

Terms and Conditions of Purchase

1. Definitions and Interpretation

1.1. Definitions

In these Conditions, unless otherwise indicated by the context:

Agreement means the agreement between COUNCIL and the Supplier consisting of a Purchase Order, these Conditions and all documents attached by COUNCIL or which COUNCIL agrees are incorporated by reference, subject to any further terms set out in the Purchase Order pursuant to clause 2.5, and any variation pursuant to clause 18.4;

Background IP Rights means IP Rights of a party which: (a) are in existence at the date of the Agreement; or (b) come into existence after the date of the Agreement otherwise than in connection with the Agreement;

Conditions means these terms and conditions of purchase;

Supplier Code of Conduct means the code of conduct that provides a minimum set of expectation that government expects of all its suppliers providing goods and services.

Confidential Information means all intellectual property and other information belonging to the parties (including but not limited to this Agreement) which by designation or by its nature is intended to be treated as confidential will be confidential information for the purposes of this Agreement;

GST means the *Goods and Services Tax Act 1985* and the related provisions of the *Tax Administration Act 1994*;

Hazardous Substance means a hazardous substance as defined in the *Hazardous Substances and New Organisms Act 1996*;

IP Rights means all rights conferred by statute, common law or equity in relation to copyright, trade secrets, trademarks, designs, drawings, patents, know-how, secret processes, formulae, semiconductor or circuit layouts and all rights of a proprietary nature created (whether or not registered or registrable);

Law means any applicable statute, rules, regulations, by-laws, codes, standards, ordinances, licences, orders, official policies, directions, requests, requirements and guidelines in force from time to time in New Zealand, whether made by Parliament or local government or by regulatory departments, bodies, instrumentalities, Ministers, agencies, or statutory authorities;

Party means COUNCIL or the Supplier and "**Parties**" means both of them;

Personal Information has the meaning given in the *Privacy Act*;

Personnel means the employees, officers, agents, consultants, other contractors and subcontractors of a Party;

Policies means COUNCIL's written guidelines, policies, principles, procedures and rules;

Price means the price set out in, or calculated in accordance with, the Purchase Order;

Privacy Laws means the *Privacy Act 1993* ("**Privacy Act**") and any other applicable laws of privacy;

Product means all goods or other materials supplied or to be supplied by the Supplier under the Agreement including product which is the output of Services;

Purchase Order means the document entitled "Purchase Order" in or to which these Conditions are referred or attached;

Services means the services to be provided by the Supplier specified in a Purchase Order;

Site means the site to which Product is to be delivered or at which Services are to be performed;

Supplier means the company, firm, person or persons named in the Purchase Order;

COUNCIL means Hauraki District Council; and

Work means performance of the Services or delivery, supply or manufacture in whole or in part of the Product.

1.2 Interpretation

In these Conditions, unless otherwise indicated to the contrary:

- (a) a reference to the Agreement or any other document or agreement, includes any variation, replacement or novation of them;
- (b) the use of the word "includes" or "including" shall be interpreted to mean "includes" or "including" without limitation";
- (c) headings are for ease of reference only and do not affect interpretation;
- (d) the singular includes the plural and vice versa;
- (e) a reference to "\$" or "dollars" is to New Zealand dollars;
- (f) a reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (g) where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase shall have corresponding meanings; and
- (h) a reference to all or any part of a Law includes that Law as amended, consolidated, re-enacted or replaced from time to time.

2. Formation of Contract

- 2.1. The COUNCIL agrees to purchase and the Supplier agrees to sell and/or supply the Products and/or Services for the Price on the terms and conditions set out in the Agreement.
- 2.2. Acceptance of the Purchase Order shall be deemed to be an acceptance of this Agreement to the exclusion of any other terms and conditions, unless a COUNCIL contract has been executed between the parties that relates to the purchase of the Products and/or Services, in which case such contract shall override and replace this Agreement.
- 2.3. Acceptance or rejection of a Purchase Order must be in writing to the COUNCIL. If the Supplier commences Work, or does not reject a Purchase Order within [seven] days, then the Supplier shall be deemed to have accepted the Purchase Order and this Agreement will apply.
- 2.4. If the Supplier has accepted (or deemed to have accepted) the Purchase Order, it will be bound to provide the Product and Services specified in the Purchase Order in accordance with the Agreement. Acceptance (or deemed acceptance) is irrevocable. The COUNCIL may vary a Purchase Order after it has been accepted (or deemed to be accepted), provided it has obtained the prior written consent of the Supplier.
- 2.5. If the terms and conditions of any part of this Agreement conflict, the following order of precedence shall apply to the extent of such conflict (with (a) having the highest order of priority):
 - (a) the terms and conditions set out in the Purchase Order;
 - (b) these Conditions; and
 - (c) any documents attached by COUNCIL or which COUNCIL agrees in writing are incorporated by reference.

