

Health New Zealand - Te Whatu Ora Lakes

Terms and Conditions of Purchase

1. Definitions and Interpretation

1.1. Definitions

In these Conditions, unless otherwise indicated by the context:

Agreement means the agreement between Lakes District and the Supplier consisting of a Purchase Order, these Conditions and all documents attached by Lakes District or which Lakes District agrees are incorporated by reference;

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

Business Day means any day excluding a weekend or public holiday in New Zealand.

Conditions means these terms and conditions of purchase;

Confidential Information means all documentation, data, drawings, intellectual property and other information of a party (and includes Personal Information) except to the extent that such information is in the public domain through no breach of the Agreement;

Defects Liability Period means the period of 18 months from the date of receipt of delivery by Lakes District or any other period agreed in writing by the parties;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Lakes District means Health New Zealand - Te Whatu Ora Lakes

Terms means these terms of trade.

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

1.2. Interpretation

In these Conditions, unless otherwise indicated to the contrary:

(a) A reference to the Agreement or any other document or agreement, includes any variation, replacement or novation of them;

(b) The use of the word "includes" or "including" shall be interpreted to mean "includes" or "including" without limitation";

(c) Headings are for ease of reference only and do not affect interpretation;

(d) The singular includes the plural and vice versa;

(e) A reference to "\$" or "dollars" is to New Zealand dollars;

(f) A reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);

(g) Where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase shall have corresponding meanings; and

(h) A reference to all or any part of a Law includes that Law as amended, consolidated, re-enacted or replaced from time to time.

2. Purchasing under these Terms

2.1. Any Purchase Order placed by Lakes District are subject to these Terms of Trade (**Terms**), except where Lakes District has signed a separate agreement for the relevant goods, equipment or services with the Supplier (in which case such agreement takes precedence).

2.2. Notwithstanding any terms of supply advised by the Supplier (including on the Supplier's invoices), these Terms will be paramount and will apply to the exclusion of any of the Supplier's documentation, even if at some later date Lakes District signs or otherwise purports to accept, the terms of that documentation.

2.3. The Supplier will supply and deliver the Supplies for the Prices, in accordance with Purchase Orders.

2.4. The Supplier will confirm receipt of each Purchase Order by email to the address advised by Lakes District or to the Lakes District Purchasing helpdesk telephone number specified on the PO. A Purchase Order will be deemed accepted if the Supplier does not reject it within one Business Day, or if Supplies are delivered to the Purchaser. If the Supplier receives a request or order for Supplies (including a verbal request) that is not, or does not appear to be, a properly constituted Lakes District Purchase Order, the Supplier shall contact Lakes District Purchasing and shall not accept the order until a proper Purchase Order is received, unless there is a specific agreement in writing that Supplies are to be provided in advance of a Purchase Order (e.g. where maintenance services are urgently required). No Purchaser will be liable for Supplies unless ordered on that Purchaser's Purchase Order unless there is such specific written agreement.

2.5. These Terms constitute a binding agreement between the Purchaser and the Supplier once a Purchase Order is accepted (or if Supplies are Supplied in advance of a Purchase Order, then from the time those Supplies are supplied).

2.6. The applicable Purchase Order number must be quoted by the Supplier on all correspondence and invoices relating to a Purchase Order.

2.7. The Supplier agrees that the terms of each Purchase Order are intended to confer benefits on and be enforceable by Lakes District under the Contracts (Privacy) Act 1982.

2.8. If Lakes District purchases under these Terms and such purchase is for the purposes of resupply to a DHB any loss suffered by that DHB in relation to the Supplies shall be deemed a direct loss suffered by Lakes District.

3. Supplier's Obligations and Warranties

Without limiting any other obligation under the Agreement, the Supplier:

3.1. Shall be responsible for any discrepancies, errors or omissions in specifications, drawings or any particulars supplied by it and shall carefully check information of any kind provided to it by Lakes District;

3.2. Shall comply with all Privacy Laws in relation to Personal Information, whether or not the Supplier is an organisation bound by the Privacy Act;

3.3. Shall ensure that it and its Personnel do not make public or disclose any Confidential Information of Lakes District except to the extent required by Law to do so and subject to giving Lakes District reasonable notice prior to disclosure;

3.4. Shall ensure that it and its Personnel comply with all Laws including:

(a) Laws relating to employees including those governing freedom of association; employment conditions, remuneration and entitlements; minimum working age; equal opportunity and discrimination;

