

1. Definitions

- 1.1. If applicable, capitalised terms have the meaning given to them in this Agreement. In addition, the following definitions apply in this Agreement:
- 1.2. "Agent," "we" or "us" shall mean Shuk Engineering Distributors Limited (our successors and assigns), or any person acting on behalf of Shuk Engineering Distributors Limited with written authority.
- 1.3. "Customer," "you" or "your" shall mean the Customer purchasing Goods or Services from us, or any person acting on behalf of you (including authorised representatives).
- 1.4. "Goods" shall mean all Goods or Services supplied to you by us at your request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).
- 1.5. "Price" shall mean the Price of the Goods or Services as agreed between you and us in accordance with clause 6.
- 1.6. "Agreement" shall mean these Terms & Conditions, as may be amended from time to time (including any orders, purchases or schedules as applicable).
- 1.7. "Amounts Owing" shall mean any amount owed by you to us, from time to time, including the Price, any interest payable by you, any of your liability under this Agreement and any enforcement expenses incurred by us in seeking payment of any Amounts Owing by you.
- 1.8. "Business Day" shall mean Monday to Friday, excluding public holidays in New Zealand.
- 1.9. "Confidential Information" shall mean all information that could be reasonably regarded in the circumstances as confidential, including information which relates to the business, interests or affairs of a party, this Agreement, the Goods or Services (as applicable), and intellectual property rights, but excludes information which is:
 - (a) in the public domain, other than as a result of a breach of this Agreement;
 - (b) in the possession of a party prior to the commencement of this Agreement without any obligation of confidentiality; and
 - (c) is independently developed or acquired by a party prior to the commencement of this Agreement without relying on information which would itself be Confidential Information.
- 1.10. "Insolvency Event" shall mean an event of insolvency, including bankruptcy; the appointment of an insolvency administrator, manager, receiver or liquidator; any action related to winding up or making a material arrangement in relation to creditors; applying for any type of protection against creditors; being unable to pay your debts as they fall due; or taking or suffering any similar or analogous action in any jurisdiction as a consequence of debt.
- 1.11. "Personnel" shall mean directors, officers, employees, agents and contractors.
- 1.12. "CCLA" shall mean the Contract and Commercial Law Act 2017.
- 1.13. "PPSA" shall mean the Personal Property Securities Act 1999.
- 1.14. "Regulator" shall mean any authority, commission, government department, court, tribunal, or similar having regulatory or supervisory authority over the parties, Goods or Services.
- 1.15. "Related Company" has the meaning given to it in Part 1, section 2(3) of the Companies Act 1993.
- 1.16. "Security Agreement" and "Security Interest" have the meaning given to them in Part 2, section 16 and 17 of the PPSA.

2. Interpretation

- 2.1. In this Agreement, unless the context otherwise requires:
 - (a) headings are for convenience only and do not affect interpretation;
 - (b) a reference to legislation includes all regulations, orders, instruments, codes, guidelines or determinations issued under that legislation or any modification, consolidation, amendment, re-enactment, replacement or codification of it;
 - (c) a reference to "in writing" includes by email;
 - (d) the words "include" or "including" or similar expressions are to be construed without limitation;
 - (e) a reference to a party shall include that party's successors, permitted assigns and substitutes; and
 - (f) a word importing the singular includes the plural and vice versa.

3. Acceptance

- 3.1. All orders are subject to our acceptance and we may (in our sole discretion) accept an order in whole or in part, by issuing an invoice in respect of the applicable Goods or Services, delivering the Goods or otherwise confirming the order in writing.
- 3.2. We are under no obligation to enquire as to the authority of any person placing an order on your behalf and if you place an order for, or accept any provision of Goods or Services from us, then you are taken to accept this Agreement and are immediately bound jointly and severally (including if you are part of a trust in which case you shall be bound in your capacity as a trustee), and such consent and acceptance to this Agreement shall continue to all future orders, purchases or schedules (as applicable).
- 3.3. This Agreement may only be amended with our written consent and shall supersede any other document or other agreement between you and us.
- 3.4. Electronic signatures shall be deemed to be accepted by both you and us (provided that both parties have complied with sections in Part 4, subpart 3 and all other relevant sections in Part 4 of the CCLA).

