

## PURCHASE ORDER TERMS AND CONDITIONS

Version Date: 1 October 2022

**These terms apply to any order placed for the supply of Goods and Services by QLDC with you unless we have agreed a separate contract for the supply of Goods and Services.**

**You may not make any alterations or changes to these terms, and any alterations or changes that have not been agreed by Separate Contract must be disregarded when interpreting these terms.**

### GLOSSARY

In this Contract the following definitions apply:	
<b>Confidential Information</b>	includes the terms of the Contract (including the details of any Order), information highlighted by us to the Supplier as being confidential and information that would reasonably be considered to be confidential, except information that is public knowledge
<b>Business Day</b>	means a day on which registered banks are open for business in Queenstown, New Zealand, excluding Saturdays and Sundays
<b>Delivery</b>	means, in the case of Goods, the delivery of the Goods in good order to and, in the case of Services, the provision of the Services to our satisfaction at a location nominated by us or as specified in the Order. <b>Deliver</b> has a corresponding meaning
<b>Force Majeure Event</b>	means an event that is beyond the reasonable control of the party immediately affected by the event including, without limitation, delays by the other party, fire or other casualty, act of God, strike or labour dispute, war or other violence, and/or any law, order or requirement of any governmental agency or authority
<b>Goods</b>	means the goods, materials or substances specified in the Order and all parts or components of the same to be provided by the Supplier
<b>GST</b>	means goods and services tax prescribed by the provisions of the Goods and Services Tax Act 1985, at the rate prevailing from time to time
<b>Intellectual Property</b>	means any rights arising by virtue of any law or custom relating to the protection of industrial or intellectual property rights or the protection of confidential information and, without limitation, includes inventions, discoveries and novel designs, whether or not registered or registerable as patents or designs, including developments or improvements of equipment or products, technology, processes, methods or techniques; copyright (including future copyright) throughout the world in all literary works, artistic works, computer software, and any other works or subject matter in which copyright may subsist now or in the future; confidential information, trade secrets and trademarks, including service marks and trading names (whether registered or unregistered)
<b>Order</b>	means an order for Goods or Services (or both) placed by us with the Supplier from time to time by one or more of the following: <ul style="list-style-type: none"> <li>• email acceptance of a request, quote and/or estimate (together with any Specifications) issued by the Supplier to us;</li> </ul>

# Purchase Order Terms and Conditions

	<ul style="list-style-type: none"> <li>repeat phone orders placed by us in relation to a Supplier account we hold with the Supplier; or</li> <li>any other method or document reasonably constituting agreement on Goods or Services between us and the Supplier which may include Specifications or other documents relating to the relevant supply</li> </ul>
<b>Purchase Order Number</b>	means the number supplied by us to the Supplier as relating to that particular purchase of Goods and/or Services (or both)
<b>Services</b>	means the services specified in the Order or as performed by the Supplier in accordance with instructions issued by us to you
<b>Specifications</b>	means any technical or other specifications relating to the Goods or Services referred to in the Order
<b>Supplier</b>	means the person, firm, company or corporate entity to whom we issue an Order and/or with whom we enter into the Contract
<b>“we”, “us”, or “our” or “QLDC”</b>	means Queenstown Lakes District Council of 10 Gorge Road, Queenstown 9300

## FORMATION OF THE CONTRACT

**1.1 Formation of Contract:** Subject to clause 1.2, this Contract will arise on the Supplier’s acceptance of an Order (whether by written acknowledgment or by Delivery) and will embody the terms of the relevant Order and the following terms and conditions. The Supplier will be deemed to have accepted these terms and conditions by providing Goods and/or Services to us.

**1.2 When Separate Contract applies:** Despite any other provision in these terms and conditions or any terms and conditions which the Supplier may provide in connection with the supply of the Goods and/or Services:

- a. if the parties have entered into a separate contract for the provision of the Goods and/or Services which has been subject to effective negotiation and otherwise agreed between the parties (**Separate Contract**), the terms of that Separate Contract will apply and prevail over any other terms and conditions (including these terms and conditions); and

- b. in the absence of a Separate Contract, these terms and conditions will apply and prevail over any other terms and conditions the Supplier may provide.