(b) Competition laws including the *Commerce Act 1986*; and

(c) Laws governing health and safety at work and environmental protection;

3.5. warrants, without limiting any other provisions of the Agreement (or otherwise), that:

(a) All Product will:

(i) Conform with all specifications specified in the Purchase Order;

(ii) Comply in all respects with all standards, codes, regulations and statutory requirements relevant to the Supplies, including any required notifications;

(iii) Be delivered free of any encumbrance, adverse interest or claim by any third party;

(iv) Have clear and indelibly inscribed labels in English;

- (v) Be new, of a high standard, of merchantable quality, manufactured in accordance with best industry practice, free from faults and defects and fit for the Purchaser's intended purpose; and
 - (vi) Not infringe the intellectual property rights of any third party.
 - (vii) Provide the full functionality and performance claimed for the Product;
 - (viii) Operate in accordance with its specifications; and
 - (ix) (in the case of software and hardware) when in operation, calculate dates correctly for the period of the useful life of the Product; and
- (b) All Services will be provided with due skill and care to the standard reasonably to be expected of a person performing the business of the Supplier.

4. Recalls & product safety

- 4.1. The Supplier will notify Lakes District and each Purchaser in writing immediately if it recalls or is required by Government or any other authorities to recall or modify any or all of the Supplies.
- 4.2. In such cases the Supplier will use its best endeavours to provide replacement Supplies that are acceptable to Lakes District and affected Purchasers as soon as possible but not withstanding this the Terms of Trade for Supplies 13 June 2016 2 Purchasers may reject any recalled or unsafe Supplies and purchase alternative supplies elsewhere.
- 4.3. If any Supplies are rejected or recalled, the Supplier will immediately refund to each affected Purchaser all money paid by that Purchaser for such Supplies, unless the Supplier has provided replacement Supplies to the satisfaction of that Purchaser. The Supplier will not at any time substitute any Supplies with any other product without prior written consent from the Purchaser.

5. Packaging & Delivery

- 5.1. The Supplier will package and transport the Supplies in an appropriate manner.
- 5.2. The Supplies will be delivered to the Delivery Address (for goods) or provided at the specified site (for services) on the required date. If no date is specified or agreed in writing then Supplies must be delivered with all reasonable speed and so as to cause the least possible disruption to the Purchase. Lakes District may reject delayed deliveries.
- 5.3. A delivery note stating the Purchase Order number(s) and itemising each item purchased (including quantity) will be provided with the Supplies..
- 5.4. A Purchaser may on 24 hours' notice postpone any delivery and the Supplier will reschedule the postponed delivery as requested.
- 5.5. Partial deliveries of Supplies may only be made with the Purchaser's prior written consent.
- 5.6. The Supplier will ensure that each item supplied is labelled with the following information:
 - (a) Manufacturer's name, product reference/supplier part number, unique lot/batch number and manufacturing date (if applicable) and expiry date;
 - (b) Sterile Supplies will be in a peel back container and sterile Supplies, packs and sets will note the method of sterilisation;
 - (c) Packs and sets will list all components.

6. Defects

- 6.1. Unless Lakes District exercises its rights under clause 4.2, the Supplier shall, at its cost and without prejudice to any of Lakes District's other rights and remedies, promptly rectify all defects occurring in the Work or Supplies within the Defects Liability Period.
- 6.2. If a Product or Service does not substantially meet the requirements of the Agreement (including any specifications), Lakes District may reject all or part of the Product or Services. The Supplier shall refund to Lakes District, upon request, any payments made by Lakes District in respect of such rejected Product and Services. Title and risk in rejected Product shall revert to the Supplier upon receipt by Lakes District of the refund.
- 6.3. Where rejection or recall of Supplies applies, any additional costs incurred by a Purchaser in purchasing alternative product, including any difference between the price for the Supplies and the actual cost of purchase of the alternative supplies (if the actual cost is higher) will be paid to that Purchaser by the Supplier on demand and will be recoverable from the Supplier as a debt due to that Purchaser.

