

Contract for Goods

July 2014



[short title for Contract] [add Contract Reference number if applicable]

The Parties

Wellington City Council (Buyer)

101 Wakefield Street

Wellington

and

[insert the legal name of the Supplier] (Supplier)

[insert address]

[insert address]

The Contract

Agreement

The Supplier agrees to sell and the Buyer agrees to buy the Goods described in this Contract. This Contract sets out the Parties' rights and obligations.

The documents forming this Contract are:

- | | |
|---|-------------------|
| 1. This page | Page 1 |
| 2. Contract Details and Description of Goods | Schedule 1 |
| 3. Standard Terms and Conditions | Schedule 2 |
| 4. Any other attachments described at Schedule 1. | |

How to read this Contract

- Together the above documents form the whole Contract.
- Any Supplier terms and conditions do not apply.
- Clause numbers refer to clauses in Schedule 2.
- Words starting with capital letters have a special meaning. The special meaning is stated in the Definitions section at clause 17 (Schedule 2).

Acceptance

In signing this Contract each Party acknowledges that it has read and agrees to be bound by it.

For and on behalf of the **Buyer**:

For and on behalf of the **Supplier**:

(signature)

(signature)

name:

name:

position:

position:

date:

date:

Schedule 1

Contract Details and Description of Goods

Start Date		Reference Schedule 2 clause 1
End Date		Reference Schedule 2 clause 1
Type of contract	One-off purchase. OR Ongoing supply.	

Contract Managers Reference Schedule 2 clause 6	Buyer's Contract Manager	Supplier's Contract Manager
Name:		
Title / position:		
Address:		
Phone:		
Fax:		
Email:		

Addresses for Notices Reference Schedule 2 clause 14	Buyer's address	Supplier's address
For the attention of:	[Contract Mgr or senior mgr]	[Contract Mgr or senior mgr]
c.c.	[cc if senior manager above]	[cc if senior manager above]
Delivery address:		
Postal address:		
Fax:		
Email:		

Delivery timeframe Reference Schedule 2 clause 2.7	The Goods must be delivered within [insert number] Business Days from the date of order. OR [specific date]
Delivery Address Reference Schedule 2 clause 2.7	[insert physical delivery address or addresses if more than one]
Delivery note	The Supplier will provide a delivery note along with the Goods when delivered.

Description of Goods
<p>Context</p> <p>Description of Goods</p> <p>Performance Standards</p> <p>Specific health & safety requirement</p> <p>The Health and Safety in Employment Act 1992 (HSE Act) places a duty on Council as principal to a contract to take all practicable steps to ensure contractors, subcontractors and employees are not harmed while undertaking any work under contract to the Council. Specific health and safety requirements are attached to this contract.</p> <p>Specific code of conduct / legislative requirement/s</p> <p>Transfer of Records</p>

CHARGES: The following section sets out the Charges. Charges are the total maximum amount payable by the Buyer to the Supplier for delivery of the Goods. Charges include **Cost**, and where agreed, **Expenses**. The Charges for this Contract are set out below.

Cost
Reference Schedule 2
clause 5

The Cost of the Goods will be calculated as follows:

List

Item / model / product number	Unit cost (exc GST)
[Insert description of item or model number]	[insert price]
[Insert description of item or model number]	[insert price]
Total Cost (exc GST)	[insert total]

OR

Fixed Cost

A fixed Cost of \$[] exc GST. The calculation is based on [].

OR

Variable Cost

As set out in the attached Schedule of Pricing.

Expenses
Reference Schedule 2
clause 5

No Expenses are payable.

OR

Specific items and agreed cost per item - specified Expenses

Item of Expense	Cost or rate (exc GST)	Total max cost (exc GST)
	[insert cost per item]	[insert total cost]
	[insert cost per item]	[insert total cost]
	[insert cost per item]	[insert total cost]
Total Expenses (exc GST)		[insert total]

OR

Specific items and actual and reasonable cost per item - specified Expenses

The Buyer will pay the Supplier's actual and reasonable Expenses incurred in delivering the Goods up to the total maximum amounts stated below, provided that the claim for Expenses is supported by GST receipts:

Item of expense	Cost or rate (exc GST)	Total max cost (exc GST)
	[insert cost per item]	[insert total cost]
	[insert cost per item]	[insert total cost]
	[insert cost per item]	[insert total cost]
Maximum total Expenses not to exceed (exc GST)		[insert total]

Exchange rate

Where the Supplier is to be paid in a currency other than NZD the Parties agree that the following exchange rate shall apply when calculating the amount due.