**1.3 Supplier terms and conditions do not apply:** For the avoidance of doubt, standard form terms and conditions provided by the Supplier are not a ‘Separate Contract’ for the purposes of clause 1.2 and, despite anything to the contrary in those standard form terms and conditions, they will not override these terms and conditions.

**1.4 Entire agreement:** The terms of the relevant Order together with these terms and conditions or, if clause a applies the terms of the Separate Contract, comprise the entire agreement of the parties in relation to the supply of Goods and/or Services and supersede any previous discussions, arrangements and representations.

**1.5 Placing of Orders:** Orders may be placed by any department of QLDC. In all such cases, we are the principal contracting

party and are solely responsible for the obligations arising under the Contract.

- 1.6 Right to cancel Orders:** If the Order is not accepted by the Supplier's written acknowledgement or Delivery within 10 Days of the date of the Order, we may cancel an Order by written notice to the Supplier.

## PRICE AND TERMS OF PAYMENT

- 2.1 Price of Goods:** The price of the Goods or Services will be as set out in the Order and includes all costs and expenses incurred by the Supplier in relation to provision of the Goods or Services. If no price is specified in the Order, the Supplier must confirm the price with us before the supply of the Goods or Services. We will not be bound to pay for the Goods or Services unless we have agreed to the price in writing before the Goods or Services are supplied. The price set out in the Order or agreed between the Supplier and QLDC for the Contract may not be amended without our prior written agreement.

- 2.2 Delivery:** The Supplier must, following Delivery of the Goods and/or Services, send valid GST invoices (if GST is applicable) to us in the manner specified in clause 2.4 below.

- 2.3 Purchase Order Number and other information:** The Supplier must have a valid Purchase Order Number before supplying Goods and/or Services and must ensure that all invoices, packing slips, advice notes and correspondence contain the Purchase Order Number and any other information that we may request.

- 2.4 Invoice requirements:** The Supplier's invoice must:

- a. be submitted to us no later than the 5<sup>th</sup> day of the month in which payment is due;

- b. be typewritten where possible (either computer generated or typed), and must be legible if handwritten;
- c. be sent by email to POInvoicing@qldc.govt.nz, and cc the QLDC representative responsible for the Order with the Supplier;
- d. include the Supplier's GST number and any other information for a valid GST invoice (if applicable);
- e. include the relevant Purchase Order Number;
- f. include a description of the Goods and Services supplied and any relevant dates of supply; and
- g. show the total payable by us, with details of how this amount has been derived.

- 2.5 Delay resulting from non-compliance:** The Supplier acknowledges that payment may be delayed if our invoicing and payment process requirements are not followed by the Supplier.

- 2.6 Payment of invoices:** Subject to compliance with these terms and conditions and there not being manifest errors or discrepancies, the Supplier's invoice for the Goods and/or Services will be paid by us on the 20<sup>th</sup> day of the same month if the invoice is received no later than 4pm on the 5<sup>th</sup> day of the month. Payment will otherwise not be made to the Supplier until the following month, unless expressly agreed otherwise.

- 2.7 Method of payment:** Payment will be made by direct credit to the bank account nominated by the Supplier.

- 2.8 Disputed invoices:** If any part of an invoice or the Delivery of the Goods and/or Services is disputed by us, we may withhold payment of the relevant invoice or part thereof until such time as the dispute is resolved.

- 2.9 Permitted withholding, deduction, or set off:** In making payment for the Goods and/or Services, we may withhold, deduct or set off any amount that was previously overpaid or any amount recoverable by us from the Supplier under the Contract or otherwise.