3. Supplier's Obligations and Warranties

- 3.1. Without limiting any other obligation under the Agreement, the Supplier:

- (a) shall be responsible for any discrepancies, errors or omissions in specifications, drawings or any particulars supplied by it and shall carefully check information of any kind provided to it by COUNCIL;
- (b) shall comply with all reasonable instructions and directions of COUNCIL;
- (c) shall not access any area's they shouldn't, whether physical or electronic;
- (d) shall not create any IT or other security risk for COUNCIL;
- (e) shall ensure that it and its Personnel do not make public or disclose any Confidential Information of COUNCIL except to the extent required by Law to do so and subject to giving COUNCIL reasonable notice prior to disclosure;
- (f) shall ensure that it and its Personnel comply with all Laws including:
 - (i) Laws relating to employees including those governing freedom of association; employment conditions, remuneration and entitlements; minimum working age; equal opportunity and discrimination;
 - (ii) shall comply with all Privacy Laws in relation to Personal Information, whether or not the Supplier is an organisation bound by the Privacy Act;
 - (iii) competition laws including the Commerce Act 1986; and
 - (iv) Laws governing occupational health and safety and environmental protection.
- (g) warrants, without limiting any other provisions of the Agreement (or otherwise), that all Product will, for the economic life of the Product, unless otherwise specified:
 - (i) conform with all specifications set out in the Purchase Order;
 - (ii) be new, of merchantable quality, and fit for its intended purpose;
 - (iii) provide the full functionality and performance claimed for the Product; and
 - (iv) operate in accordance with its specifications;
- (h) warrants, without limiting any other provisions of the Agreement (or otherwise), that all Services will:
 - (i) be provided with due skill and care;
 - (ii) be free from material defects and errors;
 - (iii) be carried out with the sufficient number of skilled, trained and experienced employees to complete the Services in accordance with the requirements of this Agreement; and
 - (v) be performed in a professional manner, in accordance with industry best practice.

3.2. The Supplier will at all times act in good faith in respect of the COUNCIL and not bring the COUNCIL'S reputation into disrepute.

3.3. The Supplier warrants that it has undertaken full due diligence in relation to the Work to be undertaken and has not relied on the information provided by the COUNCIL.

3.4. The Supplier acknowledges that it has read and understood the Code of Conduct and that the Supplier has built a reputation based on acting with integrity and fairness at all times, and that culture of openness exists where any behaviours that breach the Code of Conduct are to be brought to light; www.hauraki-dc.govt.nz/council/contractor-management > [Supplier Code of Conduct](#)

4. Defects

4.1 Unless COUNCIL exercises its rights under clause 4.2, the Supplier shall, at its cost and without prejudice to any of COUNCIL'S other rights and remedies, promptly rectify all defects, or breach of any warranty set out in clause 3, occurring in the Work, to the reasonable satisfaction of COUNCIL.

4.2 If a Product or Service does not substantially meet the requirements of the Agreement (including any specifications), COUNCIL may reject all or part of the Product or Services. The Supplier shall refund to COUNCIL, upon request, any payments made by COUNCIL in respect of such rejected Product and Services. Title

and risk in rejected Product shall revert to the Supplier upon receipt by COUNCIL of the refund.

