



# NPDC GENERAL TERMS AND CONDITIONS OF PURCHASE

Version Date: 25 September 2023

All purchases for Goods and Services whether by Written Contract or via a Purchase Order only shall be subject to these terms.

These terms may be updated from time to time. Any such changes will apply after the date of the change.

PURCHASER AND SUPPLIER	
<b>Council</b>	<b>NEW PLYMOUTH DISTRICT COUNCIL</b> , a body corporate constituted under the Local Government Act 2002 with registered address Civic Centre, 84 Liardet Street, Private Bag 2025, New Plymouth 4340 (including its employees, agents and successors).
<b>Supplier</b>	The individual or organisation named on a Purchase Order or Written Contract (as applicable) including any employees, agents, subcontractors and successors.

DEFINITIONS	
<b>Business Day</b>	means a day on which registered banks are open for business in New Plymouth, excluding Saturdays and Sundays and public holidays.
<b>Charges</b>	means the total amount payable by the Council to the Supplier in accordance with the requirements of the Contract and includes all fees, expenses, duties and levies (as applicable to the Goods and/or Services).
<b>Contract</b>	means the contract for the supply of Goods and/or Services created under a Purchase Order or a Written Contract (as applicable) together with these terms.
<b>Deliverables</b>	means an output resulting from the delivery of any Services supplied in accordance with the requirements of the Contract.
<b>Extraordinary Event</b>	means an event that is beyond the reasonable control of the Party immediately affected by the event. An Extraordinary Event does not include any risk or event that the Party claiming could have prevented or overcome by taking reasonable care.
<b>Goods and/or Services</b>	means the goods (including all component parts) or services provided by the Supplier in accordance with the requirements of the Contract.
<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>HSWA</b>	means the Health and Safety at Work Act 2015 and all regulations and approved codes of practice and standards made under that Act.
<b>Intellectual Property</b>	means all industrial and intellectual property rights whether conferred by statute, at common law or in equity, including, but not limited to copyright, trademarks, designs and patents.
<b>Invoice</b>	means a document notifying a Party of an obligation to make a payment as defined by s2 of the Goods and Services Tax Act 1985.
<b>New Intellectual Property Rights</b>	means Intellectual Property Rights developed under the Contract or in the performance of the Services.
<b>Notice</b>	means a communication from one Party to the other that meets the requirements of the clause <b>Notices</b> .
<b>Party</b>	means the Supplier or the Council, and together they are the Parties.
<b>Personnel</b>	means the person or persons to be provided by the Supplier and/or Subcontractor for the purposes of performing the Services.



<b>Pre-Existing Intellectual Property Rights</b>	means Intellectual Property Rights developed before the date of, or independently from, the Contract.
<b>Privacy Act</b>	means the Privacy Act 2020.
<b>Purchase Order</b>	means an order for Goods and/or Services issued to the Supplier by the Council in electronic format or via a number and incorporates any quotation document, order form, other document or price list provided by the Supplier against which the relevant Purchase Order is issued.
<b>Records</b>	means all information and data necessary for the management of the Goods and/or Services supplied under the Contract. Records include, but are not limited to, reports, invoices, letters, emails, notes of meetings, photographs and other media recordings. Records can be hard copies or soft copies stored electronically.
<b>Site</b>	means the land, buildings and other places made available by the Council conditionally or unconditionally to the Supplier for the purposes of supplying the Goods and/or Services under the Contract.
<b>Subcontractor</b>	Means any person to whom the Supplier has entered a written agreement with for the supply of Services or any portion thereof and each of their respective subcontractors.
<b>Taxable Supply Information</b>	means the minimum set of information buyers and sellers of Goods and/or Services must keep as evidence of a transaction, as defined by s19E of the GST Act and includes 'tax invoices' as previously defined under the GST Act.
<b>Worker</b>	means any person employed or engaged to carry out work in any capacity for or on behalf of the Supplier, including its subcontractors and agents, in each case, as defined in section 19 of the HSWA.
<b>Written Contract</b>	means a written or electronic contract which has been executed by the Parties in relation to the provision of Goods and/or Services by the Supplier, including any special terms included in such document.