## TIME FOR DELIVERY

- 3.1 Delivery date and time:** The Supplier must Deliver the Goods and/or Services not later than the date/s and time/s specified in the Order or, if no date and/or time is specified in the Order, within a reasonable time of the date and/or time specified in the Order. Time will be of the essence.

## PACKING AND DELIVERY OF GOODS

- 4.1 Invalid Purchase Order Number:** Goods supplied against an invalid Purchase Order Number may be returned at the Supplier's expense including the cost of packing, transporting, insuring and handling of the rejected Goods.
- 4.2 Packing of Goods:** The Supplier will adequately pack and protect the Goods against damage and deterioration, at the Supplier's expense.
- 4.3 Advice notes:** The Supplier must on Delivery of the Goods send detailed advice notes (packing slips) with the Goods to each delivery point.
- 4.4 QLDC not responsible for delivery:** We accept no responsibility for the Delivery of the Goods (unless otherwise agreed) or for packing materials or cases.
- 4.5 Costs:** Unless otherwise agreed in writing, the Supplier shall be responsible for the cost of and arranging Delivery (including all packaging, transportation, insurance and handling costs).
- 4.6 Incoterms:** Where applicable, the Supplier will arrange carriage and delivery

of the Goods DPP (as set out in the International Chamber of Commerce Incoterms® 2020, as varied by the terms of this Contract) or such other Incoterm as we may specify in any Order from time to time. The Supplier and QLDC acknowledge and agree that the Incoterms® 2020 are incorporated into this Contract, and any applicable Order, for the purposes of this clause 4.6.

- 4.7 Delay in the case of emergency or disaster:** If an emergency or disaster occurrence beyond the Supplier's reasonable control occurs, the Supplier will use its best endeavours to provide or delay Delivery as requested by us.

## PASSING OF TITLE AND RISK

- 5.1 Risk and title passes on delivery:** Subject to our rights under clause 3 and clause 7.1, risk and title to the Goods will pass to us on Delivery. The Supplier will not register a security interest in the Goods under this Contract or the terms and conditions of any other agreement between the parties (unless expressly agreed in writing).

## WARRANTIES

- 6.1 Supplier's warranties:** In addition to all other warranties, conditions or other terms expressed or implied by law or otherwise, the Supplier warrants to QLDC and to any subsequent purchaser of the Goods and/or Services that:
- the Goods and/or Services will comply and conform with any Specifications supplied by us or agreed between the parties, will be fit for any purpose that we make known to the Supplier and will comply with all applicable legislation, regulations and codes of practice;
  - the Goods will be appropriately packaged, packed and securely stored until completion of Delivery and installation by the Supplier (if applicable) to minimise

- the risk of damage, deterioration and theft;
- c. the Goods will, where applicable, be properly installed and integrated into, and will be compatible with, and will not damage, our systems and other property;
  - d. at the time of Delivery, the Goods will be free of any security interest as defined in the Personal Property Securities Act 1999, lien or other encumbrance;
  - e. the Goods will, for at least 24 months from the date of Delivery (or such longer period as is reasonable taking into account the nature of the Goods), be fit for the expected use and purpose and be free from any defect in design, materials, workmanship or title;
  - f. the Supplier has all Intellectual Property rights relating to the Goods and/or Services required for the Goods and/or Services to be provided to us and neither the Goods and/or Services, nor the provision or use of the Goods and/or Services by us will breach any Intellectual Property rights;
  - g. the Services will be carried out with reasonable care, diligence and skill and performed by persons with the requisite skill and experience to the appropriate professional standard or in accordance with good industry practice as would be expected from a leading supplier in the relevant industry;
  - h. If the nature of the Services requires it, the Supplier will deliver the Services in a manner that is culturally appropriate for Māori, Pacific and other ethnic or indigenous groups, and that respects the personal privacy and dignity of all participants and stakeholders; and
  - i. the Supplier will comply with all applicable legislation, regulation and industry codes of practice.

- 6.2 Survival:** This clause 6 survives completion, expiry, termination of the Contract and/or cancellation of an Order.