5. Information

- 5.1 **Record retention:** The Supplier shall keep and maintain all documents, information, records, Consents, correspondence, notes, accounts, and recorded time spent in relation to the Product and/or Services "Records", to a standard of a prudent and diligent business operator, for the longer of 7 years from the date that the Record is created or such longer length of time required by law.
- 5.2 **Audit:** The Supplier shall provide access to all of its Records to the COUNCIL or its agent for the purpose of the COUNCIL conducting an audit to ensure that the Supplier is in compliance with the requirements of this Agreement, provided that the COUNCIL has given at least two Working Days' notice of such audit. The COUNCIL may take and remove copies of Records in the course of such audit.
- 5.3 **Obligation of confidence:** The Supplier shall hold and maintain all Confidential Information in strict confidence and as a trade secret. The Supplier shall effect and maintain security measures to safeguard the Confidential Information that are at least as stringent as those effected and maintained by the COUNCIL for its own confidential information.
- 5.4 **Disclosure:** The Supplier may only use and disclose Confidential Information received from the COUNCIL to the extent reasonably required in supplying the Product and/or undertaking the Services, by law, by a Court of competent jurisdiction or as agreed in writing by the parties.
- 5.5 **Information and meetings:** The Supplier shall provide information, and attend all meetings, as reasonably requested by the COUNCIL.
- 5.6 **Media statements:** The Supplier shall not erect any sign, make any press release or other statement to the media or public, including without limitation via social media or a website, concerning or relating to the COUNCIL or any aspect of the Product and/or Services without obtaining prior written approval from the COUNCIL.
- 5.7 **Other publicity:** The Supplier must first obtain the COUNCIL's prior written permission if it wishes to promote itself in respect of the provision of the Product and/or Services or involvement with the COUNCIL.
- 5.8 **Privacy:** The parties acknowledge that the Supplier may have access to sensitive or personal information held by the COUNCIL. As such, the Supplier agrees at all times, to comply with the requirements of the COUNCIL, the COUNCIL's relevant policies and procedures and the Privacy Laws in relation to such information. The Supplier agrees that it shall only access or use such information that it is expressly authorised to access by the COUNCIL as part of the Services. Any personal information held by the COUNCIL shall at all times constitute Confidential Information.
- 5.9 **Local Government Official Information:** The Supplier acknowledges that any information held by the COUNCIL is subject to the Local Government Official Information and Meetings Act 1987 "LGOIMA". If the COUNCIL receives a request from a third Party relating to this Agreement or documentation concerning this Agreement then the COUNCIL shall give the Supplier reasonable opportunity to comment on whether or not there are good or conclusive reasons under LGOIMA for withholding the information, but the COUNCIL has the final decision on whether or not the Confidential Information is to be released pursuant to LGOIMA and may be required to release it by an Ombudsman, Tribunal or Court.

6. COUNCIL Property

- 6.1. Title to any and all goods, material and equipment supplied by COUNCIL ("COUNCIL Material") for the Suppliers use in performing any Work shall remain with COUNCIL and shall not pass to the Supplier under any circumstances. The Supplier may only use COUNCIL Material to perform the Work and bears the risk of loss or damage in relation to the COUNCIL Material while it is in possession or in control of the COUNCIL Material. The Supplier shall store, take appropriate care of and maintain

the COUNCIL Material and compensate COUNCIL if any COUNCIL Material is lost or damaged.

- 6.2. Title to any and all drawings, specifications, information and samples provided by COUNCIL shall to the extent owned by COUNCIL remain with COUNCIL and are deemed to be Confidential Information. COUNCIL makes no warranties regarding the accuracy of, and shall not be liable for, any defects, mistakes or inaccuracies in such documents, information or samples.

7. Intellectual Property Rights

- 7.1. Nothing in this Agreement transfers ownership of Background IP Rights between the parties. The Supplier grants COUNCIL an irrevocable, non-exclusive, transferable, royalty-free licence to use, modify and sub-licence its Background IP Rights that relate to the Work and to the extent necessary for the use, repair, maintenance, upgrade or modification of Product. For the purposes of this clause, COUNCIL's use of the Supplier's Background IP Rights includes COUNCIL's right to reproduce, publish, copy, adapt, communicate to the public, destroy or in any way change the materials or part of the Work:

- (a) with or without attribution of authorship;
- (b) in any medium; and
- (c) in any context and in any way it sees fit.

- 7.2. The Council shall own any and all new IP Rights created by the Supplier (and its Personnel) in undertaking any Work or Services on their creation, and to the extent that the Council does not own such new IP Rights on creation, the Supplier agrees to assign such new IP Rights to the COUNCIL on the COUNCIL'S written request. The Supplier shall, at its cost, do all things reasonably requested by COUNCIL to give effect to the assignment of IP Rights set out in this clause.

- 7.3. The Supplier:

- (a) warrants that the Works, Products and Services, and COUNCIL's use of the Works, Products and Services, will not infringe any third-party owned IP Rights; and
- (b) shall indemnify COUNCIL and COUNCIL's Personnel against any claims, demands, costs, expenses, liability, losses or damage suffered or incurred by COUNCIL and COUNCIL's Personnel arising out of, or in any way in connection with, any actual claim or alleged claim that the COUNCIL'S receipt or use of the Works, Products and/or Services infringe any third-party owned IP Rights.