7. Terms Applicable to Consignment Supplies

- 7.1. **Consignment Supplies** means Supplies that remain the property of and at the risk of the Supplier until after usage, but are held by Lakes District, a Health New Zealand or a Logistics Provider until required for use by the Purchaser.
- 7.2. If any of the Supplies are supplied as Consignment Supplies the following terms shall apply to those Supplies (in precedence over other Terms):
 - (a) the Purchaser will raise a Purchase Order immediately any Consignment Supplies are used;
 - (b) usage (including opening the packaging) of any Consignment Supplies by the Purchaser shall constitute the formation of a binding agreement between that Purchaser and the Supplier, on the terms of the Terms (and any reference to a Purchase Order forming an agreement is deemed to refer to usage forming such agreement);
 - (c) the stock of Consignment Supplies held by each Purchaser will be maintained by the Supplier at no less than three months' expected usage (unless another level is agreed);
 - (d) Consignment Supplies will be managed by the Supplier via regular (at least every three months) reviews and stocktaking and reporting to the Purchaser of such reviews.;
 - (e) expired Consignment Supplies will be replaced by the Supplier without charge, provided that the Purchaser will use reasonable endeavours to use Consignment Supplies on a first expiring, first out basis;
 - (f) the Purchaser will notify the Supplier if any Consignment Supplies are damaged or out of its original packaging;
 - (g) if the Supplier seeks payment for damage or loss, which party bears the cost of damage or loss will be agreed on a case by case basis in good faith;
 - (h) Consignment Supplies will be delivered to the Purchaser on such days, at such time, so such places and in such quantities as agreed by the Purchaser. The Purchaser and the Supplier will work together to agree on these and any other operational details as required;
 - (i) Consignment Supplies remain the property of the Supplier, and title (except for Supplies implanted into a Patient where title passes on implantation) and risk remains with the Supplier, until usage by the Purchaser; and
 - (j) the applicable Price for Consignment Supplies is the Price at the time of usage, unless agreed otherwise in writing.

8. Lakes District Property

- 8.1. Legal title to and property in all goods and material supplied by Lakes District ("**Lakes District Material**") for the Work shall remain with Lakes District and shall not pass to the Supplier under any circumstances. The Supplier may only use Lakes District Material to perform the Work and bears the risk of loss or damage. The Supplier shall store and take appropriate care of the Lakes District Material and compensate Lakes District if any Lakes District Material is lost or damaged.
- 8.2. All drawings, specifications, information and samples provided by Lakes District shall remain Lakes District's sole and exclusive property and are deemed to be Confidential Information. Lakes District makes no warranties regarding the accuracy of, and shall not be liable for, any defects, mistakes or inaccuracies in such documents, information or samples.

9. Intellectual Property Rights

- 9.1. Nothing in this Agreement transfers ownership of Background IP Rights. The Supplier grants Lakes District an irrevocable, non-exclusive, transferable, royalty-free licence to use Background IP Rights in connection with the Work and for the use, repair, maintenance, upgrade or modification of Product.
- 9.2. Subject to clause 6.1, the Supplier: (a) presently assigns to Lakes District all existing and future IP Rights created by the Supplier or the Supplier's Personnel in performing the Work; and (b) acknowledges that by virtue of this clause all such existing IP Rights are vested in Lakes District and on their creation, all such future IP Rights will vest in Lakes District. The Supplier shall, at its cost, do all things reasonably requested by Lakes District to enable Lakes District to assure further the rights assigned under this clause.
- 9.3. The Supplier:
 - (a) Warrants that Lakes District's use of the Products will not infringe any copyright under the Copyright Act 1994; and
 - (b) Shall indemnify Lakes District and its Personnel against any claims, or costs, expenses, liability, losses or damage suffered or incurred by Lakes District and its Personnel arising out of, or in any way in connection with, any actual or alleged infringement of any copyright under the Copyright Act 1994.
- 9.4. For the purposes of this clause 9, Lakes District's use of the material provided by the Supplier under this Agreement includes Lakes District's right to reproduce, publish, copy, adapt, communicate to the public, destroy or in any way change the materials or part of the Work:
 - (a) With or without attribution of authorship;
 - (b) In any medium; and
 - (c) In any context and in any way it sees fit.
- 9.5. The Supplier warrants that Lakes District's use of the Products shall not infringe any third-party IP Rights. The Supplier shall indemnify Lakes District against any loss, costs (including legal fees) and expenses arising from any claim by a third party in respect of the Work including a claim that the use of the Product or any part of the Product constitutes an infringement of any third-party IP Rights. The Supplier shall at Lakes District's option and at the Supplier's expense either replace such infringing part with a non-infringing part, or modify such part so as to render it to be non-infringing (in either case, to deliver the same functionality and performance as the infringing part), or procure for Lakes District the right to use such a part.