## DEFECTIVE OR DAMAGED GOODS

- 7.1 QLDC rights in relation to defective or damaged Goods:** If the Supplier supplies defective or damaged Goods then, at our sole option, and without prejudice to any other remedy or right, we may:
- a. reject the Goods in whole or in part and return the Goods to the Supplier at the Supplier's risk and expense including the cost of packing, transporting, insuring and handling the rejected Goods and the Supplier must immediately reimburse us for any monies paid in respect of the returned Goods. All Goods rejected by us pursuant to this clause must be removed from our premises by the Supplier within 2 Business Days of us notifying the Supplier of its intention to reject the Goods and the location from which the Supplier shall collect the rejected Goods; or
  - b. require the Supplier to replace, repair, reinstate or re-supply the Goods at the Supplier's expense so that they conform to the Contract or may have the Goods replaced, repaired or re-supplied by another person and recover the cost of doing so from the Supplier.

## DEFECTIVE SERVICES

- 8.1 QLDC rights in relation to defective Services:** If the Supplier supplies defective Services then, without prejudice to any other remedy or right, we may require the Supplier to perform the Services again to the required standard at the Supplier's expense or may have the Services re-

supplied by another person and recover the cost of doing so from the Supplier;

## CANCELLATION

**9.1 Suspension or termination for breach:** If the Supplier breaches any term of the Contract then, at our sole option, and without prejudice to any other remedy or right, we may:

- a. if the term relates to health and safety, immediately terminate (or suspend Supplier's performance of) this Contract in whole or in part and/or any Order by written notice to Supplier;
- b. suspend payment for the Goods and/or Services until the breach has been remedied to our reasonable satisfaction; and/or
- c. if notice has been given to the Supplier requiring the breach to be remedied in accordance with clause 9.3, suspend the Supplier's performance of this Contract in whole or in part until such breach is remedied, by written notice to the Supplier.

**9.2 Reimbursement of costs:** Any costs incurred by us as a result of the contract suspension shall be immediately reimbursed by the Supplier.

**9.3 Non-remediable or un-remediated breaches:** We may terminate the Contract or cancel any Order effective immediately if the Supplier breaches any provision of the Contract and fails to remedy the breach within 10 Business Days of giving written notice to the Supplier specifying the breach and requiring it to be remedied.

**9.4 Insolvency:** We may, by written notice to the Supplier, terminate the Contract or cancel any Order immediately if the Supplier becomes bankrupt, ceases to carry on business, goes into liquidation, becomes insolvent, appoints a receiver or

enters into a formal proposal for a compromise with its creditors under the Companies Act 1993.

**9.5 Termination for convenience:** We may, without cause, terminate this Contract by giving the Supplier 10 Business Days written notice or by not placing any future Orders. In the event that we do so, this Contract will terminate and any outstanding Orders at the end of the period of notice will be deemed cancelled.

**9.6 No minimum volume:** QLDC shall not be under any obligation to place an Order for a minimum volume of Goods and/or Services unless agreed between the parties in a separate contract.

**9.7 No guaranteed Order:** QLDC shall not be under any obligation to place an Order for Goods and/or Services.

**9.8 Payment for Goods and Services validly provided:** Subject to our rights of deduction or set-off, we will pay the Supplier for any Goods and/or Services validly provided up to the date of termination.

**9.9 No prejudice for failure or delay:** No failure or delay on the part of QLDC to exercise any of its rights in respect of any default by the Supplier will prejudice our rights in connection with that default or any subsequent default.

**9.10 Continuing obligations not affected:** Completion, expiry, termination of the Contract and/or cancellation of an Order does not affect any responsibilities which are intended to continue or come into effect after the Contract terminates.

## LIABILITY

**10.1 Remedies for defective Goods or Services:** If any defective performance of the Services or product defect for Goods supplied by the Supplier under this



Contact is discovered within 12 months of the completion, expiry, termination of the Contract or within a warranty period offered by an Original Equipment Manufacturer (**OEM**) (each a **Warranty Notice Period**), the Supplier must promptly reperform the Services at their sole cost and/or arrange to replace or repair the defective Goods or liaise with the OEM (as applicable).

