

## ARA Security Limited

### Standard Terms and Conditions of Purchase

#### 1. Supply of Goods and/or Services

- 1.1 In consideration of payment of the Price by the Company, the Supplier must supply the Goods and/or perform the Services requested by the Company pursuant to the Purchase Order, on the terms and conditions set out herein, which together with the Purchase Order shall comprise the Agreement.
- 1.2 For the avoidance of doubt, if the Company does not issue the Supplier with a formal Purchase Order but otherwise provides the Supplier with documentation or sends the Supplier correspondence to the effect of expressing its intentions to request or procure from the Supplier the Goods and/or Services it is in the business of supplying, such documentation or correspondence shall be taken to amount to a Purchase Order and all subsequent references herein to a "Purchase Order" shall refer to the documentation captured by this clause 1.2 in the absence of a formal Purchase Order.
- 1.3 To the extent the Supplier has its own terms and conditions pertaining to the Goods or Services (whether printed on consignment notes, annexed to its invoice or otherwise dealt with in some manner so as to be provided to the Company or otherwise deemed to apply to the Goods and/or Services), those terms and conditions will be of no legal effect and will not constitute part of the Agreement other than where the Company expressly agrees in writing that it accepts the Supplier's own terms and conditions.
- 1.4 Further to the above, where a Purchase Order relates to Goods and/or Services the subject of an existing agreement between the Supplier and the Company, the terms of that agreement shall apply to the Goods and/or Services the subject of the Purchase Order, except where the terms are inconsistent with the terms of this Agreement, in which instance, this Agreement shall govern the supply of the Goods and/or Services.
- 1.5 The Supplier must, in supplying the Goods or performing the Services:
- (a) not unduly interfere with the Company's activities or the activities of any other person at the Delivery Address;
  - (b) be aware of, comply with and ensure that the Supplier's employees, agents and contractors are aware of and comply with:
    - (i) all applicable Laws;
    - (ii) all site standards, rules and procedures of the Company or its clients, to the extent that they are applicable to the supply of the Goods or the performance of the Services by the Supplier; and
    - (iii) all lawful directions and orders given by the Company's representative or any person authorised by Law to give directions to the Supplier on behalf of the Company;
  - (c) ensure that the Supplier's employees, agents and contractors entering the Company's premises or sites perform their duties in a safe manner and are properly qualified for, and skilled in, the performance of their tasks and are of such character as to not prejudice:
    - (i) safe working practices;
    - (ii) safety and care of property; and
    - (iii) continuity of work;
  - (d) provide all such information and assistance as the Company reasonably requires in connection with any statutory or HSEC investigation in connection with the supply of the Goods or the performance of the Services; and
- (e) on request by the Company, provide to the Company and its employees, agents and contractors (as applicable) any information and assistance required to identify, evaluate, implement and report on any matter required by Law, including:
- (i) producing written reports;
  - (ii) recommending efficiency opportunities;
  - (iii) collecting data; and
  - (iv) monitoring or metering,
- in respect of anything procured, used, produced or created in connection with the performance of the Supplier's obligations under this Agreement.

#### 2. Delivery

- 2.1 This clause 2 applies to the supply of any Goods to the Company by the Supplier.
- 2.2 The Supplier bears total responsibility in respect of packaging, loading, handling and transporting the Goods to the Delivery Address.
- 2.3 The Supplier must deliver the Goods to the Delivery Address during the Company's ordinary business hours at a date mutually agreed to with the Company (being a date on or prior to the Date for Completion) and the Supplier must ensure that the delivery is accepted and signed for on behalf of the Company by a duly authorised representative of the Company.
- 2.4 The Supplier shall be responsible for re-delivery and any costs associated with such where it attempts to deliver the Goods in a manner or at a time inconsistent with clause 2.3.
- 2.5 The Supplier must ensure that the Goods are suitably packed to avoid damage in transit or in storage.
- 2.6 Packages must be accompanied by a delivery note specifying the Purchase Order number, item number, destination, contents and their quantities, and all item numbers and types are to be quoted on any and all documentation pertaining to the Goods (including in any tax invoices issued by the Supplier to the Company).
- 2.7 Where any instruction manuals or maintenance manuals are available or otherwise intended to accompany the Goods, the Supplier shall ensure that such manuals are either delivered with the Goods or provided to the Company separately within fourteen (14) days of the delivery of Goods.
- 2.8 The Supplier's costs for delivering the Goods shall be included in the Price quoted or invoiced to the Company and no separate delivery charges or fees shall be applicable other than where approved in writing by the Company.
- 2.9 All Goods supplied must be new, whole and complete.