10. Time and Delivery

- 10.1. If access to Purchaser sites is necessary for the delivery or provision of the Supplies, the Purchaser will allow access at reasonable times. The Supplier will observe the Purchaser's health & safety and security policies and procedures, and access may be denied for non-compliance.

- 10.2. The Supplier must comply with the Health & Safety at Work Act 2015 and accordingly ensure as far as is reasonably practicable that the health and safety of its personnel, the personnel of the Purchaser and of other persons is not put at risk from work carried out in the performance of these Terms and that it does not do anything likely to give rise to an improvement or prohibition notice or regulatory breach under such Act.
- 10.3. The times and dates stated in the Purchase Order for delivery or completion (including any extension of such time or date granted in writing by Lakes District) shall be binding and are of the essence of the Agreement.
- 10.4. The Supplier shall deliver Product without additional charge to Lakes District, to the address stated in the Purchase Order by the stated dates for delivery.
- 10.5. The Supplier shall not charge Lakes District for wrapping, packing, cartons, boxing or preparing the Products for shipment unless authority for such charge is expressly incorporated in the Agreement.
- 10.6. The Supplier must ensure that:
 - (a) All cases, crates and packages to be used in packaging the goods shall be protected against corrosion, weather damage, condensation, distortion, damage by vermin and the ingress of foreign matter;
 - (b) All packaging material shall comply with all legal requirements in New Zealand which are relevant to such materials, including the requirements of the Ministry of Primary Industries and the Ministry of Agriculture and Fisheries. The Supplier shall take all necessary steps to ensure that the packing materials comply with such rules and the Supplier indemnifies Lakes District against all losses, claims or expenses suffered or incurred by it as a result of such packing material not so complying;
 - (c) A packing slip is provided with all goods;
 - (d) The number on the Purchase Order must be quoted on all packing slips, delivery dockets, invoices and related documents, and shown clearly on all consignments.
- 10.7. The Supplier shall ensure that prior to the delivery or use of any Hazardous Substance on Site, the Supplier:
 - (a) applies appropriate labelling;
 - (b) provides Lakes District with a copy of the current Safety Data Sheet for such Hazardous Substance that complies with any relevant Code of Practice;
 - (c) provides Lakes District with a completed risk assessment if Services include the use of such Hazardous Substances; and
 - (d) complies in all respects with the requirements of the *Hazardous Substances and New Organisms Act 1996* and related regulations.
11. **Risk and Title**
 - 11.1. Risk of loss or damage in the Product shall pass to Lakes District on receipt of delivery by Lakes District. Title in Product shall pass to Lakes District upon payment.
 - 11.2. The Supplier warrants that at the time of delivery of Product:
 - (a) the Supplier has complete ownership of the Product free of any liens, charges and encumbrances and provides the Product to Lakes District on that basis; and
 - (b) Lakes District is entitled to clear, complete and quiet possession of the Product.
 - (c) Signing of a delivery note or physical acceptance of delivery will not be taken as acceptance of either the quality or quantity of the Supplies. Acceptance by the Purchaser is subject to its subsequent inspection and/or use of the Supplies.
 - (d) Unencumbered title will pass on payment by the Purchaser for those Supplies, except in the case of Supplies implanted into or attached to a patient prior to payment, where title passes on implantation/attachment.
12. **Price and Payment**
 - 12.1. Prices are, unless otherwise specified, fixed and not subject to variation except as permitted under the Agreement. Unless otherwise stated in the Purchase Order, prices include all Government taxes and charges.
 - 12.2. The Supplier shall submit a valid GST tax invoice specifying the Purchase Order number, Product item number and other relevant details required by Lakes District.
 - 12.3. Invoices are to be addressed to: Lakes District Health Board, Accounts Payable, Private Bag 3023, Rotorua 3046, New Zealand or email APhelp@lakesdhub.govt.nz
 - 12.4. Subject to any contrary term of the Agreement, payment will be made in accordance with the Purchase Order. Lakes District may set-off any amount due and payable by Lakes District to the Supplier against any amount owing by the Supplier, however or whenever incurred (including under an indemnity).
 - 12.5. If the supplier has complied with these Terms, the Purchaser will pay the Supplier on or before the 20th day of the month following the month of receipt of a properly issued invoice unless different terms are agreed in writing by the Parties. A Purchaser may withhold payment in relation to any matter genuinely in dispute.
 - 12.6. Failure by a Purchaser to dispute any invoice prior to payment will not prejudice that Purchaser's right (or Lakes District Health Board's right) to subsequently dispute the correctness of such invoice. A Purchaser may withhold, deduct or set off the amount of any overpayment or any amount recoverable by purchasers from the Supplier under these Terms.
 - 12.7. The Prices are the only amount payable for the delivery of the Supplies and include all the Supplier's costs and expenses in complying with its obligations (including freight, shipping, packing, duties, insurance etc.) unless otherwise agreed in writing. The Purchaser will not be required to pay any additional sums in respect of the Supplies.
13. **No Inducement**