4. Your Authorised Representatives

- 4.1. Should you introduce any third party to us as your authorised representative, that representative shall have the full authority of you to order any Goods or Services on your behalf and such authority shall continue until all requested Goods or Services have been completed or you notify us in writing that said person is no longer your authorised representative.
- 4.2. In the event that your authorised representative is to have only limited authority to act on your behalf, then you must specifically and clearly advise in writing to us, the parameters of the limited authority granted to your authorised representative.
- 4.3. You agree that you will be solely liable for all expenses incurred in providing any Goods or Services requested by your authorised representative.

5. Changes to Your Details

- 5.1. You shall give us no less than fourteen (14) days written notice prior to any change in your details (including but not limited to, changes in ownership of the company, name, address, email, contact phone or business structure).
- 5.2. Should you fail to notify us of any change in your details, you acknowledge and expressly agree that:
 - (a) you will be in breach of this Agreement for failing to provide fourteen (14) days prior written notice of any change in your details in accordance with clause 5.1; and
 - (b) you shall be liable for any expenses or loss of profit suffered by us as a result of you failing to notify us of any such changes (including any Related Company).

6. Price and Payment

- 6.1. You will pay us the Price set out in any quotation or documentation that we provide to you in accordance with this Agreement, plus any "Goods and Services Tax" (as defined and imposed in Part 2, section 8(1) of the Goods and Services Tax Act 1985 (GST)).
- 6.2. Unless otherwise agreed by us in writing the Price shall be:
 - (a) indicated in invoices provided to you by us in respect of Goods or Services provided;
 - (b) the Price at the date of the provision of Goods or Services according to our current Price list; or
 - (c) our quoted Price which will be binding provided that you accept our quotation in writing within a thirty (30) day timeframe.
- 6.3. If the Price is not set out in quotations or other documentation, the Price for the relevant Goods or Services will be at our standard rate for such Goods or Services according to our current Price list or at such rate advised by us.
- 6.4. The Price will be payable by you on the date(s) determined by us, which may be:
 - (a) on delivery of Goods or completion of the Services;
 - (b) due twenty (20) days following the end of the month in which a statement or invoice is sent to your address or address for notices; or
 - (c) seven (7) days following the date of any invoice given to you by us if there is no notice to the contrary.
- 6.5. We reserve the right at any time to alter any Price lists. Any alterations to any Price list will be effective from the date specified by us and will apply to all orders or purchases accepted by us on or after that date (unless otherwise agreed in writing).
- 6.6. The Price does not include GST (unless otherwise stated by us in writing).
- 6.7. Payment may be made by cash, electronic/on-line banking, credit card, or any other method that we expressly agree to in writing, (cheques will not be accepted as payment).
- 6.8. All credit card payments will incur a two point five percent (2.5%) additional charge.
- 6.9. We may require that you pay a deposit or provide a guarantee as security for paying any Amounts Owing.
- 6.10. You shall not withhold payment of any Amounts Owing because part of the Services are disputed and in the event that part of the Goods or Services are in dispute, you agree that you will:
 - (a) meet all of your obligations to us under this Agreement and pay in full any Amounts Owing except for the amount that is in dispute; and
 - (b) provide a specific and detailed explanation of the dispute in writing to us within seven (7) days from the delivery of Goods or Services.
- 6.11. If an Insolvency Event occurs, all Amounts Owing will (whether or not due for payment) immediately become due and payable.

7. Delivery

- 7.1. We will deliver the Goods to the delivery location that we each agree to in writing and if the delivery location is at your premises (subject to clause 21), you will provide us and our Personnel with suitable access to the premises, together with any amenities reasonably required by us or our Personnel to perform delivery of the Goods.
- 7.2. Delivery of the Goods is taken to occur at the time that:
 - (a) you or your nominated carrier takes possession of the Goods at our address; or
 - (b) we (or our nominated carrier) delivers the Goods to your nominated address even if you are not present at the address.
- 7.3. At our sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 7.4. In the event that we are unable to supply the Services as agreed solely due to any action or inaction of you, then we shall be entitled to charge a reasonable fee for re-supplying the Goods and Services at a later time and date (including storage of the Goods if applicable).
- 7.5. You authorise any deviation from the intended route or method of carriage for the Goods that may be considered reasonable or necessary to complete delivery.
- 7.6. Should you request us to leave Goods outside our premises for collection, or to deliver the Goods to an unattended location, you expressly agree that those Goods shall be left unattended at your sole risk.
- 7.7. Any time specified by us for delivery of the Goods is an estimate only and we will not be liable for any expenses or losses incurred due to your reliance on our estimated time for delivery, nor can you cancel any order for delay in delivery.
- 7.8. We may deliver the Goods in separate instalments which will be invoiced and paid as individual transactions.