## AGREEMENT

1. **Appointment:** The Council agrees to purchase and the Supplier agrees to supply the Goods and/or Services in accordance with the requirements or specifications of the Council and the Contract.
2. **Application:** Subject to Clause 3:
  - 2.1. these terms will apply to all Purchase Orders and Written Contracts issued by the Council for the purchase of Goods and/or Services from the Supplier; and
  - 2.2. the relevant Purchase Order and Written Contract together with these terms, records the entire understanding and agreement of the Parties in relation to the supply of Goods and/or Services, and supersedes any previous or existing negotiations, letters, offers, representations or agreements, either written or oral, between the Parties in relation to the supply of Goods and/or Services.
3. **Other Agreement:** To the extent that the Parties have executed another agreement covering the subject matter of any Purchase Order or Written Contract, the terms of that agreement will supersede and

prevail over these terms and these terms shall not apply to that Purchase Order or Written Contract (as applicable).

4. **Supplier Terms and Conditions Not Applicable:** No terms and conditions contained in any quotations, offers, acknowledgements, letters, advice notes, delivery notes, invoices or other communications of the Supplier shall form part of, annul or vary any of these terms and to avoid doubt shall not constitute a 'Written Contract'.

## VARIATIONS

5. **Variations:** A variation to any order specifications, quantities, requirements or deliverables after the issuance of a Purchase Order or execution of a Written Contract must be agreed and recorded in writing and signed by both Parties, or through an exchange of emails, where the signatories or authors have delegated authority to approve the variation.

## ORDERING AND CHARGES

6. **Placing an Order:** The Council will place an order for Goods and/or Services by issuing a Purchase Order to the Supplier or by executing a Written Contract with the Supplier. Such documents constitute an offer by



the Council to purchase the Goods and/or Services subject to the Contract.

7. **Re-Ordering:** The Council will issue a new Purchase Order or Written Contract to place any future orders for Goods and/or Services. The Supplier may not rely on any verbal or other written confirmation of any order.
8. **Council Obligation to Pay:** In consideration of the satisfactory provision of the Goods and/or Services, the Council shall pay the Supplier in accordance with the Charges stipulated in the Contract.
9. **No Ongoing Commitment:** The Supplier acknowledges that nothing in the Contract commits the Council to place any ongoing orders for Goods and/or Services.
10. **Charges:** The Charges stated in the Purchase Order shall include all levies, tariffs, freight, delivery, packaging, handling, storage and insurance and any other expense relating to the Goods and/or Services and shall itemise GST (where applicable).
11. **Taxes and other Charges:** With the exception of GST, all taxes, duties and charges (including fines, penalties and interest) that are or may be imposed or levied in New Zealand or overseas in connection with the Contract will be borne by the Supplier.
12. **No Exclusivity:** The Supplier acknowledges that the Council engages it on a non-exclusive basis and that the Council may appoint one or more additional suppliers to provide goods and/or services that are the same, or similar to the Goods and/or Services.

## INVOICING AND PAYMENT

13. **Invoice Requirements:** The Supplier must submit an invoice which contains at least the following:
  - 13.1.a Purchase Order number (if applicable); and
  - 13.2.the Supplier's full registered address; and
  - 13.3.where the supplier is GST registered, the applicable Taxable Supply Information as required under s19E of the GST Act; and
  - 13.4.any additional information required by the Council as notified to the Supplier from time to time.
14. **Non-Compliant Invoices:** Where an invoice does not meet the requirements of the clause above, the Council shall request correction by the Supplier.
15. **No Liability for Delayed Payment:** Where the Council has requested a corrected invoice in accordance with the clause above, the Supplier acknowledges that payment may be delayed as a result.

16. **Payment Date:** Payment will be made by the Council on or before the **20<sup>th</sup> day of the month following** the date of an invoice from the Supplier.
17. **Disputed Invoices:** If the Council disputes the accuracy of an invoice or Taxable Supply Information submitted by a Supplier, the following shall apply:
  - 17.1.the Council will notify the Supplier of the dispute at the earliest opportunity; and
  - 17.2.any undisputed portion of the invoiced amount shall remain payable on the applicable due date under the Contract; and
  - 17.3.the dispute resolution procedure at clause 77 shall be followed.

