

TERMS AND CONDITIONS FOR THE PERFORMANCE OF TESTING AND INSPECTION SERVICES

Interpretation:

1. The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in Auckland, New Zealand.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 7.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 15.5.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

Customer: the person company firm or other entity which purchases Services from the Supplier.

Customer Default: has the meaning set out in clause 6.2.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's offer to purchase the Services as set out in the Supplier's Quotation, in the form which is expressly accepted by the Supplier.

Party: means either the Supplier or the Customer and "**Parties**" means both the Supplier and the Customer.

Quotation: a document issued by the Supplier to the Customer, on the Supplier's standard form or in another format, which sets out details relating to the Services.

Report: has the meaning set out in clause 5.1

Services: the third-party inspection, testing and certification services (including repairs) supplied by the Supplier to the Customer as set out in the Specification.

Specification: the description or specification of the Services provided in writing by the Supplier to the Customer or as otherwise expressly agreed between the Parties in writing.

Supplier: Bridon New Zealand Limited incorporated and registered in New Zealand with NZ Business Number 9429040752402 whose registered office is at 6-10 Greenmount Drive, East Tamaki, Auckland, New Zealand.

Interpretation:

1.2 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.3 Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.4 A reference to **writing** or **written** includes fax and email.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted: (i) when the Supplier issues written acceptance of the Order under these Conditions; or (ii) immediately prior to commencement of the Services (whichever occurs earlier), at which point and on which date the Contract shall come into existence subject to the Conditions (**Commencement Date**).

2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 Any Quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue unless expressly specified otherwise in the Quotation and must be accepted by a Customer by providing an Order within that timeframe.

3. SUPPLY OF SERVICES

- 3.1 The Supplier warrants to the Customer that the Services will be performed using reasonable skill and care, and with all due attention to health and safety.
- 3.2 The Supplier shall use reasonable endeavours to meet any performance dates expressly agreed between the Parties in writing, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services. Without prejudice to the generality of the foregoing, observance of any such estimated dates is conditional upon the Customer's timely compliance with the Customer's obligations under clause 6.
- 3.3 The Customer agrees that Supplier is neither an insurer nor a guarantor and does not take the place of the Customer or any third parties that the Customer engages. The Customer acknowledges that if it seeks to protect itself from claims or loss, damage or injury or any other liabilities it should separately obtain appropriate insurance.
- 3.4 The warranty in clause 3.1 is the sole and entire warranty pertaining to the Services. The Supplier disclaims all other warranties, guarantees or representations express implied or arising by the operation of law, trade usage, course of dealing or those set out in Part 3 of the Contract and Commercial Law Act 2017 or implied by the common law will not apply and are expressly excluded from these Conditions to the maximum extent permitted by law. Without prejudice to the generality of the foregoing, the Supplier does not warrant or guarantee the Customer's equipment goods or other assets and the Report shall not represent a warranty in respect of fitness for purpose, a warranty in respect of merchantability or any other warranty or guarantee and that no such representation has been made by the Supplier, whether during negotiations prior to these Conditions being entered into or at any other time and accordingly, the parties agree to contract out of sections 9, 12A, 13 and 14(1) (as applicable) of the Fair Trading Act 1986.
- 3.5 The Customer acknowledges and agrees that the Services are provided for the Customer's own business use and accordingly all remedies in the Consumer Guarantees Act 1993 are excluded.

4. SCOPE OF SERVICES

- 4.1 The Supplier shall use reasonable endeavours to perform the Services in accordance with the Specification.
- 4.2 In the event the Customer requests that the Supplier witnesses any third-party intervention, the Customer acknowledges and agrees that the Supplier's sole responsibility is to be present at the time of the third-party intervention and to forward the results or confirm the occurrence of the intervention. The Customer agrees that the Supplier is not responsible for the condition or calibration of apparatus, instruments and measuring equipment used, the analysis methods applied, the qualifications, actions or omissions of third parties or the analysis of the results.
- 4.3 The Customer acknowledges that performance of the Services (or any part thereof) is subject to adverse weather and other environmental conditions. The Customer agrees that any delay arising from or connected to adverse weather and/or environmental conditions is beyond the reasonable control of the Supplier and the Supplier shall have no liability for delay arising from or connected to such adverse weather or environmental conditions.
- 4.4 The Supplier shall retain samples for a maximum period of 3 months from receipt, or such other shorter period as reasonably necessary taking into account the nature of the samples and/or the Specification. Thereafter, at the sole discretion of the Supplier, samples shall be (i) returned to the Customer at the Customer's risk and expense; or (ii) disposed of at the Customer's expense. The Supplier shall be entitled to charge a reasonable storage fee for samples in storage longer than 3 calendar months.
- 4.5 The Customer shall bear the costs and risk in respect of delivery of samples, unless the Parties expressly agree otherwise in writing. If the Customer (including the Customer's representative(s)) is responsible for transport of samples, the Customer shall ensure that the samples are suitably packaged to prevent any damage and/or deterioration to samples during transit and loading/unloading.
- 4.6 The Supplier reserves the right to amend the Specification at any time if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services. The Supplier shall notify the Customer of the amendment in any such event.