#### 3. Time for Performance

- 3.1 The Supplier must deliver the Goods and/or perform the Services by the Date for Completion, or, if none is specified, as soon as is practicable with time being of the essence.
- 3.2 The Supplier shall notify the Company in writing should it for whatever reason be unable to comply with the Date for Completion (or where no Date for Completion is provided, within a reasonable period of the Purchase Order being issued

by the Company), and the estimated date for delivery of Goods and/or performance of Services. If the estimated date for delivery or performance is not suitable to the Company, the Company, acting reasonably, may terminate the Purchase Order effective immediately by way of written notice to the Supplier and shall not be liable for any costs incurred by the Supplier in respect of such cancellation, nor any goods, materials, parts or labour procured in anticipation of fulfilling the Purchase Order.

**4. Title and Risk**

4.1 This clause 4 applies to the supply of any Goods to the Company by the Supplier.

4.2 Risk in the Goods shall pass to the Company upon delivery of the Goods to the Delivery Address in accordance with the provisions set out in clause 2. Whether or not Goods have yet been delivered, title in Goods shall only pass to the Company upon payment in full for the Price of the Goods.

4.3 Where the Company has made a partial payment for the Goods, notwithstanding that title in the Goods has not yet passed, the Company and the Supplier agree:

- (a) the partial payment of the Goods gives rise to a Security Interest in the Goods; and
- (b) at the Company's cost, the Company may register a Security Interest in respect of the Goods,

and the Supplier agrees to do all things reasonably required to assist the Company to effect such registration.

4.4 Where the Supplier has delivered the Goods to the Company but has not yet received payment in full for such Goods, the Company and the Supplier agree:

- (a) the supply of the Goods may give rise to a Security Interest in the Goods; and
- (b) at the Supplier's cost, the Supplier may register a Security Interest in respect of the Goods supplied,

and the Company agrees to do all things reasonably required by the Supplier to assist the Supplier effect such registration.

**5. Price**

5.1 The Price quoted by the Supplier to the Company for the Goods and/or Services shall be fixed and the Price shall not be varied unless agreed mutually by the Parties in writing.

5.2 The Price is inclusive of all costs incurred by the Supplier in the supply of the Goods and/or performance of the Services including all labour costs, charges for packing, insuring and delivering the Goods and the cost of any items or materials used or supplied in the performance of the Services.

5.3 The Price is inclusive of all taxes and duties, except GST.

5.4 The Company must pay the Supplier the Price for the Goods and/or Services.

**6. GST**

6.1 If GST is imposed on any supply made by the Supplier under or in connection with this Purchase Order, the Supplier may recover from the Company, in addition to the Price, an amount equal to the GST payable in respect of that Supply.

6.2 The Supplier must first provide the Company with a valid tax invoice before the Company will pay the GST amount to the Supplier.

**7. Invoicing/Payment**

7.1 Upon delivery of the Goods and/or completion of the Services, the Supplier must provide to the Company a valid tax invoice which must include the information set out in clause 7.2.

7.2 The Supplier's tax invoice must include the following details:

- (a) the Supplier's name and New Zealand company number or business number;
- (b) a reference to the Purchase Order;
- (c) a detailed description of the Goods delivered or Services performed, including the date of delivery and/or period of Services in respect of which the invoice relates and the relevant quantity (as applicable);
- (d) an individual payment reference number for the Company to quote with remittance of payment;
- (e) the Price relating to the Goods and/or Services, broken down to reflect the same Price components on the Purchase Order; and
- (f) the amount of any applicable GST.