## SUPPLY OF GOODS

18. **Supplier's obligations:** The Supplier must:
  - 18.1.supply Goods in accordance with the Contract; and
  - 18.2.deliver the Goods to the delivery address provided by the Council, on time (which is essential); and
  - 18.3.notify the Council promptly in writing if the Supplier becomes aware of any actual or possible delay in delivery of the Goods.
19. **Warranties and Maintenance:** The Supplier must ensure that the Council is passed the benefit of any warranty or maintenance obligation (including a warranty from an original equipment manufacturer or any other person) that applies in relation to the Goods or any part of the Goods.
20. **Goods must satisfy criteria:** The Goods must:
  - 20.1.be of merchantable quality and free from defects in design, materials or construction; and
  - 20.2.be fit for the purposes for which they are intended to be used as communicated to, or that are or ought to be known by, the Supplier; and
  - 20.3.comply with the description of Goods stated in the Purchase Order or Written Contract (as applicable); and
  - 20.4.comply with any sample of the Goods provided by the Supplier; and
  - 20.5.be new and unused, unless the Council has agreed otherwise in writing, and
  - 20.6.be packaged so as to protect the contents and keep them clean, dry and in a new condition until they are first used, if appropriate.



21. **Supplier Goods Warranties:** The Supplier warrants that:
- 21.1.the Goods do not breach any law or standard; and
  - 21.2.supply and use of the Goods, for the purposes communicated to, or that are or ought to be known by, the Supplier, will not infringe the rights of any person; and
  - 21.3.full ownership of the Goods will pass to the Council in accordance with the Contract, and no-one else has any rights in the Goods; and
  - 21.4.all Goods supplied to the Council comply with all of the criteria agreed with the Supplier; and
  - 21.5.any documentation supplied with the Goods is adequate (in terms of both quantity and quality) to enable the Council to use and maintain the Goods in the manner intended by the Council; and
  - 21.6.all information provided by the Supplier to the Council is accurate.
22. **No Deemed Acceptance:** The signing of a delivery note or any other act by any of the Council's Personnel does not indicate the Council's acceptance of the Goods.
23. **Non-Compliance of Goods:** If any of the Goods do not comply with the Contract, then the Council may, by Notice to the Supplier within a reasonable time after completing an inspection of the Goods, do any of the following at the Council's option, but at the Supplier's cost:
- 23.1.require the Supplier to repair the Goods; or
  - 23.2.require the Supplier to replace the Goods; or
  - 23.3.reject the Goods.
24. **Repair or Replacement:** If the Supplier receives a Notice from the Council to repair or replace the Goods, the Supplier must promptly repair or replace the Goods in question, so that the Goods (or replacement Goods) comply with the Supplier warranties.
25. **Lack of progress:** If the Council is not satisfied with the Supplier's progress in repairing or replacing the Goods, the Council may either:
- 25.1.reject the Goods by Notice to the Supplier; or
  - 25.2.arrange for the Goods to be repaired by someone else, in which case the Supplier will reimburse all costs and expenses incurred by the Council in doing so.
26. **Rejection of Goods:** If the Supplier receives a Notice from the Council rejecting the Goods, it must:
- 26.1.remove any rejected Goods from the Council's Site(s) at its own risk within **15 Business Days** of Notice of rejection, and if the Supplier fails to do so the Council may return or dispose of the Goods and recover from the Supplier any cost and expense incurred, and
  - 26.2.do either of the following the Council elects in its Notice of rejection:
    - 26.3.provide a full refund of the Charges paid for the rejected Goods, within **10 Business Days** of the Council electing to receive a refund; or
    - 26.4.provide a credit for the Charges paid for the rejected Goods, against the Charges payable for other Goods.
27. **No limitation:** The Council's rights under the Contract are in addition to, and do not limit, any other rights or remedies the Council may have.
28. **Ownership of Goods:** Ownership in the Goods passes to the Council on the earlier of:
- 28.1.the date the Council has paid the Charges for those Goods, and
  - 28.2.the date those Goods have been delivered and accepted.
29. **Risk in Goods:** Risk in the Goods passes to the Council on the date those Goods have been delivered.
30. **Rejected Goods:** Ownership and risk in any Goods rejected by the Council under the Contract will pass back to the Supplier as follows:
- 30.1.if the Council has paid the Charges for those rejected Goods, once the Supplier has provided a refund or credit in accordance with the Contract; and
  - 30.2.in all other cases, when the Goods are collected from the place to which they were delivered and accepted.
31. **Replaced Goods:** Ownership of any Goods to be replaced by the Supplier under the Contract will pass back to the Council once the Supplier has delivered the replacement Goods.