5. THE REPORT

- 5.1 The completion of the Services shall be evidenced by the Supplier issuing to the Customer a written report(s) and/or certificate(s) (as the case requires) setting out the results of the Services based upon the Specification, applicable protocols, written information, and to the extent applicable, any samples provided by the Customer to the Supplier ("**Report**").
- 5.2 The Report shall:
- (a) constitute the sole deliverable in respect of the Services;

- (b) relate solely and exclusively to the facts and circumstances observed and recorded by the Supplier at the time of performance of the Services within the limits of the Specification and the Supplier shall have no obligation to update the Report after it has been issued; and
- (c) be issued in written and signed format.

5.3 The Report will set out the findings of the Supplier solely with respect to samples or equipment identified or Services provided under the Contract, and the results set out in the Report shall not be construed as indicative or representative of the quality or characteristics of the lot from which a sample or equipment was taken for the Supplier's performance of the Services.

5.4 The Report is issued by the Supplier for the sole and exclusive use of the Customer (for the purpose specified in the Specification) and, except as strictly required by any governmental administrative or regulatory body shall not be: (a) published; (b) used for advertising; (c) copied or replicated for distribution or publicly disclosed without the Supplier's prior written consent.

5.5 The Customer accepts full responsibility and liability for the accuracy of documentation submitted to or required by any governmental administrative or regulatory body, including (without limitation) where the Supplier has provided assistance to the Customer in the preparation of such documentation.

5.6 The Supplier shall not be responsible for the interpretation of the Report by any third party.

5.7 The Report shall not be used in relation to any dispute or litigation unless and to the extent that the Supplier has given its prior written consent to do so.

6. CUSTOMER'S OBLIGATIONS

6.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities and equipment (including without limitation material handling equipment for heavy objects) as reasonably required by the Supplier to safely undertake the Services without charge;
- (d) provide the Supplier in a timely manner (and in any event not later than 2 Business Days prior to the agreed intervention) with such information and materials as the Supplier may reasonably require in order to perform the Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services (including but not limited to ensuring that all goods and equipment subject to inspection are fully prepared in readiness for the inspection);
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (g) comply with all applicable laws, including the Health and Safety at Work Act 2015 and its regulations;
- (h) ensure all necessary measures as far as reasonably practicable are taken where the Customer is primarily in charge of the workplace for safety and security of working conditions, sites and installations during the performance of Services and provide the Supplier with the Customer's health and safety policy (if it has one);
- (i) inform the Supplier in advance of any known hazards or dangers, actual or potential, associated with any site equipment goods samples or other assets, including but not limited to the presence or risk of radiation, toxic or noxious or explosive element or materials, environmental pollution or poisons and cooperate with any reasonable instructions of the Supplier as to how these hazards may be managed;
- (j) keep all materials, equipment, documents and other property of the Supplier (together, the "**Supplier Materials**") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
- (k) comply with any additional obligations as set out in the Specification; and
- (l) for a period of 2 years from the Commencement Date, not directly or indirectly take any action to solicit for employment any of Supplier's employees.

6.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 6; and

- (c) the Customer shall indemnify the Supplier from any claim, damage, loss, costs, expenses or other liability arising from or related to the Customer's Default (including but not limited to any waiting time or lost time, which Supplier may at its sole discretion charge to Customer at the Supplier's prevailing rates).

7. CHARGES AND PAYMENT

- 7.1 The Charges for the Services shall be paid in New Zealand Dollars at the Supplier's standard rates (which are subject to change) and as the Supplier directs, unless the Parties have mutually agreed otherwise in advance and in writing.
- 7.1 Where the Customer:
 - (a) has not been provided with a credit account with the Supplier, payment will be due within 5 Business Days of the date the invoice is issued to the Customer by the Supplier; or
 - (b) has been provided with a credit account by the Supplier, payment in full shall be due 20 Business Days from the end of month following after the date of invoicing, unless otherwise expressly agreed in writing between the parties; and
 - (c) in either case, time for payment shall be of the essence of the Contract.
- 7.2 All amounts due to the Supplier under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as strictly required by law).
- 7.3 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 13, the Customer shall (at Supplier's sole discretion) pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each month at a rate of 2.5% per calendar month and such interest shall compound monthly at a rate after as well as before any judgment. If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in pursuing the debt, including all legal costs on a solicitor and own client basis and the Supplier's collection agency costs.
- 7.4 In the event of any unforeseen problems or expenses arising in the course of carrying out the Services the Supplier shall endeavour to inform the Customer and shall be entitled to charge additional fees to cover reasonable extra time and cost.
- 7.5 In the event the Supplier is unable to perform all or part of the Services for any cause whatsoever outside of the Supplier's control, including but not limited to the Customer's failure to comply with its obligations under clause 6, the Supplier shall nevertheless be entitled to payment of: (a) the amount of all non-refundable expenses incurred by the Supplier; and (b) a proportion of the agreed fee equal to the proportion of the Services actually carried out.
- 7.6 The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials. In addition, Supplier shall be entitled to charge an administration fee in respect of its expenses which shall be a fixed percentage of the expenses incurred.
- 7.7 The Customer shall provide to the Supplier a valid Order (where a credit account exists with the Supplier) within 5 Business Days of request made by the Supplier (time being of the essence) to enable the Supplier to issue a tax invoice for Services. In the event the Customer does not provide the Order as required by this clause, then the Supplier may at its option suspend all further supplies of Services (or any goods being supplied to the Customer) until the Order is provided or shall be entitled to cancel this Contract.