[insert one unit of foreign currency] = NZD[insert amount]

InvoicesReference Schedule 2
clause 5

The Supplier must send the Buyer an invoice for the Charges at the following times:
On supply of the Goods.

OR

At the end of the month, for Goods delivered during that month.

**Addresses for
invoices**Reference Schedule 2
clause 5**Buyer's address****For the attention of:****Physical address:****Postal address:****Email:****Fax:****Insurance**Reference Schedule 2
clause 9.1**INSURANCE: (clause 9.1 Schedule 2)**

It is the Supplier's responsibility to ensure its risks of doing business are adequately covered, whether by insurance or otherwise. The Buyer does not require any specific insurance under this Contract. **OR**

The Supplier must have the following insurance:

- a. Product liability insurance of \$[insert figure] **OR** [No.] times the total Cost paid and payable under this Contract.

**Changes to
Schedule 2 and
additional
clause/s**

Schedule 2 of this Contract is amended as follows:

1. Amend clause 5.4 by deleting the following:

If the Buyer receives a valid tax invoice on or before the 3rd Business Day of the month, the Buyer must pay that tax invoice by the 20th calendar day of that month. Any valid tax invoice received after the 3rd Business Day of the month will be paid by the Buyer on the 20th calendar day of the month following the month it is received.

And replacing it with:

The Council's standard payment terms are 20th of the month following the month dated on the invoice.

2. Add a new clause 8.4 as follows:

Local government reorganisation

8.4 The parties agree that in the event of a local government reorganisation in the Wellington region, the Buyer may elect to assign its rights or novate its rights and obligations under this Contract to the relevant public entity. In the event that the Buyer exercises its right under this clause to assign or novate this Contract, the Supplier agrees to sign all documents and do all things necessary to give effect to such assignment or novation.

3. Amend clause 13.1(c) by deleting 'Official Information Act 1982' and replacing it with 'Local Government Official Information and Meetings Act 1987'.

4. Add a new clauses 16.10 and 16.11 as follows:

Territorial authority

16.10 The Supplier acknowledges that the Buyer is the territorial authority for the area in which the Goods are to be supplied, and that in terms of its regulatory functions as a local authority the Buyer must act as an independent local authority and not as a party to this Contract. Any consent or approval of the Buyer acting as a party to this Contract shall not be construed as a consent or approval of or bind it in its regulatory capacity.

LGOIMA

16.11 The parties acknowledge that the Buyer is subject to the Local Government Official Information and Meetings Act 1987 and that under that Act the Buyer may be required to release information about the Goods and the Supplier. The Supplier agrees to comply with the requirements of the Local Government Official Information and Meetings Act 1987 in relation to all information relating to the Buyer held by the Supplier or its employees. The Supplier will only release information directly to a third party under the Local Government Official Information and Meetings Act 1987 through the Buyer unless compelled by a competent authority, in which case it will immediately advise the Buyer as to the information released.

Attachments

Reference 'Contract documents' described at Page 1

Attachment 1: Health and Safety - Contract Statement

1. The supplier shall be responsible for the duties placed on them under the Health and Safety in Employment Act 1992 (HSE Act), as it relates to the supplier as a contractor, employer, person who controls a place of work and/or Principal.
2. The supplier shall ensure their employees and sub-contractors comply with duties placed on them under HSE Act as it relates to the contract.
3. The supplier shall:
 - a) Provide and maintain a safe working environment.
 - b) Provide and maintain work amenities and facilities for safety and health.
 - c) Ensure consumables, equipment and plant are arranged, designed, made and maintained for safe use.
 - d) Ensure no one is exposed to hazards arising out of the services, goods, arrangements, disposal, manipulation, organisation, processing, storage, transport, working, or use of things at the place of work or near the place of work.
 - e) Develop and maintain a contract-specific, and where relevant, a site-specific health and safety management plan based on information provided by the Council, including information contained in the procurement documents, and the supplier's successful procurement proposal. The plan, and any updates of the plan, are subject to Council approval and must cover:
 - systems for identifying, assessing, managing and reporting hazards
 - recording and reporting incidents, including the threshold for reporting incidents to the Council, ie all incidents where medical treatment or

hospitalisation occurred and near miss incidents that had the potential to be of a serious nature

- safety and emergency procedures
- training, experience and qualifications of employees
- safety provisions of others who may be affected by the work, including people in the vicinity and members of the public
- safety equipment that may be necessary and its appropriate safe use
- access / egress to work areas where relevant
- means of involving employees, for example toolbox meetings and site safety observations.