7.3 The Company will pay all tax invoices that comply with clause 7.2 within forty five (45) days from the end of the month in which the Supplier's invoice is received, except where the Company disputes the invoice, in which case:

- (a) the Company may withhold payment of the disputed amount pending resolution of the dispute; and
- (b) if the resolution of the dispute determines that the Company must pay an amount to the Supplier, the Company must pay that amount upon resolution of that dispute.

7.4 The Company may set off or deduct from any payment due to the Supplier under this Agreement by any amount which the Supplier owes the Company, including in respect of any costs, charges, damages, expenses and reimbursements owed by the Supplier to the Company on any account whatsoever. The Company's exercise of its rights of set off and deduction shall not be taken to limit the Company's entitlement to pursue the Supplier for any amounts owing to it by other means.

**8. Quality**

8.1 The Goods and/or Services must match the description detailed and be in the quantity or of the frequency (as applicable) referred to in the Purchase Order.

8.2 The Goods and/or Services must be fit for the purpose for which the Goods and/or Services are ordinarily procured and for any other purpose expressly communicated to the Supplier by the Company as at the date of the Purchase Order.

8.3 If the Supplier gave the Company a sample of the Goods or a demonstration of the Services, the Goods and/or Services must be of the same nature and quality as the same or demonstration given.

8.4 The Goods or Services may be rejected by the Company without liability should they be defective generally, fail to comply with the sample or demonstration previously given by the Supplier, are of inferior quality or workmanship, or (in respect of Goods) are not safe, do not comply with the Specifications provided or agreed to by the Company.

**9. Warranty Period**

9.1 If, during the Warranty Period, any of the Goods or Services are found to be Defective, the Company may, at its discretion:

- (a) return the Defective Goods to the Supplier (with the costs of such return to be reimbursed to the Company);
- (b) reject the Defective Services;
- (c) request that the Supplier repair or make good the Defective Goods, unless:

- (i) the Company reasonably believes the Supplier cannot adequately and punctually repair or make good the Defective Goods; or
  - (ii) the Supplier fails to do so within a reasonable time of such request,
- the Company may repair or make good the Defective Goods itself and claim the direct expenses incurred in doing so from the Supplier; or

- (d) request that the Supplier re-perform or make good the Defective Services, unless:
  - (i) the Company reasonably believes the Supplier cannot adequately and punctually re-perform the Services; or
  - (ii) the Supplier fails to do so within a reasonable time of such request,

the Company may make good the Defective Services itself and claim the direct expenses incurred by the Company in doing so from the Supplier.

9.2 The Supplier must, as appropriate in the circumstances:

- (a) repair or replace the Defective Goods;
- (b) re-perform or make good the Defective Services;
- (c) reimburse the Company for any direct expenses incurred in repairing, re-performing or making good (as the case may be) any Defective Goods or Services should the Supplier decline or fail to perform the remedies set out in clauses 9.2(a) and/or (b) above; or
- (d) if the Defective Goods or Services were incapable of being reasonably remedied (or where it would be inappropriate to do so), reimburse the Company for the full value of the Defective Goods and/or Services, and

reimburse the Company for any loss, damage, costs, expenses or liability incurred by the Company as a result of the Defect.

9.3 The provisions relating to any Warranty Period or Defects specified under this Agreement shall be in addition to (and without limiting) any conditions or warranty expressed or implied by Law (including common law) or otherwise. Without limiting the generality of the foregoing, the Supplier's liability under this Agreement shall be in addition to any condition or warranty in the Company's favour implied by Law (including common law) as to the quality or the fitness for any particular purpose of the works and each part thereof.

## 10. Confidentiality

- 10.1 Each Party must not, and must ensure that its employees, agents and contractors do not, divulge to third parties any information relating to the Goods and/or Services (including Intellectual Property), the other Party, or the supply to the Company by the Supplier, unless and until such information is within the public domain (other than by reason of a breach of this clause 10.1) or where the express written consent of the other Party is obtained.
- 10.2 Each Party (each the "Indemnifying Party") shall indemnify and keep indemnified the other Party from and against all liabilities, losses, damages, actions, suits, proceedings, claims, costs (including legal costs) and expenses arising from any breach of clause 10.1 by the Indemnifying Party.