- 10.2 Supplier liability cap:** To the extent permitted by law, the aggregate liability of the Supplier to QLDC, whether in contract, tort (including negligence) or otherwise, will be limited to the **value of the Goods or Services**.
- 10.3 No liability for consequential loss:** The Supplier shall not be liable for any indirect, consequential, special or economic loss, cost liability, damage or expenses howsoever arising.
- 10.4 Reduction of liability:** The Supplier's liability is reduced proportionately to the extent that any such loss or damage was caused or contributed to by any negligent act, omission or default of QLDC or the employees or agents of QLDC.
- 10.5 Supplier indemnity:** The Supplier must indemnify QLDC from and against any claim for direct loss, injury, damage or expense (including legal costs on a full indemnity basis) which QLDC suffers or incurs in connection with, or for the consequences of:
- a. any breach by the Supplier of the Contract;
  - b. any act or omission by or on behalf of the Supplier, which adversely relates to, or adversely affects, QLDC and/or its property; and/or
  - c. any loss, damage, liability, cost or expense suffered or incurred by a third party (including, to avoid any doubt, an employee, agent or contractor of the

Supplier) arising from, as a result of or in connection with any act, matter or thing of the kind described in clause a or b.

## RECORDS

- 11.1 Supplier's Records:** The Supplier must keep full records and documentation in relation to the Goods and/or Services and this Contract (**Records**) and provide copies of Records to us on reasonable request, and immediately notify us of any disclosure requests the Supplier receives (including under the Local Government Official Information and Meetings Act 1987).

## RELATIONSHIP BETWEEN PARTIES

- 12.1 No agency, partnership, or employment relationship:** Nothing in the Contract should be interpreted as constituting either QLDC or the Supplier, an agent, partner or employee of the other and neither party will have the authority to act for or to incur any obligation on behalf of the other party except as expressly provided for in the Contract.
- 12.2 No exclusivity:** Our relationship with the Supplier is not exclusive.
- 12.3 Review:** We may carry out a review of the Supplier's performance under this Contract at any time and the Supplier agrees to co-operate fully with us, including by attending all relevant meetings and providing all requested records and information.

## CONFIDENTIALITY

- 13.1 Confidential Information is property of QLDC:** All Confidential Information will be and will remain the property of QLDC, and the Supplier must:
- a. keep all Confidential Information confidential and use the Confidential Information only for the purpose of the Contract;

- b. not disclose any Confidential Information to any person without our prior written consent (unless the disclosure is required under law); and
- c. destroy or return the Confidential Information to us upon our request at any time, provided that the Supplier may disclose Confidential Information to its employees, subcontractors and advisers to the extent necessary for the purposes of the Contract. The Supplier will ensure that its employees, subcontractors and advisers will comply with these obligations of confidentiality.

**13.2 Use of QLDC name:** The Supplier will not use our name in advertising its business or activities without our prior written consent and will comply with all reasonable terms and conditions upon which such permission may be given.

**13.3 Provision of records:** Upon request, the Supplier will provide to us a copy of any record on the Supplier's file or within the possession or control of the Supplier, where receipt of such record may be reasonably required by us.

**13.4 Survival:** This clause 13 survives completion, expiry, termination of the Contract and/or termination of an Order.

## HEALTH AND SAFETY

**14.1 Supplier's health and safety obligations:** Where Services are being provided by the Supplier at any place owned or operated by QLDC, the following provisions shall apply.