- f) Ensure all employees, including subcontractors, working under the contract are inducted for the site where the work is being undertaken, prior to any work commencing. Induction will in the least require all employees and subcontractors to complete the Council's "Contractor Health and Safety Induction Checklist".
4. The Council will carry out health and safety performance monitoring, observations and audits at the times [and in the manner] specified in the Schedule, and in any event no less frequently than [quarterly] during the term of the contract.
5. These health and safety provisions are in addition to, and do not replace or exclude, the supplier's obligation to comply with any other health and safety obligations either under this contract or at law.

Schedule 2

Standard Terms and Conditions – Goods

1. Length of Contract

- 1.1 This Contract starts on the Start Date.
- 1.2 This Contract ends on the End Date, unless terminated earlier.

2. Supply of Goods

Both Parties' obligations

- 2.1 Both Parties agree to:
 - a. act in good faith and demonstrate honesty, integrity, openness, and accountability in their dealings with each other
 - b. discuss matters affecting this Contract or the supply of the Goods, whenever necessary
 - c. notify each other immediately of any actual or anticipated issues that could:
 - i. significantly impact on the Goods or the Charges
 - ii. receive media attention, and
 - d. comply with all applicable laws and regulations.

Orders

- 2.2 If this Contract is for a one-off purchase of Goods, the signing of this Contract by both Parties is the order for the Goods.
- 2.3 If this Contract is for the ongoing supply of Goods, the Buyer will place orders for the Goods with the Supplier from time to time. Each order must:
 - a. be in writing
 - b. be sent by post, fax, email, e-procurement system or other electronic means
 - c. specify the volume and type of Goods ordered, and
 - d. be in any form that is agreed between the Buyer and the Supplier.
- 2.4 The Goods are supplied under the terms of this Contract. Any Supplier terms and conditions stated in its sales order form, delivery receipt, e-procurement system or elsewhere do not apply.

Buyer's obligations

- 2.5 The Buyer must pay the Supplier the Charges for the Goods as long as the Supplier has delivered Goods and invoiced the Buyer, all in accordance with this Contract.

Supplier's obligations

- 2.6 The Supplier must supply goods which meet the Description of Goods in Schedule 1, the requirements of this Contract, and which are supplied in accordance with orders from the Buyer.
- 2.7 The Supplier must deliver the Goods to the Delivery Address stated in Schedule 1, or such other address the Buyer specifies, on time, and for the Charges. It is essential that Goods are delivered on time.

- 2.8 The Supplier must notify the Buyer immediately in writing if the Supplier becomes aware of any actual or possible delay in delivery of the Goods.
- 2.9 If a warranty or maintenance obligation (including a warranty from a manufacturer) applies in relation to the Goods or any items incorporated into or supplied with the Goods, the Supplier must ensure that the benefit of the warranty or obligation is passed on to the Buyer.

Goods must satisfy criteria

- 2.10 The Goods must:
- a. be of merchantable quality and free from defects in design, materials or construction
 - b. be fit for the purposes for which they are intended to be used
 - c. comply with the Description of Goods stated in Schedule 1
 - d. comply with any sample of the Goods provided by the Supplier, except if the Buyer has agreed otherwise in writing
 - e. be new and unused, unless the Buyer has agreed otherwise in writing, and
 - f. be packaged so as to protect the contents and keep them clean, dry and in a new condition until they are first used, if appropriate.

Supplier warranties

- 2.11 The Supplier warrants that:
- a. the Goods do not breach any law or standard
 - b. supply of the Goods in accordance with this Contract will not infringe the rights of any person
 - c. when ownership is stated to pass in this Contract, full ownership of the Goods passes to the Buyer and no-one else has any rights in the Goods
 - d. all Goods supplied to the Buyer comply with all of the criteria stated in clause 2.10
 - e. any documentation supplied with the Goods is adequate (in terms of both quantity and quality) to enable the Buyer to use and maintain the Goods in the manner intended by the Buyer
 - f. all information provided by the Supplier to the Buyer is accurate, and
 - g. the Supplier has told the Buyer about any Conflict of Interest relating to the supply of Goods or this Contract.

Spare parts

- 2.12 If stated in Schedule 1 the Supplier must maintain an adequate stock of spare parts and equipment for the Goods, for supply to the Buyer as and when required.

3. Acceptance and rejection of Goods

Inspection and acceptance

- 3.1 The signing of a delivery note by any of the Buyer's Personnel does not indicate the Buyer's acceptance of the Goods.
- 3.2 If, following the Buyer's inspection of the Goods, any of the Goods do not meet the requirements of this Contract, then the Buyer may, within a reasonable time after completing the inspection, do any of the following at the Buyer's option, but at the Supplier's cost:
- a. require the Supplier to repair the Goods
 - b. require the Supplier to replace the Goods, or
 - c. reject the Goods.