## 11. Intellectual Property

- 11.1 Any Specifications issued to the Supplier by the Company will remain the exclusive property of the Company and are to be kept strictly confidential.
- 11.2 The Supplier warrants that:

- (a) the Goods supplied and/or Services performed by the Supplier do not infringe any intellectual property rights of any third party; and
- (b) the Goods supplied and/or Services performed are not subject to any intellectual property rights of any third party that in any way restrict the rights of the Company or its clients to use or sell the same.

11.3 The Supplier agrees that title in all (present and future) intellectual property created, discovered or coming into existence as a result of, for the purposes of or in connection with the supply of the Goods and/or performance of the Services under the Purchase Order (other than any improvements, modifications or additions to any pre-existing Supplier intellectual property) shall vest exclusively in the Company upon its creation (**Company IP**) and the Supplier shall do all things necessary to facilitate such vesting.

11.4 The Company acknowledges that the Supplier remains the owner of all intellectual property created, discovered or brought into existence by the Supplier other than as a result of, for the purposes of, or in connection with the supply of the Goods and/or performance of the Services (**Supplier IP**).

11.5 The Supplier grants the Company a non-exclusive, royalty free licence to use all Supplier IP to the extent necessary to enable the Company to use and obtain the benefit of the Goods and/or Services provided by the Supplier.

## 12. Indemnity

The Supplier indemnifies the Company, its related companies (as defined by the *Companies Act 1993*), its directors, officers, employees, agents, consultants or contractors from and against all liabilities, losses, damages, actions, suits, proceedings, claims, costs and expenses (including legal costs on a full indemnity basis) arising from, as a result of, or in connection with:

- (a) injury to (including illness or disability), or death, of any persons; and
- (b) loss or destruction of, damage to, or loss of use of any property,

caused or contributed to by the act or omission of the Supplier or its directors, officers, employees, agents or contractors in carrying out its obligations under this Agreement or by any breach of this Agreement by the Supplier (including any breach of a warranty or Defects in Goods and/or Service), except to the extent caused or contributed to by the wilful default or unlawful or negligent act or omission of the Company.

## 13. Force Majeure

13.1 If a Party is delayed or prevented from performing its obligations under a Purchase Order or this Agreement (**Affected Party**) by reason of a Force Majeure Event, the Affected Party will not be liable for such delay or failure if as soon as is practicable after the beginning of the Force Majeure Event, the Affected Party gives notice to the other Party in accordance with clause 13.3.

13.2 The Purchase Order will suspend for the duration of the applicable Force Majeure Event and resume thereafter at the cessation of the Force Majeure Event, provided that each Party's respective obligations contained in this clause 13 are complied with.

13.3 A notice given under clause 13.1 must:

- (a) specify the obligations the Affected Party cannot perform;
- (b) fully describe the Force Majeure Event;

- (c) estimate the time during which the Force Majeure Event will continue; and
  - (d) specify the measures proposed to be adopted to remedy or abate the Force Majeure Event.
- 13.4 Where the Supplier is the Affected Party, any amendment to the Date for Completion shall be the Supplier's sole remedy for any delays or failures resulting from a Force Majeure Event, and the Supplier shall not be entitled to any increase in the Price nor to any damages, costs or expenses in connection with the Force Majeure Event.

13.5 Notwithstanding this clause 13, should a Force Majeure Event result in a delay of thirty (30) consecutive days or more concerning the delivery of Goods or performance of Services, the Company shall be entitled to withdraw and terminate the affected Purchase Order, by seven (7) days' written notice to the Supplier.

#### 14. Breach and Termination

14.1 In addition to any other termination rights set out in this Agreement, the Company may terminate a Purchase Order or this Agreement:

- (a) in its absolute discretion without cause by giving the Supplier seven (7) days' written notice; or
- (b) in the event the Supplier is in default of any of the terms of this Agreement for any reason (including insolvency), by written notice with immediate effect where the default:
  - (i) is not capable of remedy; or
  - (ii) is capable of remedy but the Supplier fails to remedy such default within fourteen (14) days of a written notice from the Company (or such other time as the Company may agree at its absolute discretion, which time shall not be less than fourteen (14) days).