## SUPPLY OF SERVICES

32. **Council's Obligations:** The Council must:

- 32.1.provide the Supplier with any information and/or access to Council personnel that the Supplier has reasonably requested to enable the delivery of the Services; and



- 32.2. make decisions and give approvals reasonably required by the Supplier to enable delivery of the Services, within reasonable timeframes; and
- 32.3. pay the Supplier the Charges for the Services in accordance with the Contract.
33. **Supplier's Obligations:** The Supplier must deliver the Services:
- 33.1. on time except where delay is caused by the Council, and to the required performance standards agreed with the Council; and
- 33.2. with due care, skill and diligence, and to the appropriate professional standard or in accordance with good industry practice as would be expected from a leading supplier in the relevant industry; and
- 33.3. ensure that its Workers have the necessary skills, experience, training and resources to deliver the Services; and
- 33.4. provide all equipment and resources necessary to deliver the Services unless otherwise agreed with the Council.
- ## HEALTH, SAFETY AND LEGAL COMPLIANCE
34. **Compliance with Laws:** The Supplier must comply with all statutes, regional and district plans, bylaws, regulations, any applicable industry codes of conduct and any contract or other enforceable obligation of the Supplier which relate to the Goods and/or Services.
35. **Compliance with Health and Safety Legislation:** The Supplier and its Workers must at all times:
- 35.1. comply with the HSWA, regulations, applicable codes of practice and standards, Council health and safety policies and procedures, and any standard operating procedures notified by the Council; and
- 35.2. take all reasonably practicable steps to ensure the health and safety of all Workers who carry out work in any capacity for the Supplier in providing the Goods and/or Services, and any other parties associated with the Goods and/or Services, including Council staff, visitors, service providers, members of the public, and visitors to any area under the control of Supplier, is not put at risk from the provision of the Goods and/or Services.
36. **Consultation, Co-operation and Coordination:** The Supplier agrees, so far as is reasonably practicable, to:
- 36.1. consult, co-operate with and co-ordinate its activities with the Council; and
- 36.2. participate in and facilitate, if required, engagement between the Council and the Supplier and any other persons Conducting a Business or Undertaking (as defined in section 17 of the HSWA) in relation to work health and safety matters related to the Goods and/or Services.
37. **Health and Safety Processes:** The Supplier will, before and during the course of supplying Goods and/or Services under the Contract, identify all hazards and risks associated with the Goods and/or Services and/or any Sites and have in place appropriate processes, including health and safety policies and procedures to comply with the HSWA, to eliminate or minimise the risks, including preparing a safety plan specific to the Goods and/or Services and the Site, including a completed risk and hazard identification and control register, any associated job safety and environmental analysis, and an emergency response plan upon the Council's request.
38. **Training and Supervision:** It is the responsibility of the Supplier to ensure its Workers are adequately trained and/or supervised to ensure that no harm is inflicted to any other parties associated with the Goods and/or Services, including Council staff, visitors, service providers or members of the public.
39. **Accidents/Incident Reporting:** The Supplier must immediately notify the Council of any notifiable event (as defined in section 25 of the HSWA), lost time incident, serious harm incident or accident, injury, property damage or environmental damage, and any incident, accident or other event that could have or did result in harm, which occurs during the delivery or performance of the Goods and/or Services. If requested, the Supplier will provide the Council with a report giving complete details, including results of investigations into its cause, and any recommendations or strategies for prevention of the incident or accident in the future. The Supplier will also provide the Council with such assistance as may be reasonably necessary to conduct any incident or accident investigation at no cost to the Council.
40. **Authorisations/Consents:** The Supplier must obtain all necessary consents and/or authorisations in relation to any Services to be performed under the Contract at its cost.

## COUNCIL AS REGULATORY AUTHORITY

41. **Council as Regulatory Authority:** The Supplier acknowledges and agrees that the Council has a range of statutory and regulatory powers and



functions (Regulatory Capacity) which it may exercise and/or must fulfil and nothing in the Contract will be construed as limiting or fettering the Council in its Regulatory Capacity or requiring the Council to exercise its Regulatory Capacity in a particular way.

## **INSURANCE**

42. **Policies:** The Supplier must, at its cost, have and maintain insurance cover (as set out in any applicable schedule of a Written Contract or as otherwise notified to the Supplier) with a reputable insurer in respect of the Supplier's obligations under the Contract for so long as the Supplier supplies Goods and/or Services to the Council.
43. **Evidence:** The Supplier will provide evidence of such insurance upon request by the Council.