- 3.3 The Buyer must give Notice to the Supplier if it decides to exercise any of the options under clause 3.2.

Repair or replacement

- 3.4 If the Supplier receives a Notice from the Buyer to repair or replace the Goods, the Supplier must promptly repair or replace the Goods in question, so that the Goods (or replacement Goods) comply with the warranties in clause 2.11.
- 3.5 If the Buyer is not satisfied with the Supplier's progress in repairing or replacing the Goods, the Buyer may either:
- a. reject the Goods, in which case clauses 3.6 to 3.7 will apply; or
 - b. arrange for the Goods to be repaired by someone else, in which case the Supplier will reimburse all costs and expenses incurred by the Buyer in doing so.

Rejection

- 3.6 If the Supplier receives a Notice from the Buyer rejecting the Goods, it must remove any rejected Goods from the Buyer's premises at its own risk and expense. If the Supplier does not remove the rejected Goods within 15 Business Days of Notice of rejection, the Buyer may return the Goods and recover from the Supplier any cost and expense incurred.
- 3.7 If the Buyer rejects any Goods, the Supplier, at the Supplier's cost, will do whichever one of the following the Buyer elects. The Buyer must state the action required in its Notice issued under clause 3.3:
- a. provide a full refund of the Charges paid for the rejected Goods, within 10 Business Days of the Buyer electing to receive a refund, or
 - b. provide a credit for the Charges paid for the rejected Goods, against the Charges payable for other Goods, or
 - c. promptly replace the rejected Goods with Goods that meet the requirements of this Contract.

No limitation

- 3.8 The Buyer's rights under clauses 3.2 to 3.7 are in addition to, and do not limit, any other rights or remedies the Buyer may have.

4. Ownership and risk

Ownership of Goods

- 4.1 Ownership in the Goods passes to the Buyer on the earlier of:
- a. the date the Buyer has paid the Charges for those Goods, or
 - b. the date those Goods have been delivered.
- 4.2 Risk in the Goods passes to the Buyer on the date those Goods have been delivered.
- 4.3 Ownership and risk in any Goods rejected by the Buyer under clauses 3.6 to 3.7 will pass back to the Supplier as follows:
- a. if the Buyer has paid the Charges for those rejected Goods, once the Supplier has provided a refund, credit or replacement in accordance with clause 3.7, and
 - b. in all other cases, when the Goods are collected from the place to which they were delivered.
- 4.4 Ownership of any replaced Goods by the Supplier under clauses 3.2 to 3.5 will pass back to the Supplier once the Supplier has delivered the replacement Goods.

5. Charges and payment

Charges & invoices

- 5.1 The Charges are the total maximum amount payable by the Buyer to the Supplier for the delivery of the Goods. Charges include the Cost, and where agreed, Expenses.
- 5.2 Unless otherwise stated in Schedule 1 the Charges for the Goods include all of the following:
- a. costs of shipping, carriage and freight
 - b. insurance charges
 - c. customs duties and clearance charges, and
 - d. other costs incurred by the Supplier in delivering the Goods to the Buyer.

Invoices

- 5.3 The Supplier must provide valid tax invoices for all Charges on the dates or at the times specified in Schedule 1. The Buyer has no obligation to pay the Charges set out on an invoice, which is not a valid tax invoice. To be valid a tax invoice must:
- a. clearly show all GST due
 - b. be in New Zealand currency, or the currency stated in Schedule 1
 - c. be clearly marked 'Tax invoice'
 - d. contain the Supplier's name, address and GST number, if the Supplier is registered for GST
 - e. contain the Buyer's name and address and be marked for the attention of the Buyer's Contract Manager, or such other person stated in Schedule 1
 - f. state the date the invoice was issued
 - g. name this Contract and provide a description of the Goods delivered
 - h. contain the Buyer's contract reference or purchase order number if there is one
 - i. state the Charges due, calculated correctly, and
 - j. be supported by GST receipts if Expenses are claimed and any other verifying documentation reasonably requested by the Buyer.