14.2 In the event that the Company terminates a Purchase Order or the Agreement pursuant to clause 14.1(a), subject to any other rights of the Company under this Agreement, the Company must:

- (a) pay for the Goods delivered or Services provided by the Supplier in accordance with the Purchase Order prior to the date of termination; and
- (b) reimburse the Supplier for the cost of materials the Supplier reasonably ordered prior to the date of termination for the purpose of providing the Goods and or performing the Services and which the Supplier is legally liable to accept and cannot otherwise utilise, but only when the materials are delivered to the Delivery Address. For the avoidance of doubt, any such materials will become the Company's property upon payment by the Company,

and the Supplier, shall not otherwise be entitled to any other compensation, whether for loss of profits, anticipated profits, costs, expenses or otherwise which are incurred as a result of a termination of a Purchase Order or Agreement under this clause 14.2.

14.3 In the event the Company terminates a Purchase Order or the Agreement pursuant to clause 14.1(b), the Company reserves its rights to claim damages from the Supplier as though the Supplier had repudiated the Agreement.

14.4 The Supplier may terminate this Agreement in the event the Company is in default of any of the terms of this Agreement for any reason (including insolvency), by written notice with immediate effect where the default:

- (a) is not capable of remedy; or

- (b) is capable of remedy but the Company fails to remedy such default within fourteen (14) days of a written notice from the Supplier (or such other time as the Parties may agree, which time shall not be less than fourteen (14) days).

#### 15. Insurances

15.1 The Supplier must at all times for the duration of this Agreement maintain the following insurances:

- (a) public liability insurance for at least \$20,000,000.00 for any one event and unlimited in the aggregate which shall contain a principal's indemnity extension in favour of the Company for liability to any third party arising out of the performance of a Purchase Order or this Agreement by the Supplier;
- (b) products liability insurance for at least \$10,000,000.00 for any one event and in the aggregate;
- (c) (where the Purchase Order provides for the provision of professional services) professional indemnity insurance for at least \$10,000,000.00 for any one claim and \$20,000,000 in the annual in the aggregate. Such insurance shall be maintained for a minimum period of seven (7) years following either, completion of the Services subject to a Purchase Order, or the termination of that Purchase Order (or this Agreement), whichever occurs last;
- (d) motor vehicle and/or industrial plant and equipment insurance which:
  - (i) includes coverage against loss or damage for its replacement value; and
  - (ii) has a limit of at least \$30,000,000 for loss or damage to property and death or injury to any person; and
  - (iii) contains a waiver of subrogation in favour of the Company; and
- (e) any other insurances required by Law.

15.2 When requested by the Company, the Supplier must promptly provide copies of certificates of currency of the above insurances.

15.3 Each insurance policy required by this Agreement must be procured with an insurer with a Standard and Poor's or equivalent claims payment rating of A - or greater.

#### 16. Limitation of Liability

16.1 The Company's liability to the Supplier:

- (a) under, arising out of, or in connection with this Agreement;
- (b) at Law or in equity, including:
  - (i) by statute to the extent permitted by Law;
  - (ii) in tort (whether for negligence or otherwise); and
- (c) on any other basis whatsoever,

shall not exceed the full value of the Price of the applicable Goods and/or Services giving rise to any loss, damage, cost, expense suffered or incurred by, or any demand, claim, action, suit or proceeding made or brought against the Company by the Supplier.

16.2 Notwithstanding any other clause of this Agreement, under no circumstances other than those identified in clause 16.3 will either Party be liable to the other in respect of any Consequential Loss.

16.3 The exclusion of Consequential Loss in clause 16.2 above shall not apply in respect of the Supplier's liability where:

- (a) the Supplier's insurances provide an indemnity in respect of the Consequential Loss, or would have provided such an indemnity had the Supplier maintained and complied with the terms of the policy of insurance and diligently pursued a claim under the policy of insurance;
- (b) the Consequential Loss arises from, concerns or relates to:
  - (i) any Defects or breaches of warranties in respect of Goods or Services;
  - (ii) any misrepresentation, or misleading or deceptive conduct by the Supplier;
  - (iii) the Supplier's wilful misconduct or negligence, fraudulence or criminal activity;
  - (iv) death of or injury to (including illness) any person;
  - (v) loss of or damage to property;
  - (vi) breach of and/or repudiation of this Agreement;
  - (vii) a breach of the Supplier's obligations of confidentiality or pertaining to intellectual property; or
- (c) the Law does not permit such liability to be excluded.