8. Variations

- 8.1. We reserve the right to change the quoted Price in the event that:
 - (a) you request any change to plans, specifications or the Goods or Services that were originally quoted; or
 - (b) any plans, specifications or other information supplied by you is inaccurate.

9. Defects

- 9.1. You shall inspect all Goods immediately on delivery and shall notify us of any alleged defect, shortage in quantity, damage or any other issue within seven (7) days from the date of delivery. If you do not notify us within the seven (7) day timeframe (from the date of delivery) then the Goods shall be presumed to be free from any defect or damage and we will consider all Goods to be supplied free from any defect or damage.
- 9.2. You shall afford us an opportunity to inspect the Goods within a reasonable time following delivery if you believe the Goods are defective in any way. If you fail to comply with clause 9.1 the Goods shall be presumed to be free from any defect or damage.

10. Returns

- 10.1. Any Goods will not be accepted for return without our prior written consent (which may be withheld at our sole discretion).
- 10.2. Any Goods are returned on condition that:
 - (a) you have notified and obtained our agreement within seven (7) days of receiving the Goods; and
 - (b) the Goods are returned in the condition in which they were received (including all packaging).
- 10.3. Return of any Goods for credit may incur a restocking fee of twenty percent (20%) of the value of the Goods.
- 10.4. Goods that are non-stock-list items or that are modified in any way shall not be accepted for return.

11. Cancellation

- 11.1. Should you cancel all or part of any order, you shall be liable for all Amounts Owing to us prior to cancellation (including any direct or indirect expenses incurred by us as a result of you cancelling any part of any order).
- 11.2. Orders made to your specifications or non-stock-list items cannot be cancelled once production has commenced.
- 11.3. Either party may cancel this Agreement immediately by written notice if the other party breaches a term of this Agreement which is not capable of remedy or, where the breach is capable of remedy, fails to remedy the breach within 20 Business Days of written notice of the breach.
- 11.4. Cancellation or expiry of this Agreement will not affect any rights accrued prior to such cancellation or expiry.
- 11.5. We shall be entitled to cancel all or part of any order of yours which remains unperformed and all Amounts Owing to us shall (whether or not due) become immediately payable in the event that:
 - (a) any money payable to us becomes overdue, or in our opinion you will be unable to meet your payments as they fall due; or
 - (b) an Insolvency Event occurs and you become insolvent/bankrupt, convene a meeting with your creditors or a receiver/liquidator or similar person is appointed in respect of you or any of your assets.

12. Privacy Act 2020

- 12.1. You authorise us and our agents to collect, use, retain and disclose "personal information" (as defined in Part 1, section 7 of the Privacy Act 2020) about you and your Personnel that you or they provide to us, in accordance with clause 12 for the following purposes:
 - (a) assessing creditworthiness and exercising our rights and/or performing our obligations under this Agreement;
 - (b) direct marketing purposes (including by email and other electronic means), unless you notify us that you do not wish to receive direct marketing from us;
 - (c) using the services of credit reporting and debt collection agencies and you consent to us disclosing personal information (including any information about default and repayment history) to a credit reporter, who may hold that information and use it to provide its credit reporting services;
 - (d) registering any Security Interest under this Agreement; and
 - (e) the use or transfer of personal information to a Related Company in connection with the performance of our obligations or exercise of our rights under this Agreement.
- 12.2. Clause 12.1 is authority and consent from you in accordance with sections in Part 3, Part 7, subpart 1 and all other relevant sections in the Privacy Act 2020.
- 12.3. You (if you are an individual) have the right under sections in Part 4, subpart 1 and Part 4, subpart 2 of the Privacy Act 2020 to access, and request correction of, any of your personal information held by us and if you provide any personal information about a third party (including your Personnel) to us, you confirm that you are authorised to do so by the relevant individual and you have informed the relevant individual that they have the right to contact us to access and, if applicable, request correction of any personal information that we hold about them.
- 12.4. Each party must keep confidential all Confidential Information, however nothing in clause 12 prevents a party from disclosing Confidential Information:
 - (a) in circumstances expressly provided for in this Agreement;
 - (b) if disclosure is required by law, or Regulator (but only to the extent required); or
 - (c) if disclosure is reasonably required to enable a party to perform its obligations or enforce its rights under this Agreement.
- 12.5. We may disclose Confidential Information to a Related Company and their Personnel on a 'need to know' basis, provided that person is under a duty to keep the Confidential Information confidential in accordance with this Agreement.
- 12.6. If the Services are expected to involve the sharing of any data sets, or other personal information, to you by us, or us to you, we will enter into a separate data protection agreement with you.
- 12.7. If you do not provide personal information requested by us, we may not be able to perform our obligations under this Agreement.

