreement to subordinate a security interest arising under this Agreement and conditions in favour of any person under section 61 of the PPSA.

5.7 In this clause 5, a 'security interest' includes any form or lien, encumbrance or a security interest under the PPSA.

5.8 Terms used in this clause 5 but not defined have the same meanings as in the PPSA.

5.9 This clause 5 will survive the termination or expiry of this Agreement.

6. Intellectual Property

6.1 As between the Parties:

(a) we own all Intellectual Property Rights in Our Materials;

(b) you own all Intellectual Property Rights in Your Materials; and

(c) nothing in this Agreement constitutes a transfer or assignment of any Intellectual Property Rights in Our Materials or Your Materials.

6.2 As between the Parties, ownership of all Intellectual Property Rights in any New Materials will at all times vest, or remain vested, in us upon creation. To the extent that ownership of such Intellectual Property Rights in any New Materials does not automatically vest in us, you hereby assign all such Intellectual Property Rights to us and agree to do all other things necessary to assure our title in such rights.

6.3 We grant you a non-exclusive, revocable, royalty-free, worldwide, non-sublicensable and non-transferable right and licence, to use Our Materials that we provide to you and the New Materials, solely for your use and enjoyment of the Goods, as contemplated by this Agreement.

6.4 You grant us a non-exclusive, irrevocable, royalty-free, worldwide, non-sublicensable (other

than to our related companies, as that term is defined in the *Companies Act 1993*) and non-transferable right and licence to use Your Materials that you provide to us solely for the purpose of performing of our obligations or exercising our rights under this Agreement.

6.5 If you (if you are an individual) or any of your Personnel have any Moral Rights in any material provided, used or prepared in connection with this Agreement, you agree to (and will procure that your Personnel) consent to our use or infringement of those Moral Rights.

6.6 This clause 6 will survive termination or expiry of this Agreement.

7. Confidential Information

7.1 Subject to clause 7.2, each Party must (and must ensure that its Personnel) keep confidential, and not use (except to perform its obligations under this Agreement) or permit any unauthorised use of, information provided by the other Party, including information about this Agreement and the other Party's business and operations.

7.2 Clause 7.1 does not apply where the disclosure is required by Law or the disclosure is to a professional adviser in order to obtain advice in relation to matters arising in connection with this Agreement and provided that the disclosing Party ensures the adviser complies with the terms of clause 7.1.

7.3 This clause 7 will survive the termination of this Agreement.

8. New Zealand Consumer Law

8.1 You agree and represent that you are acquiring the Goods for the purposes of trade. The Parties agree that:

(a) to the maximum extent permitted by law, the Consumer Guarantees Act 1993 and sections 9, 12A and 13 of the *New Zealand Fair Trading Act 1986*; and

(b) it is fair and reasonable that the Parties are bound by this Agreement, including this clause.

8.2 This clause 8 will survive the termination or expiry of this Agreement.

9. Liability

9.1 Despite anything to the contrary, to the maximum extent permitted by Law:

(a) neither Party will be liable for Consequential Loss;

(b) a Party's liability for any Liability under this Agreement will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of its Personnel), including any failure by that other Party to mitigate its loss;

(c) our Liability is limited (at our discretion) to:

(1) replacing the Goods or the supply of equivalent Goods, or the payment of the cost of replacing the Goods or of supplying equivalent Goods; or

(2) the repair of the Goods, or the payment of the cost of having the Goods repaired;

(d) our aggregate liability for any Liability arising from or in connection with this Agreement will be limited to the Price paid by you to us in respect of the supply of the relevant Goods to which the Liability relates.

9.2 This clause 9 will survive the termination or expiry of this Agreement.

10. Term and Termination

10.1 This Agreement will operate for the Term.

10.2 Either Party may terminate this Agreement or any unfulfilled Order at any time by giving 30 days' notice in writing to the other Party.

10.3 This Agreement will terminate immediately upon written notice by a Party (**Non-Defaulting Party**) if:

(a) the other Party (**Defaulting Party**) breaches a material term of this Agreement and that breach has not been remedied within 10 Business Days of the Defaulting Party being notified of the breach by the Non-Defaulting Party; or

(b) the Defaulting Party goes bankrupt, insolvent or is otherwise unable to pay its debts as they fall due.

10.4 Upon expiry or termination of this Agreement:

(a) without limiting and subject to your consumer law rights, any payments made by you to us for Goods already supplied are not refundable to you;

(b) you are to pay for all Goods supplied prior to termination, including Goods which have been supplied and have not yet been invoiced to you, and all other amounts due and payable under this Agreement;

(c) you agree to grant us such rights of access to any premises where the Goods are located to allow us (or our Personnel) to recover or repossess any Goods which we retain title to;

(d) by us pursuant to clause 10.3, you also agree to pay us our additional costs, reasonably incurred, and which arise

directly from such termination (including recovery fees);

(e) we may retain your documents and information (including copies) to the extent required by Law or pursuant to any information technology back-up procedure, provided that we handle your information in accordance with clause 7; and

(f) you agree to promptly return (where possible), or delete or destroy (where not possible to return), any documentation, information or material provided to you by us that is in your possession or control.

10.5 Unless otherwise agreed between the Parties, if this Agreement is terminated:

(a) by us, then any current Order will also terminate on the date of termination and we will immediately cease supplying the Goods; or

(b) by you, then any outstanding Orders will continue in accordance with the terms of the Order (and this Agreement) until such time as the Order is complete or the Order is otherwise terminated in accordance with its terms.

10.6 Termination of this Agreement will not affect any rights or liabilities that a Party has accrued under it.

10.7 This clause 10 will survive the termination or expiry of this Agreement.

11. General

11.1 **Amendment:** Subject to clauses 1.4, this Agreement may only be amended by written instrument executed by the Parties.