## 17. Dispute Resolution

- 17.1 The Parties agree that all disputes relating to or arising out of this Agreement must be resolved in accordance with this clause 17 and a Party may not commence any court or arbitration proceedings relating to the dispute unless it has first complied with the following paragraphs of this clause 17, except where the Party seeks urgent interlocutory relief.
- 17.2 If a dispute arises then either Party must give notice to the other that must:
- (a) be in writing;
  - (b) state that it is a notice under clause 17.2; and
  - (c) include or be accompanied by reasonable particulars of the dispute.
- 17.3 Within five (5) Business Days (or such other time as the Parties may agree) of receipt of the notice given pursuant to clause 17.2, the authorised representatives of each of the Parties (who must be capable of binding each Party to any resolutions agreed upon) must meet and use reasonable endeavours, acting in good faith, to resolve the dispute.
- 17.4 If the dispute is not resolved subject to clause 17.3, the dispute must be referred to mediation.
- 17.5 If a dispute is not resolved at mediation, either Party may commence proceedings for the resolution of the dispute.
- 17.6 The Parties shall be barred from commencing proceedings where the mediation requirement in clause 17.4 is not complied with, except where the dispute in question concerns non-payment of monies owing.
- 17.7 Notwithstanding the existence of a dispute, each Party must continue to perform its obligations under this Agreement other than where the Agreement (or Purchase Order) has been terminated in accordance with the terms of this Agreement.

## 18. Company policies

- 18.1 The Supplier must conduct itself and supply the Goods and/or perform the Services in a manner consistent with the Company's policies pertaining to procurement, including but not limited to the Company's Anti-Slavery and Human Trafficking Policy, Corporate Social Responsibility Policy, Procurement Policy, Quality Assurance Policy, Sie Policy, and Work Health and Safety Policy. Copies of any such applicable policies shall be available from the Company upon request.

- 18.2 As and when requested by the Company, the Supplier must complete and provide a risk assessment in relation to the Goods, Services or other work for which the Company engaged the Supplier for.

## 19. Compliance with Laws

The Parties must at all times comply with all applicable Laws relating to anti-bribery, improper payments, anti-money laundering, and modern slavery (as applicable).

## 20. Survival

Clauses 8, 9, 10, 11, 12, 14, 15, 16, 17, 18 and 19 of this Agreement survive the termination of any Purchase Order or this Agreement.

## 21. Jurisdiction

This Agreement shall be governed by and construed in accordance with the Laws of New Zealand and the parties submit to the exclusive jurisdiction of the courts of New Zealand.

## 22. Definitions

In this Agreement, the following definitions shall apply:

"**Agreement**" refers to the documents comprising:

- (a) any applicable Purchase Order;
- (b) these Standard Terms and Conditions of Purchase; and
- (c) any attachments or annexures specifically referred to in any relevant Purchase Order.

"**Company**" means the entity listed in the applicable Purchase Order, being ARA Security Limited NZBN 9429031250054 or its related companies (as defined in the *Companies Act 1993*).

"**Consequential Loss**" means:

- (a) loss of profit or anticipated profit, loss of income, loss of revenue, loss of business or business opportunity, loss of financial opportunity, loss of savings (including any failure to realise anticipated savings), loss of contract, loss of goodwill, loss of data, loss of production, loss of use (including in respect of loss of use of equipment, items or assets or downtime costs), whether the loss is direct or indirect;
- (b) exemplary, punitive, aggravated or nominal damages; or
- (c) any other loss, cost, damage, expense or liability that could not fairly and reasonably:
  - (i) be considered to arise naturally (being according to the usual course of things) as a result of a breach of this Agreement or relevant matter; or
  - (j) be contemplated by the Company and Supplier as at the date of this Agreement as the probable result of a breach of this Agreement or relevant matter,

whether actual or contingent, fixed or unascertained, present or future.

"**Date for Completion**" means the date specified on the Purchase Order (if any) by which the Goods are to be delivered to the Delivery Address and/or the Services are to be completed.