## **LIABILITY, INDEMNITY AND EXCLUSION**

44. **Supplier Liability:** The Supplier will fully protect, indemnify and hold harmless the Council from and against any liability, losses, damages, expenses, liabilities, claims, demands, proceedings and costs (including solicitor and own client costs), suffered or incurred at any time by the Council as a result of any breach by the Supplier of any of its obligations or undertakings contained in the Contract.
45. **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 the Council.
46. **Council Liability:** The Council's liability, as a result of any breach of its obligations or undertakings contained in the Contract will be limited to the monetary value of the Charges in the immediate 12-month period that the liability arose.
47. **Additional Warranties:** The Council's rights under the Contract are in addition to and not in substitution of any express, implied, statutory or other rights.
48. **No Indirect Loss:** Neither Party will be liable to the other for any indirect or consequential loss, or for any loss of revenue, profits, goodwill, business or anticipated business, or anticipated savings, whether or not that loss was, or ought to have been, contemplated by the Party in breach.

## **INFORMATION AND RECORDS**

49. **Information and Records:** The Supplier must:
- 49.1. keep and maintain Records in accordance with prudent business practice and all applicable laws; and

- 49.2. make sure the Records clearly identify all relevant time and expenses incurred in providing the Services; and
- 49.3. make sure the Records are kept safe and are easy to access; and
- 49.4. give information to the Council relating to the Services that the Council reasonably requests, in a format that is usable by the Council, and within a reasonable time of the request; and
- 49.5. co-operate with the Council to provide information promptly if the information is required by the Council to comply with an enquiry or its statutory, regulatory, or other reporting obligations; and
- 49.6. make its Records available to the Council during the term of the Contract and for 7 years after the performance of the Services or delivery of the Goods (unless already provided to the Council earlier); and
- 49.7. make sure that Records provided by, or created for, the Council are securely managed and destroyed on their disposal.

50. **Written Reports:** The Supplier shall provide to the Council upon request all written reports and data in relation to the Goods and/or Services that have been or are being provided to the Council and the Council shall upon request have complete access to all records and such other data as may be compiled by the Supplier relating to any Goods and/or Services and all such data and records shall be delivered by the Supplier to the Council and shall, at the expiry of the Contract, belong exclusively to the Council.
51. **Use of information:** The Supplier shall not, without the Council's prior written consent, use any information provided by the Council for purposes unrelated to the Goods and/or Services.

## **CONFIDENTIAL INFORMATION**

52. **Confidential Information:** The Council and the Supplier undertake to treat as confidential and not misuse or disclose to any third person or entity any information belonging to the other Party that could reasonably be expected to be proprietary, commercially sensitive or confidential, or that is not yet publicly known, and which comes to their knowledge during the term of, or in connection with, the provision of the Goods and Services except to the extent as may be necessary for the performance of the obligations under the Contract or as required by law.



53. **Disclosure of Confidential Information:** Without limiting the effect of the clause above, a Party may disclose confidential information only to those of its officers, Workers or professional advisers, in each case as is reasonably required for the implementation of the Contract.

54. **Official Information:** The Supplier acknowledges that the Council has statutory obligations relating to the disclosure of information and public accountability, including under the Local Government Official Information and Meetings Act 1987, the Public Records Act 2005 and the Public Audit Act 2001. The Supplier agrees that:

54.1.the Council may be required to release information it holds, including any information that was provided by or otherwise concerns the Supplier pursuant to such legislation and shall not be in breach of its obligations under the Contract if it does so; and

54.2.the Supplier will maintain full and accurate records in an accessible form to enable the Council to meet its obligations under such legislation; and

54.3.the Supplier will promptly provide the Council with access to information and records held by the Supplier in relation to the Goods and/or Services which are required by the Council to meet its obligations under such legislation; and

54.4.the Supplier will provide reasonable assistance to the Council to enable the Council to meet its obligations under such legislation.

## PRIVACY

55. **Protection of Personal Information:** Where the Supplier has access to Personal Information (as such term is defined in the Privacy Act) under or in connection with the Contract, the Supplier must:

55.1.only use, access, store, process or transmit that Personal Information to the extent necessary to provide the Deliverables or Services; and

55.2.ensure that the Personal Information is protected against loss, access, use, modification, or disclosure that is not authorised by the Council; and

55.3.provide all information and assistance reasonably required by the Council to comply with its obligations under the Privacy Act in relation to the Contract; and

55.4.comply with the Privacy Act and not do anything under the Contract that would cause the Council to breach the Privacy Act.