If the Supplier either directly or indirectly provides to an employee of Lakes District any benefit which might reasonably be construed as an inducement for the employee to show favour to the Supplier then Lakes District may at its option give notice to the Supplier that the Agreement is void and of no force or effect.
14. **Liability, Indemnity and Insurance**
 - 14.1. The Supplier shall indemnify Lakes District and Lakes District's Personnel against all loss, actions, liabilities, proceedings, claims, demands, damages, costs or expenses (including legal fees and disbursements) suffered or incurred by Lakes District and Lakes District Personnel arising out of personal injury (including death) and damage to property to the extent caused or contributed to by an act or omission of the Supplier.
 - 14.2. Except to the extent that liability cannot be legally limited or excluded and whether in contract, tort, negligence, under an indemnity, under statute, in equity or otherwise:
 - (a) Lakes District's liability arising out of or in connection with the Agreement shall be limited to payment of the prices due and owing for the Work under clause 9; and
 - (b) in no event shall Lakes District be liable for indirect or consequential loss or damage, economic loss, loss of profit, loss of revenue, loss of contract, loss of production or production stoppage, or loss of data.
 - 14.3. The Supplier shall at its expense effect and maintain:
 - (a) a public liability policy for an amount not less than \$5 million per occurrence; and
 - (b) an insurance policy covering (to replacement value) the loss of or damage to the Product at all such times that risk of loss of or damage to the Product remains with the Supplier.
 - 14.4. The policies in clause 14.3 must name Lakes District as an additional insured and include a cross-liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons comprising the insured. All insurance policies must be on terms and with an insurer reasonably acceptable to Lakes District. The Supplier shall provide satisfactory evidence of such insurance to Lakes District upon request.
15. **Confidential Information**
 - 15.1. Each Party confirms that it will keep all information that is marked or should reasonably be regarded as confidential (including the fact and quantity of any Supplies ordered) confidential other than as necessary for the performance of these Terms (including the provision of shared services to any DHB, as required by law (including under the Official Information Act 1982), Ministers or parliamentary convention, with the other party's approval or if the information is already in the public domain other than through a party's breach. This is a continuing obligation and each party will ensure its personnel comply with it as if it applied to them.
16. **Site Access**
 - 16.1. The Supplier will be given access to the Site for a period sufficient to enable it to execute its contractual obligations under the Agreement. Access shall be at a mutually convenient time.
 - 16.2. Unless otherwise agreed in writing the Supplier shall provide at its own expense all Site facilities, constructional plant and other amenities as may be necessary for the performance of the Work.
 - 16.3. When on Site, the Supplier shall comply with and shall ensure that its Personnel comply with all reasonable instructions from Lakes District, Policies and Laws applicable to the Site.
17. **Termination**
 - 17.1. If the Supplier:
 - (a) breaches clause 3.4;

- (b) does not remedy any other breach of the Agreement within 14 days of being requested to do so;
- (c) has a liquidator, administrator, receiver, receiver and manager, controller, trustee, inspector under any companies or securities legislation or other like officer appointed over some or all of its assets; or
- (d) has a change in its ultimate shareholding, then Lakes District may, at its option and without prejudice to any other rights it may have, by notice in writing terminate the Agreement with immediate effect and retain or enforce any security given. Lakes District may apply such security to any loss and damage incurred by it arising from such termination. The Supplier shall immediately refund any amounts paid by Lakes District in respect of Work partially or not yet performed and, upon request, shall deliver to Lakes District any of the Work completed, as at the date of termination (subject only to payment of agreed costs, or failing agreement, direct costs and normal overheads for such Work).

17.2. Lakes District may at any time without cause, vary, cease or suspend the Work or terminate the Agreement by giving notice in writing to the Supplier. On receipt of a notice from Lakes District, the Supplier shall immediately, vary, cease or suspend Work in accordance with and to the extent specified in the notice. If such notice is given, Lakes District shall only be liable for the amount of any direct cost and normal overheads falling within the scope of the Agreement, as have accrued to the date of receipt of the notice from Lakes District up to a maximum of the amounts that would otherwise have been payable under the Agreement.