13. Intellectual Property and Designs

- 13.1. We own all right, title and interest in any designs (including all intellectual property rights in the Goods or Services) at all times.
- 13.2. Any new intellectual property which is created as a result of, or in connection with, the provision of our Goods or Services will be owned by us, unless otherwise agreed in writing.
- 13.3. If, notwithstanding clause 13.1, any intellectual property rights in any of our Goods or Services vests in you, you assign those intellectual property rights to us with effect from creation, and agree to do all things reasonably required by us to give effect to such assignment.
- 13.4. You warrant that the use by us of any designs, instructions or specifications supplied by you will not infringe the intellectual property rights of any other person and indemnify us against any damages, expenses, losses or liabilities (including full legal expenses on a solicitor-client basis) that we may suffer or incur in the event of any such infringement.

14. Consumer Guarantees Act 1993 & Fair Trading Act 1986

- 14.1. Nothing in this Agreement will affect any rights you may have as a "consumer" (as defined under the Consumer Guarantees Act 1993 (CGA)) under the CGA.
- 14.2. For the purposes of section 2 and Part 5, section 43(2) of the CGA, the parties acknowledge and agree that, if you are acquiring, or hold yourself out as acquiring, the Goods or Services in trade:

- (a) to the extent permitted by law, you are contracting out of the CGA (to the extent that the CGA would otherwise apply to any matters covered by this Agreement); and
 - (b) it is fair and reasonable for the parties to be bound by clause 14.2.
- 14.3. If you are acquiring the Goods or Services for the purpose of resupplying the Goods or Services in trade, you undertake that you will:
- (a) contract out of the CGA to the maximum extent permitted by law in your contracts with your own Customers; and
 - (b) procure that your Customers, and each other person in the distribution chain thereafter, contract out of the CGA to the maximum extent permitted by law in their contracts with Customers.
- 14.4. For the purposes of section 5D of the Fair Trading Act 1986 (FTA), the parties acknowledge and agree that, if you are acquiring, or hold yourself out as acquiring, the Goods or Services in trade:
- (a) to the extent permitted by law, you are contracting out of sections 9, 12A and 13 of the FTA; and
 - (b) it is fair and reasonable for the parties to be bound by clause 14.4.
- 14.5. You will indemnify us against any expenses or losses incurred by us as a result of your breach of clause 14.

15. Default in Payment

- 15.1. You agree to reimburse us for any expenses we incur in recovering any Amounts Owing (including but not limited to, administration fees, debt collection agency fees and full legal expenses on a solicitor-client basis), and unless waived by us in writing, we may charge interest at a rate of two and a half percent (2.5%) per calendar month on the outstanding amount from the due date of payment until the date the outstanding amount is paid.
- 15.2. We may begin proceedings to collect any invoice, notwithstanding that the ownership and title of the Goods or Services will not pass to you until full payment has been cleared and received by us in accordance with clause 16.