56. **Privacy Breaches:** If the Supplier becomes aware of any Privacy Breach in relation to the Contract it will notify the Council immediately and take all reasonable steps:

56.1.to identify the person or persons affected; and

56.2.provide information as required by the Council to undertake its own investigation; and

56.3.stop, and/or mitigate the impact of, any privacy breach and prevent its reoccurrence; and

56.4.the Supplier shall not notify any person of the privacy breach without prior written approval of the Council.

## INTELLECTUAL PROPERTY

57. **Ownership of Intellectual Property Rights:**

57.1.Pre-existing Intellectual Property Rights remain the property of their owner; and

57.2.New Intellectual Property Rights in the Deliverables become the property of the Council when they are created and are retained by the Council from that date onwards, and the Supplier agrees to do all things necessary to give effect to this clause; and

57.3.New Intellectual Property Rights that are not in the Deliverables will become the property of the Party that created them.

58. **Licence:** The Supplier grants to the Council a perpetual, non-exclusive, worldwide, transferable, sub-licensable, irrevocable and royalty-free licence to use, for any purpose, all Intellectual Property Rights in the Deliverables that are not owned by the Council to:

58.1.receive the full benefit of the Services and Deliverables, and

58.2.use, copy, modify and distribute the Deliverables.

59. **Supplier Warranties relating to Intellectual Property:** The Supplier warrants that:

59.1.it is legally entitled to grant the licence in the clause above; and

59.2.the Council's use of anything provided by the Supplier and incorporated in the Services and Deliverables will not infringe the rights, including Intellectual Property Rights, of any third party.



The Supplier's liability for breach of the warranties in this clause is **not subject to any limitation or cap on liability that may be stated elsewhere in the Contract.**

## ASSIGNMENT AND SUB-CONTRACTING

60. **No Assignment:** The Supplier shall not assign, transfer, or otherwise dispose of any of its rights or obligations or liabilities under the Contract without the prior written consent of the Council.
61. **No Subcontracting:** The Supplier shall not subcontract any of the Supplier's obligations under the Contract unless:
- 61.1. the use of subcontracted personnel is notified as forming part of the provisions of the Goods and/or Services prior to the acceptance of the Contract; or
  - 61.2. the prior written consent of the Council is obtained after the acceptance of the Contract.
62. **Responsibility:** The Supplier shall be responsible to the Council for any Goods provided and/or Services performed by any sub-contractor, and in the event of any sub-contracting, the Supplier will not be relieved from any liability or obligations under the Contract.

## CONFLICT OF INTEREST

63. **Notice of Conflict:** The Supplier will immediately disclose any conflict of interest (whether that conflict is a perceived conflict, a potential conflict or an actual conflict) to the Council which could or does arise in relation to the provision of the Goods and/or Services by the Supplier as a result of a present or future appointment, assignment, employment/engagement or any other interest of the Supplier.

## TERMINATION

64. **Supplier's Request to Terminate:** At any time during the term of the performance of Services or prior to the delivery of Goods under the Contract the Supplier may notify the Council that it wishes to terminate this Contract. The Council will, within **20 Business Days** following receipt of the Supplier's Notice, notify the Supplier whether, in its absolute discretion, it consents to the Supplier's Notice of termination. If the Council:
- 64.1. consents, the Contract will be terminated on a date that is mutually agreed between the Parties; or
  - 64.2. does not consent, the Contract will continue in full force as if the Supplier's Notice requesting termination had not been given.