The Supplier shall at COUNCIL's option and at the Supplier's expense either replace an infringing part of the Works, Products or Services with a non-infringing part, or modify the Works, Products or Services so that they are non-infringing (in either case, to deliver the same functionality and performance as the infringing part), or procure for COUNCIL the right to use such infringing part.

8. Time and Delivery

- 8.1. The times and dates stated in the Purchase Order for delivery or completion (including any extension of such time or date granted in writing by COUNCIL) shall be binding and are of the essence.
- 8.2. If it appears that the Goods or Services will not be delivered or completed within the time and dates stated in the Purchase Order, the supplier must immediately notify the COUNCIL of the anticipated delay. In the event of the delay occurring COUNCIL reserve the right to terminate all or part of the Agreement (without compensation to the Supplier).
- 8.3. The Supplier shall deliver or arrange delivery of Products without additional charge to COUNCIL, to the address stated in the Purchase Order.
- 8.4. The Supplier shall not charge COUNCIL for wrapping, packing, cartons, boxing or preparing the Products for shipment unless authority for such charge is expressly incorporated in the Agreement.
- 8.5. The Supplier must ensure that:

- (a) All cases, crates and packages to be used in packaging the Products shall be protected against corrosion, weather damage, condensation, distortion, damage by vermin and the ingress of foreign matter;
 - (b) All packaging material shall comply with all legal requirements in New Zealand which are relevant to such materials, including the requirements of the Ministry of Forestry and the Ministry of Agriculture and Fisheries. The Supplier shall take all necessary steps to ensure that the packing materials comply with such rules and the Supplier indemnifies COUNCIL against all losses, claims or expenses suffered or incurred by it as a result of such packing material not so complying;
 - (c) A packing slip is provided with all goods;
 - (d) The number on the Purchase Order must be quoted on all packing slips, delivery dockets, invoices and related documents, and shown clearly on all consignments.
- 8.6. The Supplier shall ensure that prior to the delivery or use of any Hazardous Substance on Site, the Supplier:
- (a) applies appropriate labelling to the Product;
 - (b) provides COUNCIL with a copy of the current Safety Data Sheet for such Hazardous Substance that complies with any relevant Code of Practice;
 - (c) provides COUNCIL with a completed risk assessment if Services include the use of such Hazardous Substances;
 - (d) complies in all respects with the requirements of the *Hazardous Substances and New Organisms Act 1996* and related regulations; and
 - (e) complies with the health and safety requirements at clause 17.

9. Risk and Title

- 9.1. Title in the Product shall pass to COUNCIL upon payment.
- 9.2 The Supplier warrants that at the time of delivery of Product:
- (a) the Supplier owns the Product free of any security interests, liens, charges and encumbrances and provides the Product to COUNCIL on that basis; and
 - (b) COUNCIL is entitled to clear title to the Product, and complete and quiet possession of the Product.

10. Price and Payment

- 10.1. Prices are, unless otherwise specified in the Purchase Order, fixed and not subject to variation except as permitted under the Agreement. Unless otherwise stated in the Purchase Order, prices include GST and any other taxes and charges.
- 10.2. The Supplier shall submit a valid GST tax invoice for the Price specifying the Purchase Order number, Product item number and other relevant details required by COUNCIL. Invoices shall be issued in accordance with the timing set out in the Purchase Order, or if no timing is specified, on delivery of the Product or completion of the Services or Work, or on a monthly in arrears basis where the Services or Work takes longer than one month.
- 10.3. Invoices are to be emailed to info@hauraki-dc.govt.nz or addressed to: Hauraki District Council, Accounts Payable, PO Box 17, Paeroa, 3640, New Zealand.
- 10.4. The COUNCIL will pay the amount set out in each valid invoice in accordance with the payment terms set out in the Purchase Order, or if not specified in the Purchase Order, on the 20th of the month following the month in which the invoice was issued.
- 10.5. COUNCIL may set-off any amount due and payable by COUNCIL to the Supplier against any amount owing by the Supplier to the COUNCIL, however or whenever incurred (including under an indemnity).
- 10.6. Should COUNCIL dispute all or part of an invoice is payable, COUNCIL shall pay the undisputed portion of the invoice, and notify the Supplier in writing of the dispute. Any dispute raised in relation to an invoice shall be remedied in accordance with clause 16 of these Conditions.