"**Defect**" or "**Defective**" refers to the state of any Goods and/or Services (or any aspect of them) which are not in accordance with the Purchase Order or this Agreement, or which are otherwise damaged, deficient, faulty, inadequate, incomplete, of poor quality or workmanship, not fit for purpose, unsafe, inconsistent with any sample or demonstration previously given by the Supplier for such Goods and/or Services, do not conform

to the Specifications provided or agreed to by the Company, or are contrary to any relevant New Zealand standards or applicable building codes or regulations.

“**Delivery Address**” means the place for delivery specified on the Purchase Order or otherwise communicated to the Supplier by the Company.

“**Force Majeure**” means any event or circumstance (or combination of events and circumstances) which:

- (a) are beyond the control of the Party affected by that event or circumstance or both which could not reasonably have been foreseen at the time of entering into this Agreement and which could not reasonably have been provided against or prevented by the Party affected, including but not limited to; an act of God, war declared or undeclared, blockage, revolution, riot, insurrection, civil commotion, sabotage, lightning, fire, earthquake, storm or flood on the site, plague, explosion, governmental or governmental agency restraint, expropriation, prohibition, intervention or embargo; and
- (b) cause delay or prevent of the performance by the affected Party of any of its obligations under the Agreement; and
- (c) cannot be prevented, overcome or remedied by the exercise by the affected Party of a standard of care and diligence consistent with that of a prudent and competent person in the position of the affected Party.

For the avoidance of doubt, Force Majeure includes a strike or industrial dispute which:

- (d) has national or state-wide application and is not confined to the Supplier’s workforce;
- (e) affects the execution of the Services at the site; and
- (f) lasts for more than seven (7) consecutive days, but does not include,
  - (g) other industrial-related disputes including strikes, lockouts, industrial difficulties, labour difficulties, work bans, blockades or picketing;
  - (h) wet or otherwise inclement weather not connected to a named cyclone;
  - (i) lack of or inability to use funds for any reason;
  - (j) any occurrence which results from the wrongful omission of the affected Party or the failure by the affected Party to act in a prudent and proper manner and in accordance with good and accepted industry practices;
  - (k) any failure by the affected Party to reach agreement with any third party necessary to enable the affected Party to perform its obligations under this Agreement;
  - (l) an event or circumstances, where the event or circumstances or its effects on the affected Party or the resulting inability of the affected Party to perform its obligations could have been prevented, overcome or remedied by the exercised by the affected Party of the standard of care and diligence consistent with that a reasonable and prudent person would have exercised; or
- (m) breakdown of any plant or equipment.

“**Goods**” means the goods, if any, described in a Purchase Order.

“**GST**” has the same meaning given to that term under the Goods and Services Tax Act 1985.

“**HSEC**” means health, safety, environment and community.

“**Law**” means:

- (a) National and local government legislation, including regulations, by-laws, orders, awards and proclamations in force in New Zealand;
- (b) common law and equity;
- (c) authority requirements and consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals); and
- (d) guidelines of authorities with which the Supplier is legally required to comply.

“**Party**” means a party to this Agreement.

“**PPSA**” means the *Personal Property Securities Act 1999*.

“**Price**” means the price set out in the Purchase Order which is exclusive of GST but is inclusive of all other costs and charges, including any delivery costs.

“**Purchase Order**” means the purchase order (or such other document or correspondence referred to at clause 1.2) for Goods and/or Services issued by the Company to the Supplier from time to time containing, amongst other things, a description of the Goods and/or Services.

“**Security Interest**” has the meaning given to that term in the PPSA.

“**Services**” means the services, if any, described in a Purchase Order.

“**Specifications**” means any drawings, designs, technical instructions, dimensions or specifications provided to the Supplier by the Company or agreed to by the Supplier.

“**Supplier**” means the person or entity identified as such (or in a similar capacity to a supplier) in the relevant Purchase Order and its officers, directors, employees, agents and contractors.

“**Warranty Period**” means the period of twenty-four (24) months commencing on:

- (a) (in respect of Goods) the date of delivery of the Goods; and
- (b) (in respect of Services) the date of performance of the Services.