16. Retention of Title

- 16.1. Ownership (including all right, title and interest) of the Goods or Services remains with us and does not pass to you until:
- (a) all Amounts Owing for the Goods or Services have been cleared and received by us; and
 - (b) you have met all other obligations due to us in respect of this Agreement.
- 16.2. If any Amounts Owing are overdue or an Insolvency Event occurs, you give irrevocable authority to us to use reasonable force to enter anywhere Goods may be stored, to remove any Goods. We shall not be liable in contract, tort (including negligence) or otherwise, for any damages, expenses, or losses incurred by you or any third party, and you indemnify us against any liability we may have to any third party (including full legal expenses on a solicitor-client basis), as a result of exercising our rights under clause 16.2.
- 16.3. If you resell or use any Goods before ownership of the Goods has passed to you, the proceeds of such sale or use will be received and held by you (in whatever form) in trust for us to the extent of the Amounts Owing (where our interest as beneficiary under that trust will be that portion of the proceeds which is equivalent to the Amounts Owing to us and the balance of the proceeds (if any) will be your beneficial interest under that trust).
- 16.4. If any Goods are damaged where full payment has not been received and therefore ownership remains with us, then you agree that we are entitled to:
- (a) receive all insurance proceeds paid for the Goods; and
 - (b) supply this Agreement as a binding legal agreement which is sufficient evidence for us to deal directly with the insurance company to receive all proceeds for the Goods which we legally own in accordance with clause 16.1.
- 16.5. Payment in any form other than cash shall not be taken to be payment for the Amounts Owing and all ownership rights of the Goods or Services remain with us until that form of payment has been cleared and received.

17. Security and Lien

- 17.1. Subject to us providing Goods or Services, you charge all of your right, title and interest, whether joint or several in any land, real estate or other asset capable of being legally charged with a lien, owned by you either now or in the future, to secure the performance of all obligations (including but not limited to full payment of all Amounts Owing) under this Agreement.
- 17.2. You irrevocably appoint all directors of our companies (including any Related Company) as your true and lawful attorney(s) and agree that the appointed attorney(s) may perform all necessary acts to enforce our rights provided in clause 17 of this Agreement (including but not limited to signing any document on your behalf).
- 17.3. You are liable for all our disbursements and expenses (including full legal expenses on a solicitor-client basis) incurred in exercising our rights under clause 17 to secure the performance of your obligations to us under this Agreement.
- 17.4. It is fair and reasonable for the parties to be bound by clause 17.

18. Personal Property Securities Act 1999

- 18.1. This Agreement constitutes, in favour of us, a Security Agreement creating a Security Interest in the Goods or Services and the proceeds of such Goods or Services, to secure the payment by you to us, of all Amounts Owing and a Security Interest is taken in all Goods and Services (all present and after acquired personal property), in regard to your account, which is a monetary obligation of you to us for Goods or Services previously provided and that will be provided in the future.
- 18.2. You agree that you will:
- (a) sign any further document and provide any information which we may reasonably require to ensure we are paid all Amounts Owing due to us and otherwise to protect our interests under this Agreement including by registration of a financing statement and ensuring that we have a first ranking perfected Security Interest in the Goods or Services and/or a Security Interest in the proceeds of all Goods or Services (a Security Interest taken in all collateral and any proceeds of any collateral).
 - (b) give us (addressed to the financial controller or equivalent) not less than fourteen (14) days prior written notice of any proposed change in your name and/or any other changes in your details (including but not limited to, changes in ownership of the company, address, email, contact phone or business structure) in accordance with clause 5.1.
- 18.3. To the extent permitted by law, we each contract out of:
- (a) sections 114(1)(a), 133 and 134 of the PPSA; and
 - (b) your rights referred to in sections 107(2)(a), (c), (d), (e), (f), (g), (h) and (i) of the PPSA.
- 18.4. Nothing in this Agreement is to be construed as an agreement that a Security Interest in Goods (collateral) attaches at a later time than the time specified in Part 3, section 40(1) of the PPSA; a Security Interest is perfected in accordance with Part 3, section 41(1) of the PPSA; a Security Interest in all after acquired property attaches at the time specified in Part 4, section 44(1) of the PPSA; and a Security Interest in collateral shall extend to the proceeds as specified in Part 4, section 45(1) of the PPSA.
- 18.5. You waive your right to receive a verification statement under section 148 of the PPSA in respect of any financing statement relating to a Security Interest.
- 18.6. Each Security Interest is a continuing Security, notwithstanding any intermediate payments, settlement of accounts or anything else.
- 18.7. You must provide us with information and any associated documentation reasonably requested by us from time to time relating to your financial status.
- 18.8. If at any time we consider that your financial status is unsatisfactory, we may require you to grant additional Security Interest(s) as security for the Amounts Owing and we may suspend or cancel further supply of Goods or Services to you until you have provided such Security Interest(s).
- 18.9. Any actions taken by us under clause 18 shall be unconditionally ratified by you.