65. **Council Right to Terminate by Notice:** At any time during the term of the performance of Services or prior to the delivery of Goods under the Contract the Council may terminate the Contract by giving not less than **20 Business Days'** Notice in writing to the Supplier.
66. **Payment Up To Termination:** If either Party terminates the Contract under this section "Termination" then, subject to all other clauses of the Contract, the Council will pay the Supplier for all Goods and/or Services delivered or performed (as applicable) up to the date of termination.
67. **Council Termination for Cause:** The Council may terminate the Contract immediately, by giving Notice, if the Supplier:
- 67.1. becomes bankrupt or insolvent; or
  - 67.2. has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed; or
  - 67.3. becomes subject to any form of external administration; or
  - 67.4. ceases for any reason to continue in business; or
  - 67.5. does something or fails to do something that, in the Council's opinion (acting reasonably), results in damage to the Council's reputation or business; or
  - 67.6. has a conflict of interest that in the Council's opinion is so material as to impact adversely on the delivery of the Goods and/or Services; or
  - 67.7. provides information to the Council that is misleading or inaccurate in any material respect.
68. **Termination for Breach:** If a Party breaches the Contract (defaulting Party), the non-defaulting Party may give a default Notice to the defaulting Party. A default Notice must state:
- 68.1. the nature of the breach; and the time and date by which it must be remedied; and
  - 68.2. the period allowed to remedy the breach must be reasonable given the nature of the breach; and
  - 68.3. that the non-defaulting Party may terminate the Contract immediately by giving a further Notice to the defaulting Party if the defaulting Party does not remedy the breach within the period specified in the default Notice as required by the default Notice.
69. If the Council gives a default Notice to the Supplier, the Council may also:



- 69.1.withhold any payment of Charges due until the breach is remedied as required by the default Notice; and/or
- 69.2.if the breach is not remedied as required by the default Notice, deduct a reasonable amount from any Charges due to reflect the reduced value of the Goods and/or Services to the Council.
70. **Supplier's Obligations:** On giving or receiving a Notice of termination from the Council, the Supplier must:
- 70.1.immediately do everything reasonably possible to reduce its losses, costs and expenses arising from the termination of the Contract; and
- 70.2.on termination or expiry of the Contract, the Supplier must, if requested by the Council, promptly return or securely destroy all Confidential Information and other material or property belonging to the Council.
71. **Accrued Rights:** The termination or expiry of the Contract does not affect any rights of a Party which:
- 71.1.arose prior to the date of termination; or
- 71.2.relate to any breach of the Contract that arose prior to the date of termination.
72. **Council's Rights:** If the Contract is terminated the Council:
- 72.1.will only be liable to pay Charges that were due for Services delivered before the effective date of termination, and
- 72.2.may recover from the Supplier or set off against sums due to the Supplier, any Charges paid in advance for Services or Deliverables that have not been provided.
73. **Handing Over of Services:** The Supplier will provide all reasonable assistance and cooperation necessary to facilitate a smooth handover of the Services to the Council or any person appointed by the Council during the term of the Contract and for a period of **10 Business Days** after the date of termination of the Contract.

## EXTRAORDINARY EVENT

74. **No liability:** Neither Party will be liable to the other for any failure to perform its obligations under the Contract to the extent the failure is due to an Extraordinary Event.
75. **Obligations of Affected Party:** A Party who wishes to claim suspension of its obligations due to an

Extraordinary Event must notify the other Party as soon as reasonably possible. The Notice must state:

- 75.1.the nature of the circumstances giving rise to the Extraordinary Event; and
- 75.2.the extent of that Party's inability to perform under the Contract; and
- 75.3.the likely duration of that non-performance; and
- 75.4.what steps are being taken to minimise the impact of the Extraordinary Event on the performance of the Contract.

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

## DISPUTE RESOLUTION

77. **Dispute Resolution Process:** If any dispute or difference arises between the Parties in relation to the Contract, the Parties will follow the dispute resolution process as set out in this section "Dispute Resolution".
78. **Good Faith Obligation:** The Parties agree to act in good faith and use their best endeavours to cooperate with each other to promptly resolve any dispute or difference that may arise in relation to the Contract.
79. **Senior Management:** If a dispute cannot be resolved in accordance with clause 78, either Party may give written Notice to the other at any time specifying the nature of the dispute (**Dispute Notice**) and requiring that the Supplier and the relevant authorised representative of the Council meet within **10 Business Days** after delivery of the Dispute Notice, to attempt to resolve the Dispute (**Dispute Resolution Meeting**).
80. **Mediation:** If the Parties fail to resolve the dispute at the Dispute Resolution Meeting, or if a Party fails or refuses to attend the Dispute Resolution Meeting, either Party may give written Notice to the other specifying its intention to refer such dispute or difference to mediation. If a request to mediate is made, then the Party making the request will invite the chairperson for the time being of the Resolution Institute to appoint a mediator to enable the Parties to mediate and settle the dispute. All discussions in the mediation will be without prejudice and will not be referred to in any later proceedings. The Parties will bear their own costs in the mediation and will equally share the mediator's costs.