11.No Inducement

- 11.1 If the Supplier either directly or indirectly provides to an employee of COUNCIL any benefit which might reasonably be construed as an inducement for the employee to show favour to the Supplier then COUNCIL may at its option give notice to the Supplier that the Agreement is void and of no force or effect.

12.Liability, Indemnity and Insurance

- 12.1. The Supplier shall indemnify COUNCIL and COUNCIL's Personnel against all loss, actions, liabilities, proceedings, claims, demands, damages, costs or expenses (including legal fees and disbursements) suffered or incurred by COUNCIL and COUNCIL Personnel arising out of damage to property to the extent caused or contributed to by an act or omission of the Supplier, or the Supplier's breach of this Agreement.
- 12.2. Except to the extent that liability cannot be legally limited or excluded and whether in contract, tort, negligence, under an indemnity, under statute, in equity or otherwise:
- (a) COUNCIL's liability arising out of or in connection with the Agreement shall be limited to payment of the Price; and
 - (b) in no event shall COUNCIL be liable for indirect or consequential loss or damage, or any economic loss, loss of profit, loss of revenue, loss of contract, loss of business, loss of opportunity, loss of production or production stoppage, or loss of data.
- 12.3. The Supplier shall at its expense effect and maintain:
- (a) a public liability insurance policy with a sum insured of not less than \$2 million per event, unless agreed otherwise with the COUNCIL; and
 - (b) an insurance policy covering (to replacement value) the loss of or damage to the Product at all such times that risk of loss of or damage to the Product remains with the Supplier.

13.Site Access

- 13.1. The Supplier will be given access to the Site for a period sufficient to enable it to execute its contractual obligations under the Agreement. Access shall be at a mutually convenient time.
- 13.2. Unless otherwise agreed in writing the Supplier shall provide at its own expense all Site facilities, constructional plant and other amenities as may be necessary for the performance of the Work.
- 13.3. When on Site, the Supplier shall comply with and shall ensure that its Personnel comply with all Policies and Laws applicable to the Site.

14.Termination

- 14.1. If the Supplier:
- (a) breaches clause 3.1;
 - (b) does not remedy any breach of the Agreement which is capable of remedy within 14 days of being requested by COUNCIL in writing to do so;
 - (c) becomes bankrupt, or has a liquidator, administrator, receiver, receiver and manager, controller, trustee, inspector under any companies or securities legislation or other like officer appointed over some or all of its assets, or is struck off; or
 - (d) has any legal or beneficial change in shareholding that the COUNCIL has not consented to in writing,
- then COUNCIL may, at its option and without prejudice to any other rights it may have, by notice in writing provided to the Supplier terminate the Agreement with immediate effect.
- 14.2 On termination or expiry of this Agreement, the COUNCIL may require the Supplier to do one of the following, by providing notice in writing to the Supplier:

- (a) deliver to COUNCIL any of the Work partially completed, and COUNCIL shall pay a reasonable pro-rata fee for the incomplete Work, up to a maximum of the Price; or
- (b) the COUNCIL may demand an immediate refund of all amounts paid by COUNCIL in respect of this Agreement and/or the Work, and the COUNCIL shall return all Work partially completed.

14.3 COUNCIL may at any time without cause, suspend the Work or terminate the Agreement by giving notice in writing to the Supplier. On receipt of a notice from COUNCIL, the Supplier shall immediately cease or suspend Work in accordance with and to the extent specified in the notice. If such notice is given, COUNCIL shall only be liable for a reasonable pro-rata fee for the incomplete Work, performed up to the date of receipt of the notice from COUNCIL up to a maximum of the Price.

14.4 On termination or expiry of this Agreement, the Supplier shall:

- (a) return any COUNCIL property in their possession, to the COUNCIL including without limitation Council Materials; and
- (b) immediately cease use of the COUNCIL'S IP Rights and Confidential Information.

15 Force Majeure

15.1 Neither party shall be responsible for reasonable delays in performance or completion of the Works or undertaking their obligations pursuant to this Agreement, where the cause of such delay in performance or completion is the result of war, strike, fire, pestilence, the acts of God or the public enemy, riot or civil commotion, change of Laws, or any other cause reasonably beyond their control.

16. Dispute Resolution

16.1 If any dispute between the Parties arises out of or in connection with the Agreement ("**Dispute**"), either Party may give written notice of that Dispute to the other Party, giving details of the subject-matter of the Dispute ("**Notice of Dispute**").