19. Trusts

- 19.1. If you at any time upon or subsequent to entering in to the Agreement are acting in the capacity of trustee of any trust then whether or not we may have notice of the trust, you expressly agree that:
- (a) the Agreement extends to all rights of indemnity which you now or subsequently may have against the trust and the trust fund; and
 - (b) you have full and complete power and authority under the trust to enter into this Agreement and the rights of the trust do not purport to exclude or take away the right of indemnity of you against the trust or the trust fund. You will not release the right of indemnity or commit any breach of trust or be a party to any other action which might affect that right of indemnity.
- 19.2. You will not without consent in writing from us, cause or permit any of the following events:
- (a) the removal, replacement or retirement of you as trustee of the trust;
 - (b) any alteration to or variation of the terms of the trust;
 - (c) any advancement or distribution of capital of the trust; and
 - (d) any change to the trust's property.

20. Warranty

- 20.1. For Goods not manufactured by us, the warranty shall be the current warranty provided by the manufacturer of the Goods. We shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

20.2. To the extent permitted by statute, no warranty is given by us as to the quality or suitability of the Goods for any purpose and any implied warranty is expressly excluded. We shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

21. Health and Safety at Work Act 2015

- 21.1. Each party will comply with the Health and Safety at Work Act 2015 (HSW Act), including all health and safety duties specified in Part 2 of the HSW Act, as well as all other applicable standards and codes of practice relating to health and safety. In addition, each party will comply with the other party's pre-notified and reasonable health and safety policies when on the party's premises.
- 21.2. You must notify us of any known hazards arising from your premises to which any person may be exposed to, as well as notify us of any notifiable injury, illness, incident or event (as defined in Part 1, subpart 3 of the HSW Act) to ensure that your workplace is without risks to the health and safety of any person.
- 21.3. Each party must consult, cooperate with and coordinate activities with all other persons who have a health and safety duty in relation to the same matter in providing the Goods or Services (including in connection with the delivery of the Goods or Services).

22. Supplied Information

- 22.1. Where you supply us with any design specifications (such as CAD drawings or any other electronic software that provides detailed and specific information relating to dimensions or measurements), you shall be responsible for providing accurate data and we shall be entitled to rely on the accuracy of any dimensions or measurements supplied by you.
- 22.2. We shall not be liable whatsoever for any errors in the Goods or Services (including additional expenses) that are caused by inaccurate data being supplied by you.
- 22.3. You agree that all specifications, illustrations, dimensions and weights stated in our Price list or advertising material supplied to you are estimates only and you acknowledge that these estimates should not be relied on for accuracy.
- 22.4. We accept no responsibility for any expenses or loss of profit suffered by you from a reliance on the estimations provided in any Price list or advertising material.

23. Third Party Suppliers

- 23.1. If you request and authorise us to arrange the provision of Goods or Services directly to you by a third party supplier (whether or not such arrangement involves us contracting as your agent), to the extent applicable, this Agreement shall apply to our Services in arranging such supply, provided that we exclude all liability in connection with the supply of Goods or Services to you directly by a third party supplier. You agree to pay all Amounts Owing in accordance with this Agreement in the event we arrange any supply of Goods or Services that are provided directly to you by a third party supplier.