**14.2 Compliance:** The Supplier must:

- a. comply with the Health and Safety at Work Act 2015 (and any successor or replacement legislation) and any Regulations made under that Act, applicable codes of practice and standards, our health and safety policies

and procedures, and any standard operating procedures;

- b. ensure that it takes all practicable steps to ensure the health and safety of all personnel of the Supplier, and any other parties associated with the Services, including us, workers, visitors, subcontractors, service providers, the public, and visitors to any area under the control of the Supplier;
- c. have, and keep current, all relevant health and safety qualifications required to perform its obligations under this Contract;
- d. immediately provide us with information about any health and safety matters relating to the Services, if requested; and
- e. comply with all reasonable directions given by us in relation to health and safety in connection with this Contract.

**14.3 Cooperation:** The Supplier must:

- a. so far as is reasonably practicable, consult, co-operate with and co-ordinate its activities with us in relation to the Services;
- b. facilitate engagement between the parties (and/or its designees) in relation to work health and safety matters; and
- c. ensure that any feedback, agreed changes or improvements to health and safety processes and procedures are implemented immediately.

**14.4 QLDC Site:** The Supplier must:

- a. participate in our emergency procedures, workplace assessments, training or orientation and any other relevant health and safety activities (if requested);
- b. participate in our worker participation practices (if requested); and
- c. identify and address any special needs requirements.



**14.5 Audits:** We (or our representatives) may carry out an audit of the Supplier to ensure compliance with all obligations set out under this clause 14. The Supplier must:

- a. actively cooperate and participate in any health and safety audits carried out by us;
- b. provide all necessary access and information required by us in relation to the audit and any other health and safety monitoring; and
- c. take all reasonable steps to immediately rectify any issues raised by us.

**14.6 Incidents and investigations:** The Supplier must immediately notify us of any:

- a. “notifiable event” (as defined in the Health and Safety at Work Act 2015);
- b. near miss or exposure the Supplier becomes aware of in the course of delivering the Goods or Services;
- c. any WorkSafe inspection, investigation, or information request in connection with the Supplier’s delivery of the Goods or Services; and/or
- d. breach of this clause 14; and
- e. provide us with such assistance and information as we require in relation to any of these matters.

**14.7 Non-compliance (defective services):** Without limitation to our other rights and remedies at law or under this Contract, we may immediately withhold any payment if the Supplier is in breach of any of its obligations under this clause.

**14.8 Health and Safety Plans:** The Supplier shall, prior to commencing the Services, undertake a site-specific risk assessment and prepare and submit to us a site-specific safety plan for the execution of the Services.

**14.9 Application to subcontractors:** All clauses in this section (Health and Safety) shall apply to the Supplier’s

subcontractors, including the reporting, notification, and compliance obligations. The Supplier shall ensure that its subcontractors are aware of and comply with these obligations. Clauses 14.5 (Audits) and 14.6 (Incidents and Investigations) survive termination and expiry of the Contract.

## INTELLECTUAL PROPERTY

**15.1 Pre-existing Intellectual Property:** All Intellectual Property owned by either party and existing prior to the commencement of the supply of Goods and/or Services will remain the exclusive property of that party.

**15.2 New Intellectual Property:** The Supplier agrees that all new Intellectual Property that arises or is created by the Supplier or any of the Supplier’s employees, subcontractors or agents in the course of supplying the Goods and/or Services will be our exclusive property.

**15.3 License of Intellectual Property:** The Supplier grants to us a perpetual, royalty free, non-exclusive license to use all Intellectual Property owned by the Supplier under clause 15.1.

## ASSIGNMENT AND SUBCONTRACTING

**16.1 No assignment without consent:** The Supplier may not assign, subcontract or otherwise transfer any of its rights, benefits or obligations under the Contract without our prior written consent. A change in the management or control of the Supplier or the sale of a major part of the Supplier’s business or assets will be deemed to be an assignment for the purposes of this clause.

**16.2 Enduring obligations:** Where we consent to the Supplier assigning, subcontracting or transferring any of its obligations under, or aspect of, this Contract to a third party, the Supplier will remain fully

responsible for all obligations to us under the Contract.