Payment

- 5.4 If the Buyer receives a valid tax invoice on or before the 3rd Business Day of the month, the Buyer must pay that tax invoice by the 20th calendar day of that month. Any valid tax invoice received after the 3rd Business Day of the month will be paid by the Buyer on the 20th calendar day of the month following the month it is received. The Buyer's obligation to pay is subject to clauses 5.3, 5.5 and 12.10.
- 5.5 If the Buyer disputes a tax invoice, or any part of a tax invoice, that complies with clause 5.3, the Buyer must notify the Supplier within 10 Business Days of the date of receipt of the tax invoice. The Buyer must pay the portion of the tax invoice that is not in dispute. The Buyer may withhold payment of the disputed portion until the dispute is resolved.

6. Contract management

Contract Manager

- 6.1 The persons named in Schedule 1 as the Contract Managers are responsible for managing the Contract, including:
- a. managing the relationship between the Parties
 - b. overseeing the effective implementation of this Contract, and

- c. acting as a first point of contact for any issues that arise.

Changing the Contract Manager

- 6.2 If a Party changes its Contract Manager it must tell the other Party, in writing, the name and contact details of the replacement within 5 Business Days of the change.

7. Information management

Information and Records

- 7.1 The Supplier must:
- a. keep and maintain Records in accordance with prudent business practice and all applicable laws
 - b. make sure the Records clearly identify all relevant time and Expenses incurred in providing the Goods
 - c. make sure the Records are easy to access, and
 - d. keep the Records safe.
- 7.2 The Supplier must give information to the Buyer relating to the Goods that the Buyer reasonably requests. All information provided by the Supplier must be in a format that is usable by the Buyer, and delivered within a reasonable time of the request.
- 7.3 The Supplier must co-operate with the Buyer to provide information immediately if the information is required by the Buyer to comply with an enquiry, or its statutory, parliamentary or other reporting obligations.
- 7.4 The Supplier must make its Records available to the Buyer during the term of the Contract and for 7 years after the End Date (unless already provided to the Buyer earlier).
- 7.5 The Supplier must make sure that Records provided by the Buyer, or created for the Buyer, are securely managed and securely destroyed on their disposal.

Reports

- 7.6 The Supplier must prepare and give to the Buyer the reports stated in Schedule 1, by the due dates stated in Schedule 1.

8. The contractual relationship

Independent contractor

- 8.1 Nothing in this Contract constitutes a legal relationship between the Parties of partnership, joint venture, agency, or employment. The Supplier is responsible for the liability of its own, and its Personnel's, salary, wages, holiday or redundancy payments and any GST, corporate, personal and withholding taxes, ACC premiums or other levies attributable to the Supplier's business or the engagement of its Personnel.

Neither Party can represent the other

- 8.2 Neither Party has authority to bind or represent the other Party in any way or for any purpose.

Permission to transfer rights or obligations

- 8.3 The Supplier may transfer any of its rights or obligations under this Contract only if it has the Buyer's prior written approval. The Buyer will not unreasonably withhold its approval.

9. Insurance

Where insurance is a requirement

- 9.1 It is the Supplier's responsibility to ensure its risks of doing business are adequately covered, whether by insurance or otherwise. If required in Schedule 1, the Supplier must have the insurance specified in Schedule 1 and the Supplier must:
- a. take out insurance, with a reputable insurer, and maintain that insurance cover for the term of this Contract and for a period of 3 years after the End Date, and
 - b. within 10 Business Days of a request from the Buyer provide a certificate confirming the nature of the insurance cover and proving that each policy is current.

10. Conflicts of Interest

Avoiding Conflicts of Interest

- 10.1 The Supplier warrants that as at the Start Date, it has no Conflict of Interest in supplying the Goods or entering into this Contract.
- 10.2 The Supplier must do its best to avoid situations that may lead to a Conflict of Interest arising.

Obligation to tell the Buyer

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

11. Resolving disputes

Steps to resolving disputes

- 11.1 The Parties agree to use their best endeavours to resolve any dispute or difference that may arise under this Contract. The following process will apply to disputes:
- a. a Party must notify the other if it considers a matter is in dispute
 - b. the Contract Managers will attempt to resolve the dispute through direct negotiation
 - c. if the Contract Managers have not resolved the dispute within 10 Business Days of notification, they will refer it to the Parties' senior managers for resolution, and
 - d. if the senior managers have not resolved the dispute within 10 Business Days of it being referred to them, the Parties shall refer the dispute to mediation or some other form of alternative dispute resolution.
- 11.2 If a dispute is referred to mediation, the mediation will be conducted:
- a. by a single mediator agreed by the Parties, or if they cannot agree, appointed by the Chair of LEADR NZ Inc.
 - b. on the terms of the LEADR NZ Inc. standard mediation agreement, and
 - c. at a fee to be agreed by the Parties, or if they cannot agree, at a fee determined by the Chair of LEADR NZ Inc.
- 11.3 Each Party will pay its own costs of mediation or alternative dispute resolution under this clause 11.