11.2 **Assignment:** Subject to clauses 11.3 and 11.10, a Party must not assign, novate or deal with the whole or any part of its rights or obligations under this Agreement without the prior written consent of the other Party (such consent is not to be unreasonably withheld).

11.3 **Assignment of Debt:** You agree that we may assign or transfer any debt owed by you to us, arising under or in connection with this Agreement, to a debt collector, debt collection agency, or other third party.

11.4 **Disputes:** A Party may not commence court proceedings relating to any dispute arising from, or in connection with, this Agreement (**Dispute**) without first meeting a representative of the other Party within 10 Business Days of notifying that other Party of the Dispute. If the Parties cannot resolve the Dispute at that meeting, either Party may refer the Dispute to mediation administered by the New Zealand Disputes Resolution Centre.

11.5 **Force Majeure:** Neither Party will be liable for any delay or failure to perform their respective obligations under this Agreement if such delay or failure is caused or contributed to by a Force Majeure Event, provided that the Party seeking to rely on the benefit of this clause:

(a) as soon as reasonably practical, notifies the other Party in writing details of the Force Majeure Event, and the extent to which it is unable to perform its obligations; and

(b) uses reasonable endeavours to minimise the duration and adverse consequences of the Force Majeure Event.

Where the Force Majeure Event prevents a Party from performing a material obligation under this Agreement for a period in excess of 60 days, then the other Party may by notice terminate this Agreement, which will be effective immediately, unless otherwise stated in the notice. This clause will not apply to a Party's obligation to pay any amount that is due and payable to the other Party under this Agreement.

11.6 **Governing Law:** This Agreement is governed by the laws of New Zealand. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New Zealand and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts. The Parties agree that the U.N. Convention on Contracts for the Sale of International Goods is excluded from application to this Agreement.

11.7 **Notices:** Any notice given under this Agreement must be in writing addressed to the addresses set out in this Agreement, or the relevant address last notified by the recipient to the Parties in accordance with this clause. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.

11.8 **Publicity:** Despite clause 7, with your prior written consent, you agree that we may advertise or publicise the broad nature of our supply of the Goods to you, including on our website or in our promotional material.

11.9 **Relationship of Parties:** This Agreement is not intended to create a partnership, joint venture, employment or agency relationship between the Parties.

11.10 **Subcontracting:** We may subcontract the supply of any part of the Goods without your prior written consent. We agree that any subcontracting does not discharge us from any liability under this Agreement and that we are

liable for the acts and omissions of our subcontractor.

12. Definitions

In this Agreement, unless the context otherwise requires, capitalised terms have the meanings given to them in the Schedule, and:

Agreement means these terms and conditions and any agreed Order issued under it and any documents attached to, or referred to in, each of them.

Business Day means a day on which banks are open for general banking business in Auckland, New Zealand, excluding Saturdays, Sundays and public holidays.

Commencement Date means the date this Agreement is signed by the last of the Parties.

Consequential Loss includes any consequential loss, special or indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise. However, your obligation to pay us the Price will not constitute “Consequential Loss”.

Consumer Law Rights has the meaning given in clause 8.1.

Goods means the goods to be supplied as set out in the Schedule or any Order, as adjusted in accordance with this Agreement.

Force Majeure Event means any event or circumstance which is beyond a Party’s reasonable control including but not limited to, acts of God including fire, hurricane, typhoon, earthquake, landslide, tsunami, mudslide or other catastrophic natural disaster, civil riot, civil rebellion, revolution, terrorism, insurrection, militarily usurped power, act of sabotage, act of a public enemy, war (whether declared or not) or other like hostilities, ionising radiation, contamination by radioactivity, nuclear, chemical or biological contamination, any widespread illness, quarantine or government sanctioned ordinance or shutdown, pandemic (including COVID-19 and any variations or mutations to this disease or illness) or epidemic.

Intellectual Property Rights or **Intellectual Property** means any and all existing and future rights throughout the world conferred by statute, common law, equity or any corresponding law in relation to any copyright, designs, patents or trade marks, domain names, know-how, inventions, processes, trade secrets or confidential information, circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing, whether or not registered or registrable.

Law means all applicable laws, regulations, codes, guidelines, policies, protocols, consents, approvals, permits and licences, and any requirements or directions given by any government or similar authority with the power to bind or impose obligations on the relevant Party in connection with this Agreement or the supply of the Goods.

Liability means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to this Agreement or otherwise.

Moral Rights has the meaning given in the *Copyright Act 196*8 (Cth) and includes any similar rights in any jurisdiction in the world.

New Materials means all Intellectual Property developed, adapted, modified or created by or on behalf of us or you or any of your or our respective Personnel in connection with this Agreement or the supply of the Goods, whether before or after the date of this Agreement and any improvements, modifications or enhancements of such Intellectual Property, but excludes Our Materials and Your Materials.

Order means an order for the supply of Goods, placed in accordance with clause 3.

Our Materials means all Intellectual Property which is owned by or licensed to us and any improvements, modifications or enhancements of such Intellectual Property, but excludes New Materials and Your Materials.

Personnel means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents, but in respect of you, does not include us.

Price means the price set out in the Schedule or any Order, as adjusted in accordance with this Agreement.

Schedule means the schedule to this Agreement.

Your Materials means all Intellectual Property owned or licensed by you or your Personnel before the Commencement Date (which is not connected to this Agreement) and/or developed by or on behalf of you or your Personnel independently of this Agreement and any improvements, modifications or enhancements of such Intellectual Property, but excludes Our Materials and New Materials