16.2 Upon the giving of a Notice of Dispute, the following shall apply:

- (a) the Dispute shall be submitted for negotiation by the respective Chief Executive Officers of the Parties or their respective nominees;
- (b) If the dispute is not resolved in accordance with 16.2(a) within 10 working days of the referral for resolution, then the dispute will be referred to mediation;
- (c) If the dispute is unable to be resolved at mediation within 30 working days of the referral for resolution, then either party may submit the Dispute to arbitration in accordance with the *Arbitration Act 1996* (excluding clauses 4 and 5 of the Second Schedule);
- (d) if the Parties fail to agree on the appointment of an arbitrator within 5 days of submitting the Dispute to arbitration, the appointment will be made by the President of the Auckland District Law Society for the time being or their nominee;
- (e) the award of such arbitration shall be final and binding on both Parties;
- (f) a reference to arbitration under this clause shall not relieve the Supplier of any obligations under the Agreement, including, if and so far as is reasonably practicable, the obligation to take steps necessary during arbitration proceedings to ensure that the progress of the Agreement will be maintained; and
- (g) the seat of Arbitration shall be Auckland, New Zealand. The language to be used in the arbitration shall be English.

17. Occupational Health Safety and Environment

- 17.1 Without limiting any other provision or the obligation under the Agreement, the Supplier shall ensure that the Work and workplace are safe, adequately managed and shall take all practicable steps to ensure that the Work and workplace are free from risks to health, safety and the environment and in doing so shall:
- (a) have a safety and environmental management system that ensures compliance with occupational health, safety and environment Laws;
 - (b) prepare safe work method statements for the Work which:
 - (i) describes how the Work is to be performed and the equipment to be used;
 - (ii) identify the work activities assessed as having safety and environmental risks and the control measures that will be applied to such risks, (iii) the standards or codes to be complied with, (iv) the qualifications of the Personnel doing the Work and (v) the training required to do the Work;
 - (c) ensure the Work is adequately supervised at all times to ensure workplace health and safety and protection of the environment;
 - (d) ensure that it and its Personnel performing the Work are qualified, have undertaken the relevant training for the Work and hold relevant current qualifications, licences, permits, authorisations and certifications in accordance with applicable Laws including the Health and Safety At Work Act 2015 and any COUNCIL required accreditation;
 - (e) ensure that all Personnel are provided with all relevant information and instruction to ensure safe performance of the Work;
 - (f) ensure that all plant, equipment and substances used in performing the Work are safe and limit, as far as reasonably practicable, risks to health, safety and the environment (when properly used); and
 - (g) if requested by COUNCIL, provide evidence of compliance with this clause 16.
- 17.2 Where the parties have a duty in relation to the same matter imposed by or under the Health and Safety At Work Act 2015, the parties shall, so far as is reasonably practicable, consult, co-operate with, and co-ordinate activities with each other.
- 17.3 COUNCIL may, upon reasonable notice to the Supplier, audit the Supplier's compliance with this clause 16 and the Supplier shall cooperate with any reasonable requests of COUNCIL in connection with such audit.

18. General

- 18.1 **Notices:** For the purpose of service of any document or notice in connection with the Agreement it shall be sufficient for either COUNCIL or the Supplier to forward such document or notice by hand, prepaid post or facsimile to the registered office of the other party.
- 18.2 **Severability:** If the whole or any part of this Agreement is or becomes or is held to be illegal invalid or unenforceable, then the whole and each part of the clauses of these Conditions shall (to the extent necessary to avoid such illegality invalidity or unenforceability) be interpreted read down or severed without affecting the operation of the remaining clauses.
- 18.3 **Assignability:** The Supplier shall not, without the prior written consent of COUNCIL, assign, transfer or subcontract the performance of any or all of the Supplier's obligations or benefits under the Agreement to a third party.
- 18.4 **Variation:** The Agreement may only be amended in writing signed by both parties.
- 18.5 **Governing law:** The Agreement shall be governed by and construed in accordance with the laws of New Zealand and subject to clause 15, the parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand.
- 18.6 **Survivorship:** Termination of this Agreement for any reason will not affect such rights and obligations of the parties as are intended to survive the termination, including but not limited to clauses 3, 5, 7, 12, 14 and 18.

- 18.7 **Waiver:** A party will not have waived or be deemed to have waived any provision of this Agreement unless the waiver is in writing and signed by that party.
- 18.8 **No relationship:** This Agreement does not create any relationship of partnership, employment, agency or joint venture between the parties.