81. **Obligations Continue:** If there is a Dispute, each Party will continue to perform its obligations under the Contract as far as practical given the nature of the dispute.
82. **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 the foregoing clauses, unless that Party requires urgent relief from a court.
83. **Interlocutory Relief:** Nothing in the Contract shall affect either Party's right to seek urgent interlocutory relief.
84. **Costs and Expenses:** Each Party will pay its own costs of mediation or alternative dispute resolution under the Contract.

## NOTICES

85. **Requirements:** All Notices must be:
- 85.1.in writing and delivered by hand or sent by post, courier or email to the recipient Party's address for Notices stated below; and
- 85.2.signed, or in the case of email sent, by the appropriate manager or person having authority to do so.
86. **Receipt of Notices:** A Notice will be considered to be received:
- 86.1.if delivered by hand or sent by courier, on the date it is delivered; or
- 86.2.if sent by post within New Zealand, on the 5th Business Day after the date it was sent; or
- 86.3.if sent by post internationally, on the 9th Business Day after the date it was sent, or
- 86.4.if sent by email, at the time the email enters the recipient's information system and it is not returned undelivered or as an error, but a Notice received after 5pm on a Business Day or on a day that is not a Business Day will be considered to be received on the next Business Day.
87. **Parties Addresses for Notices:**
- 87.1.**Supplier:** The address or email address stated on the Contract or supplier form completed to establish the Supplier onto the Council's billing system (whichever is most recent); and
- 87.2.**Council:** The address stated in the Parties section above.

## INTERPRETATION

88. In the Contract, unless the context requires otherwise:

- 88.1.a reference to any monetary amount is to New Zealand currency; and
- 88.2.a reference to time is to New Zealand time; and
- 88.3.a reference to "includes" is to "includes without limitation" and references to "included" and "including" shall be construed accordingly; and
- 88.4.a reference to a Party includes that Party's personal representatives, successors and permitted assigns; and
- 88.5.a reference to a person includes a corporation sole and a body of persons, whether corporate or unincorporated; and
- 88.6.a reference to a document, statute or regulation includes a reference to that document, statute or regulation as amended or replaced from time to time; and
- 88.7.headings will not be used in the interpretation of the Contract.

## GENERAL

89. **Independent contractor:** The Supplier is an independent contractor, contracted by the Council to provide the Goods and/or Services in accordance with the Contract. Nothing contained or implied in the Contract shall be construed as creating, and neither Party shall state, imply or do anything to suggest, that the Contract creates an employer/employee partnership or principal/agent relationship between the Council and the Supplier or any of its proprietors, officers, employees or subcontractors.
90. **Severability** If and to the extent any provision or part of a provision is illegal or unenforceable, such provision or part of a provision will be severed from the Contract and will not affect the continued operation of the remaining provisions of the Contract.
91. **Precedence:** If there is any conflict or difference between the documents forming the Contract then the order of precedence is:
- 91.1.a signed Variation to Contract agreement; and
- 91.2.any specific departures to these terms as documented in a Purchase Order or a Written Contract; and
- 91.3.these terms.
92. **Remedies:** The rights, powers and remedies provided in the Contract are cumulative and are in addition to any right, powers or remedies provided by law.



93. **Clauses that Remain in Force:** The clauses that by their nature should remain in force on expiry or termination of the Contract are all clauses in the following sections **Insurance, Records, Confidential Information, Privacy, Intellectual Property, Dispute Resolution, Suspension and Termination of Services, Notices, General** and all Definitions.
94. **Entire Agreement:** The Contract sets out the entire agreement between the Parties. It replaces any previous communications, negotiations, arrangements or agreements that the Parties had with each other relating to the Services before the Contract was signed, whether they were oral or in writing.
95. **Waiver:** If a Party does not immediately enforce its rights under the Contract that:
- 95.1. does not mean that the other Party is released or excused from any obligation to perform at the time or in the future; and
- 95.2. does not prevent that Party from exercising its rights at a later time.
96. **Electronic Acceptance:** The Parties agree that any legal requirement may be met by using electronic means in accordance with the Contract and Commercial Law Act 2017. In this clause the term “legal requirement” has the meaning given to it by section 219(2) of the Contract and Commercial Law Act 2017.
97. **Governing Law:** The Contract shall be governed by the laws of New Zealand and the Parties irrevocably submit to the exclusive jurisdiction of the courts of New Zealand.

END OF TERMS