24. Liability

- 24.1. We shall have no liability whatsoever to you for any indirect expense or loss of profit suffered by you arising out of a breach by us of this Agreement.
- 24.2. You shall not cancel any contract with us or sue for damages arising out of any unintentional misrepresentation made to you by us in regard to any Goods or Services.
- 24.3. Our liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods or Services.
- 24.4. To the extent permitted by law, our total liability under or in connection with this Agreement and the Goods or Services is limited to, at our option:
- (a) in the case of Goods, any one or more of the following: (i) the replacement of the Good(s) or the supply of equivalent Good(s); (ii) the repair of the Good(s); (iii) the payment of the expense of replacing the Good(s) or of acquiring equivalent Good(s); or (iv) the payment of the expense of having the Good(s) repaired; or
 - (b) in the case of Services: (i) supplying the Services again; or (ii) the payment of the expense of having the Services supplied again.
- 24.5. If, notwithstanding clause 23, we have any liability under or in connection with this Agreement, to the maximum extent permitted by law:
- (a) our total aggregate liability to you for any loss, damage or liability arising out of or in connection with this Agreement will be limited to the lesser of: (i) the Price paid by you to us for the applicable Goods or Services; or (ii) the actual loss or damage suffered by you; and
 - (b) we will not be liable for any: (i) indirect, special or consequential loss or damage whatsoever; or (ii) loss of profits, revenue, data, goodwill, Customers, opportunities or loss of or damage to reputation.
- 24.6. The limitations and exclusions on liability in this clause 24 will apply irrespective of the legal basis for the applicable claim, including contract, equity, tort (including negligence) or statute.
- 24.7. In no circumstances will we have any liability whatsoever under or in connection with this Agreement:
- (a) for the acts or omissions of any third party;
 - (b) any act or omissions performance in accordance with your instructions (or instructions from your representatives); or
 - (c) to any third party.

25. General

- 25.1. **Governing law:** This Agreement is governed by and to be construed in accordance with the laws of New Zealand and each party submits to the exclusive jurisdiction of the courts of New Zealand.
- 25.2. **Entire Agreement:** This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, representations and understandings.
- 25.3. **Priority:** To the extent of an inconsistency between:
- (a) this Agreement;
 - (b) all other schedules to this Agreement;
 - (c) any privacy or data agreement (if applicable); and
 - (d) the order of priority set out above will apply (with (a) having the highest priority).
- 25.4. **Sub-contracting:** We may subcontract the performance of our obligations (including to a Related Company), on the basis we remain solely liable to you for the performance of our obligations.
- 25.5. **Assignment:** You must not assign, novate or transfer your rights or obligations under this Agreement without our prior written consent (which may be withheld in our sole discretion). We may assign this Agreement to any other person. Without limiting the foregoing, we may assign to any other person all or part of the Amounts Owing by you to us.
- 25.6. **Amendments:** Except where stated otherwise in this Agreement, any amendment to this Agreement must be in writing, signed by both parties, except where we are required to make changes to ensure compliance with applicable laws in which case we can give you notice of any such amendments required and you will be bound by the same.
- 25.7. **Notices:** Any notice, demand or other communication to be served on a party must be in writing and sent by personal delivery, pre-paid post or email to the address of the relevant party (or otherwise notified to the other party from time to time). Any notice or other communication is deemed to be received (i) if personally delivered, on receipt, (ii) if posted by pre-paid official postal service, on the fifth Business Day after posting (or seven Business Days after posting if sent from one country to another), and (iii) if sent by email on the date and time that the email was sent (as evidenced in the senders email sent history). Notices received after 5pm on a Business Day will be deemed received on the next Business Day.
- 25.8. **Force majeure:** We will not be liable to you for any failure or delay in performing our obligations under this Agreement where such failure or delay is caused by events or circumstances beyond our reasonable control (including any strike, lockout, labour dispute, delay in transit, embargo, epidemic, pandemic, accident, emergency, order of government or other authority or act of god).
- 25.9. **Severability:** If any part of this Agreement is illegal or unenforceable, it will be severed and all remaining rights in this Agreement will continue in full force and effect.
- 25.10. **Waiver:** A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- 25.11. **Survival:** Any rights or obligations under or in connection with this Agreement, which is by nature a continuing obligation, will survive cancellation of this Agreement by either party.
- 25.12. **Rights of third parties:** This Agreement is not intended to confer a benefit on any person other than the parties to this Agreement.
- 25.13. **Relationship:** We will provide Goods or Services to you as an independent Contractor. Nothing in this Agreement creates any partnership, joint venture or employment relationship between the parties.
- 25.14. **Non-exclusive:** This Agreement is not exclusive and you agree that there are no restrictions on us to provide any Goods or Services to any other person.
- 25.15. **Counterparts:** This Agreement may be executed in any number of counterparts (including by electronic signature or by email exchange of pdf copies) which together will constitute the one instrument.