Obligations during a dispute

- 11.4 If there is a dispute, each Party will continue to perform its obligations under this Contract as far as practical given the nature of the dispute.

Taking court action

- 11.5 Each Party agrees not to start any court action in relation to a dispute until it has complied with the process described in clause 11.1, unless court action is necessary to preserve a Party's rights.

12. Ending this Contract

Termination by the Supplier

- 12.1 The Supplier may terminate this Contract by giving 20 Business Days Notice to the Buyer, if the Buyer fails to pay Charges that are properly due, and are not in dispute under clause 5.5. The Charges must be overdue by 20 Business Days and the Supplier must have first brought this to the Buyer's attention in writing within this period.
- 12.2 At any time during the term of this Contract the Supplier may notify the Buyer that it wishes to terminate this Contract. The Buyer will, within 20 Business Days following receipt of the Supplier's Notice, notify the Supplier whether, in its absolute discretion, it consents to the Supplier's Notice of termination. If the Buyer:
- a. consents, the Contract will be terminated on a date that is mutually agreed between the Parties, or
 - b. does not consent, the Contract will continue in full force as if the Supplier's Notice of termination had not been given.
- 12.3 The Supplier may also terminate this Contract under clause 12.9.

Termination by the Buyer

- 12.4 The Buyer may terminate this Contract at any time by giving 20 Business Days Notice to the Supplier.
- 12.5 The Buyer may terminate this Contract immediately, by giving Notice, if the Supplier:
- a. becomes bankrupt or insolvent
 - b. has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed
 - c. becomes subject to any form of external administration
 - d. ceases for any reason to continue in business or to supply the Goods
 - e. is unable to supply the Goods for a period of 20 Business Days or more due to an Extraordinary Event
 - f. requires the supply of Goods within the period of an Extraordinary Event
 - g. is in breach of any of its obligations under this Contract and the breach cannot be remedied
 - h. repeatedly fails to perform or comply with its obligations under this Contract, whether those obligations are minor or significant
 - i. does something, or fails to do something, that, in the Buyer's opinion, results in damage to the Buyer's reputation or business
 - j. has a Conflict of Interest that in the Buyer's opinion is so material as to impact adversely on the supply of the Goods or the Buyer, or
 - k. provides information to the Buyer that is misleading or inaccurate in any material respect.

Termination by a Party if a breach has not been remedied

- 12.6 If a Party fails to meet the requirements of this Contract (defaulting Party) and the other Party (non-defaulting Party) reasonably believes that the failure can be remedied, the non-defaulting Party must give a Notice (default Notice) to the defaulting Party.
- 12.7 A default Notice must state:
- a. the nature of the failure
 - b. what is required to remedy it, and
 - c. the time and date by which it must be remedied.
- 12.8 The period allowed to remedy the failure must be reasonable given the nature of the failure.
- 12.9 If the defaulting Party does not remedy the failure as required by the default Notice, the non-defaulting Party may terminate this Contract immediately by giving a further Notice.
- 12.10 If the Buyer gives a default Notice to the Supplier, the Buyer may also do one or both of the following things:
- a. withhold any payment of Cost due until the failure is remedied as required by the default Notice, and or
 - b. if the failure is not remedied as required by the default Notice, deduct a reasonable amount from any Cost due to reflect the reduced value of the Goods to the Buyer.

Supplier's obligations on termination or expiry of this Contract

- 12.11 On giving or receiving a Notice of termination, the Supplier must:
- a. stop supplying the Goods
 - b. comply with any conditions contained in the Notice, and
 - c. immediately do everything reasonably possible to reduce its losses, costs, and expenses, arising from the termination of this Contract.
- 12.12 On termination or expiry of this Contract, the Supplier must, if requested by the Buyer, immediately return or securely destroy all Confidential Information and other material or property belonging to the Buyer.

Consequences of termination or expiry of this Contract

- 12.13 The termination or expiry of this Contract does not affect those rights of each Party which:
- a. accrued prior to the time of termination or End Date, or
 - b. relate to any breach or failure to perform an obligation under this Contract that arose prior to the time of termination or End Date.
- 12.14 If this Contract is terminated the Buyer:
- a. will only be liable to pay Charges that were due for Goods delivered before the effective date of termination, and
 - b. may recover from the Supplier, or set off against sums due to the Supplier, any Charges paid in advance that have not been incurred.

Handover

- 12.15 If the Buyer requests it, the Supplier will provide all reasonable assistance to support any replacement supplier to supply the Goods.