18. Force Majeure

The Supplier shall not be responsible for delays or defaults in deliveries, nor Lakes District for failure to receive, if occasioned by war, strike, fire, pestilence, the acts of God or the public enemy, riot or civil commotion, or any other cause reasonably beyond the control of the Supplier or Lakes District.

19. Dispute Resolution

19.1. If any dispute or difference occurs between the Parties arising out of or in connection with the Agreement (“Dispute”), either Party may give written notice of that Dispute to the other Party, giving details of the subject-matter of the Dispute (“Notice of Dispute”).

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

- (a) the Dispute shall be submitted for negotiation by the respective Chief Executive Officers of the Parties or their respective nominees;
- (b) if within 21 days of the giving of the Notice of Dispute, the Dispute has not been resolved, then either party may submit the Dispute to arbitration in accordance with the *Arbitration Act 1996* (excluding clauses 4 and 5 of the Second Schedule);
- (c) if the Parties fail to agree on the appointment of an arbitrator within 5 days of submitting the Dispute to arbitration, the appointment will be made by the President of the Auckland District Law Society for the time being or their nominee;
- (d) the award of such arbitration shall be final and binding on both Parties;
- (e) a reference to arbitration under this clause shall not relieve the Supplier of any obligations under the Agreement, including, if and so far as is reasonably practicable, the obligation to take steps necessary during arbitration proceedings to ensure that the progress of the Agreement will be maintained; and
- (f) the seat of Arbitration shall be Auckland, New Zealand. The language to be used in the arbitration shall be English.

20. Health and Safety at Work and Environmental Protection

20.1. Without limiting any other provision or the obligation under the Agreement, the Supplier shall ensure that the Work and workplace are safe, adequately managed and shall take all practicable steps to ensure that the Work and workplace are free from risks to health, safety and the environment and in doing so shall:

- (a) have a safety and environmental management system that ensures compliance with health and safety at work and environmental protection Laws;
- (b) prepare safe work method statements for the Work which: (i) describe how the Work is to be performed and the equipment to be used; identify (ii) the work activities assessed as having safety and environmental risks and the control measures that will be applied to such risks, (iii) the standards or codes to be complied with, (iv) the qualifications of the Personnel doing the Work and (v) the training required to do the Work;
- (c) ensure the Work is adequately supervised at all times to ensure workplace health and safety and protection of the environment;
- (d) ensure that it and its Personnel performing the Work are qualified, have undertaken the relevant training for the Work and hold relevant current qualifications, licences, permits, authorisations and certifications in accordance with applicable Laws including the Health and Safety at Work Act 2015;
- (e) ensure that all Personnel are provided with all relevant information and instruction to ensure safe performance of the Work;
- (f) ensure that all plant, equipment and substances used in performing the Work are safe and limit, as far as reasonably practicable, risks to health, safety and the environment (when properly used); and
- (g) if requested by Lakes District, provide evidence of compliance with this clause 16.

20.2. Lakes District may, upon reasonable notice to the Supplier, audit the Supplier’s compliance with this clause 16 and the Supplier shall cooperate with any reasonable requests of Lakes District in connection with such audit.

21. General

21.1. For the purpose of service of any document or notice in connection with the Agreement it shall be sufficient for either Lakes District or the Supplier to forward such document or notice by hand, prepaid post or facsimile to the registered office of the other party.

21.2. If the whole or any part of these Conditions is or becomes or is held to be illegal invalid or unenforceable, then the whole and each part of the clauses of these Conditions shall (to the extent necessary to avoid such illegality invalidity or unenforceability) be interpreted read down or severed without affecting the operation of the remaining clauses.

21.3. The Supplier shall not, without the prior written consent of Lakes District, assign, transfer or subcontract the performance of any or all of the Supplier’s obligations or benefits under the Agreement to a third party.

21.4. The Agreement may only be amended in writing signed by both parties.

21.5. The Agreement shall be governed by and construed in accordance with the laws of New Zealand and subject to clause 15, the parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand.

21.6. In the event of any inconsistency between the terms of the Purchase Order, these Conditions and any separate written agreement signed by the parties in relation to the Work, the following order of precedence applies:

- (a) the Purchase Order;
- (b) the written agreement;
- (c) these Conditions.