## NOTICES

- 17.1 Delivery of notices:** Any notice to be given under the Contract must be in writing and must be delivered or sent by post or e-mail, if to:
- QLDC, to the address on the Order; or
  - the Supplier, to its registered office, or if the Supplier has no registered office, its usual address.
- 17.2** A notice will be deemed to have received:
- if delivered, when it is left at the relevant address;
  - if sent by post, 2 Business Days after it has been posted;
  - if sent by email, when sent to the relevant party's email address.

## REGULATORY CAPACITY

- 18.1 QLDC not bound in Regulatory Capacity:** To the extent that we have regulatory authority or powers (**Regulatory Capacity**), this Contract does not bind or fetter us in our Regulatory Capacity.
- 18.2 No liability for Regulatory Capacity:** The Supplier will not be entitled to any damages or other payment should we, acting in our Regulatory Capacity, either decline any consent or permission, issue any consent or permission on terms that are unsatisfactory to any party or for any act or omission by us in our Regulatory Capacity.
- 18.3 Local Government Official Information and Meetings Act 1987:** The Supplier acknowledges that QLDC is subject to the Local Government Official Information and Meetings Act 1987 under which QLDC is required to treat each request for information in accordance with the provisions of that Act. The Supplier agrees

to immediately pass on any request for information that it receives from a regulator or third party under that Act to QLDC for instruction and/or action.

## FORCE MAJEURE

- 19.1 No liability:** Neither party will be liable to the other for any failure to perform its obligations under this Contract to the extent the failure is due to a Force Majeure Event.
- 19.2 Obligations of affected party:** A party who wishes to claim suspension of its obligations due to a Force Majeure Event must notify the other party as soon as reasonably possible. The notice must state:
- the nature of the circumstances giving rise to the Force Majeure Event;
  - the extent of that party's inability to perform under this Contract;
  - the likely duration of that non-performance;
  - what steps are being taken to minimise the impact of the Force Majeure Event on the performance of this Contract.

- 19.3 Termination due to Force Majeure Event:** If a Party is unable to perform any obligations under this Contract for 20 Business Days or more due to an Force Majeure Event, the other party may terminate this Contract immediately by giving notice.

## DISPUTES

- 20.1 Details of the dispute must be supplied:** If either party considers that a dispute has arisen in relation to any matter governed by this Contract, that party must give the other party written notice outlining the basis of the dispute (**Dispute Notice**).
- 20.2 Dispute must be discussed:** The parties must then meet to resolve, in which case

both parties will promptly attempt to resolve the dispute by consultation at the lowest practicable level of escalation.

**20.3 Escalation of dispute:** If the dispute is not resolved by discussion, meeting and/or other informal means within 10 Business Days of the date of the Dispute Notice the parties may agree to submit the dispute to mediation.

**20.4 Mediation:** If a Dispute is referred to mediation, the mediation will be conducted by:

- a. a single mediator agreed by the parties or, failing agreement, on the terms of the Resolution Institute Mediation Rules;
- b. at a fee to be agreed by the parties or if they cannot agree, at a fee determined by the Resolution Institute.

**20.5 Obligations Continue:** 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.

**20.6 Taking court action:** Each party agrees not to start any court action in relation to a dispute until it has complied with the process described in this clause, unless that party requires urgent relief from a court.

**20.7 Interlocutory relief:** Nothing in these terms shall affect either party's right to seek urgent interlocutory relief.

**20.8 Costs and expenses:** Each party will pay its own costs of mediation or alternative dispute resolution under this clause.

## GENERAL

**21.1 Variation:** This Contract may not be amended or varied in any way unless such amendment or variation is made in writing and signed by each party.

**21.2 Governing Law:** This Contract, and any claims arising out of or in connection with it or its subject matter or formation (including non-contractual claims), will be governed by and construed in accordance with the laws of New Zealand and the parties irrevocably submit to the exclusive jurisdiction of the courts of New Zealand for any matter arising under or relating to this Contract or its subject matter or formation or the relationships established by it (including non-contractual claims).