13. Confidential Information

Protection of Confidential Information

- 13.1 Each Party confirms that it has adequate security measures to safeguard the other Party's Confidential Information from unauthorised access, or use by third parties, and that it will not use or disclose the other Party's Confidential Information to any person or organisation other than:
- a. to the extent that use or disclosure is necessary for the purposes of providing the Goods, or in the case of the Buyer, using the Goods
 - b. if the other Party gives prior written approval to the use or disclosure
 - c. if the use or disclosure is required by law (including under the Official Information Act 1982), Ministers or parliamentary convention, or
 - d. in relation to disclosure, if the information has already become public, other than through a breach of the obligation of confidentiality by one of the Parties.

Obligation to inform staff

- 13.2 Each Party will ensure that its Personnel:
- a. are aware of the confidentiality obligations in this Contract, and
 - b. do not use or disclose any of the other Party's Confidential Information except as allowed by this Contract.

14. Notices

Delivery of Notices

- 14.1 All Notices to a Party must be delivered by hand or sent by post, courier, fax or email to that Party's address for Notices stated in Schedule 1.
- 14.2 Notices must be signed, or in the case of email sent, by the appropriate manager or person having authority to do so.

Receipt of Notices

- 14.3 A Notice will be considered to be received:
- a. if delivered by hand, on the date it is delivered
 - b. if sent by post within New Zealand, on the 3rd Business Day after the date it was sent
 - c. if sent by post internationally, on the 7th Business Day after the date it was sent
 - d. if sent by courier, on the date it is delivered
 - e. if sent by fax, on the sender receiving a fax machine report that it has been successfully sent, or
 - f. if sent by email, at the time the email enters the recipient's information system as evidenced by a delivery receipt requested by the sender and it is not returned undelivered or as an error.
- 14.4 A Notice received after 5pm on a Business Day, or on a day that is not a Business Day, will be considered to be received on the next Business Day.

15. Extraordinary Events

No fault if failure to deliver due to an Extraordinary Event

- 15.1 Neither Party will be liable to the other for any failure to perform its obligations under this Contract where the failure is due to an Extraordinary Event.

Obligations of the affected Party

- 15.2 A Party who wishes to claim suspension of its obligations due to an Extraordinary Event must notify the other Party as soon as reasonably possible. The Notice must state:
- a. the nature of the circumstances giving rise to the Extraordinary Event
 - b. the extent of that Party's inability to perform under this Contract
 - c. the likely duration of that non-performance, and
 - d. what steps are being taken to minimise the impact of the Extraordinary Event on the delivery of the Goods.

Alternative arrangements requiring immediate termination

- 15.3 If the Buyer, acting reasonably, requires the Goods to be supplied during a period affected by an Extraordinary Event, then despite clause 15.4, the Buyer may terminate this Contract immediately by giving Notice.

Termination of Contract

- 15.4 If a Party is unable to perform any obligations under this Contract for 20 Business Days or more due to an Extraordinary Event, the other Party may terminate this Contract immediately by giving Notice.

16. General

Changes to this Contract

- 16.1 Any change to this Contract is called a Variation. A Variation must be agreed by both Parties and recorded:
- a. in writing and signed by both Parties, or
 - b. through an exchange of emails where the authors have delegated authority to approve the Variation.

This is the entire Contract

- 16.2 This Contract, including any Variation, records everything agreed between the Parties relating to the supply of the Goods. It replaces any previous communications, negotiations, arrangements or agreements that the Parties had with each other relating to the supply of the Goods before this Contract was signed, whether they were verbal or in writing.

Waiver

- 16.3 If a Party breaches this Contract, and the other Party does not immediately enforce its rights resulting from the breach that:
- a. does not mean that the Party in breach is released or excused from its obligation to perform the obligation at the time or in the future, and
 - b. does not prevent the other Party from exercising its rights resulting from the breach at a later time.

New Zealand law, currency and time

- 16.4 This Contract will be governed and interpreted in accordance with the laws of New Zealand. All money is in New Zealand dollars unless Schedule 1 specifies a different currency. Dates and times are New Zealand time.

Publication of information about this Contract

- 16.5 The Supplier may disclose the existence of this Contract but must obtain the Buyer's prior written approval before making reference to the Buyer or this Contract in its publications, public statements, promotional material or promotional activities about this Contract.

16.6 Each Party undertakes not to post on websites or social networking sites and not to publicly display objectionable or derogatory comments about the Goods, this Contract, each other, or any Personnel and to ensure that its Personnel do not do so.

Signing the Contract

16.7 The date of execution is date this Contract is signed. This Contract is properly signed if each Party signs the same copy, or separate identical copies, of Page 1. If this Contract is signed on two separate dates or separate copies are signed, the date of execution is the later of the two dates. Where separate copies are signed the signed copy can be the original document, or a faxed or emailed copy.

Clauses that remain in force

16.8 The clauses that by their nature should remain in force on expiry or termination of this Contract do so, including clauses: 7 (Information management), 9 (Insurance), 11 (Resolving disputes), 12 (Ending this Contract), 13 (Confidential Information), 16 (General) and 17 (Definitions).

Precedence

- 16.9 If there is any conflict or difference between the documents forming this Contract (as stated on Page 1) then the order of precedence is:
- a. a Variation agreed between the Parties under clause 16.1
 - b. Schedule 1
 - c. any Attachment to Schedule 1
 - d. Schedule 2.

17. Definitions

17.1 When used in this Contract the following terms have the meaning beside them:

Attachment Any supplementary document named in Schedule 1 as an Attachment to this Contract.

Business Day A day when most businesses are open for business in New Zealand. It excludes Saturday, Sunday and public holidays. A Business Day starts at 8.30am and ends at 5pm.

Buyer The Buyer is the purchaser of the Goods. The Buyer is the Sovereign in right of New Zealand who acts by and through the government agency named as the Buyer on page 1 of this Contract for the purposes of this Contract.

Charges The total amount payable by the Buyer to the Supplier as stated in Schedule 1. The Supplier's Charges include Costs and any Expenses stated in Schedule 1. Charges are payable on successful delivery of Goods provided a valid tax invoice has been submitted.

Confidential Information Information that:

- a. is by its nature confidential
- b. is marked by either Party as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence'
- c. is provided by either Party, or a third party 'in confidence'
- d. either Party knows or ought to know is confidential, or
- e. is of a sensitive nature or commercially sensitive to either Party.

Conflict of Interest A conflict of interest arises if a Party or its Personnel's personal or business interests or obligations do or could conflict or be perceived to conflict with its obligations under this Contract. It means that its independence, objectivity or impartiality can be called into question. A conflict of interest may be:

- a. actual: where the conflict currently exists
- b. potential: where the conflict is about to happen, or could happen
- c. perceived: where other people may reasonably think that a person is compromised.

Contract The legal agreement between the Buyer and the Supplier that comprises Page 1 (the front sheet), Schedule 1, this Schedule 2, any other Schedule, and any Variation and Attachment.

Contract Manager The person named in Schedule 1 as the Contract Manager. Their responsibilities are listed in clause 6.

Cost The amount payable to the Supplier for the Goods calculated on the basis stated in Schedule 1 excluding any Expenses.

Delivery Address The address where the Supplier must deliver the Goods as specified in Schedule 1 or such other address as specified by the Buyer.

Description of Goods The specific requirements for the Goods as described in Schedule 1.

End Date The earlier of the date this Contract is due to end as stated in Schedule 1, the date of termination as set out in a Notice of termination, or any other date agreed between the Parties as the date the Contract is to end.

Expenses Any actual and reasonable out-of-pocket costs incurred by the Supplier in the delivery of the Goods and agreed to by the Buyer in Schedule 1.

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

- a. acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires, pandemics and any natural disaster
- b. acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilisation, requisition or embargo
- c. acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war, or
- d. contamination by radioactivity from nuclear substances or germ warfare or any other such hazardous properties.

Goods The Goods described in Schedule 1 that the Supplier must supply under this Contract.

GST The goods and services tax payable in accordance with the New Zealand Goods and Services Tax Act 1985.

Notice A formal or legal communication from one Party to the other that meets the requirements of clause 14.

Party The Buyer and the Supplier are each a Party to this Contract, and together are the Parties.

Personnel All individuals engaged by either Party in relation to this Contract, or the supply of Goods. Examples include: the owner of the business, its directors, employees, subcontractors, agents, external consultants, specialists, technical support and co-opted or seconded staff.

Records All information and data necessary for the management of this Contract and the supply of Goods. Records include but are not limited to, reports, invoices, letters, emails, notes of meetings, photographs and other media recordings. Records can be printed hard copies or soft copies stored electronically.

Schedule An attachment to this Contract with the title 'Schedule'.

Start Date The date when this Contract starts as stated in Schedule 1.

Supplier The person, business, company or organisation named as the Supplier on page 1. It includes its Personnel, successors, and permitted assignees.

Variation A change to any aspect of this Contract that complies with clause 16.1.