8. GST

- 8.1 Unless expressly stated otherwise, the Supplier's prices and the Charges referred to in these Conditions and in any Quotation which may have formed the basis of an Order are exclusive of GST (pursuant to the Goods and Services Tax Act 1985) and any other applicable taxes and duties or similar charges which shall be payable by the Customer at the rate and in the manner from time to time prescribed by law. The Customer shall pay GST on the Services the subject of these Conditions, as invoiced by the Supplier on the payment terms on that invoice and, if rendered on the same date or on the same invoice as the Services supplied, at the same time as payment for the Services to which the GST relates.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 The Customer represents and warrants to the Supplier that no sample, equipment or other assets furnished to the Supplier by or on behalf of the Customer shall be in violation of any third party's Intellectual Property Rights. Customer shall indemnify the Supplier against any claim made against the Supplier in respect of any actual or alleged infringement of a third party's Intellectual Property Rights arising from or connected to the Services.
- 9.2 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier. Without prejudice to the generality of the foregoing, the names,

services marks, trademarks, copyrights and related Intellectual Property Rights of the Supplier and its affiliates (together, the "Marks") are and remain the sole property of the Supplier and shall not be used by the Customer.

9.3 Each Party grants the other a fully paid-up, non-exclusive, royalty-free, non-transferable licence to use the other Party's background Intellectual Property Rights solely for the purpose and to the extent necessary for performance of the Services.

9.4 The Customer may use issued Reports only after payment of all sums payable to the Supplier under the Contract and is not permitted to modify amend or otherwise use extracts of Reports.

10. PRIVACY ACT 2020

10.1 The Customer and the Guarantor/s acknowledge that they have received, agreed to and understood the Supplier's privacy policy linked at: <https://www.cookes.co.nz/about-cookes/legal> which are amended from time to time and incorporated into these Conditions.

10.2 The Customer and any party or parties guaranteeing its obligations and liabilities under the Contract ("Guarantor(s)") authorise the Supplier to: (a) collect, retain and use any information about the Customer for the purpose of assessing the Customer's creditworthiness or marketing products and services to the Customer; and (b) disclose information about the Customer, whether collected by the Supplier from the Customer directly or obtained by the Supplier from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer. Where the Customer and/or the Guarantor(s) are an individual the authorities and consents under this clause are authorities or consents for the purposes of the Privacy Act 2020.

10.3 The Customer and/or the Guarantors shall have the right to request from the Supplier a copy of the respective information retained by the Supplier in respect of them and the right to request the Supplier to correct any incorrect information held in respect of them.

11. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

11.1 Nothing in the Contract shall exclude or in any way limit any liability which cannot be excluded by law.

11.2 Subject to clause 11.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) any indirect or consequential loss.

11.3 Subject to clause 11.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the lesser of: (a) NZ\$100,000 (one hundred thousand New Zealand Dollars); or (b) 200% of the total Charges paid or payable (as the case requires) for the specific Services which gave rise to the applicable claim.

11.4 This clause 11 shall survive termination of the Contract.

12. INDEMNITY

12.1 The Customer indemnifies the Supplier from and against all liabilities, expenses, losses, damages and costs (including without limitation legal costs on a full indemnity basis and any third-party claims) whether arising under contract, tort (including negligence) or otherwise the Supplier or its directors, principals, employees, contractors or agents sustains or incurs (directly or indirectly) arising out of or resulting from:

- (a) Any breach of these Conditions by the Customer;
- (b) Any contravention of applicable laws or regulations by the Customer, including export and import control laws;
- (c) Any claim by any third party arising from any act or omission of the Customer in connection with these Conditions (whether negligent or not), including:
 - (i) Connected to or arising out of the Customer's breach of clause 6; or
 - (ii) Any misrepresentations, warranty or agreement, express or implied made by the Customer with respect to the Supplier, or any third-party supplier or manufacturer of the goods supplied by the Supplier;

- (d) Without limiting the foregoing, any negligent, wilful, reckless or unlawful act or omission of, or any intentional misconduct by the Customer in connection with these Conditions; or
- (e) Any claim by the Customer, to the extent that such claim is beyond the scope of the Supplier's liability to the Customer under these Conditions.

13. TERMINATION OR SUSPENSION

- 13.1 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract or suspend performance of Services each with immediate effect by giving written notice to the other party if:
- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 Business Days of that party being notified in writing to do so;
 - (b) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer (or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction);
 - (c) the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the Supplier's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 13.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
 - (b) the Customer fails to comply with any of its obligations under clause 6.
- 13.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.1, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

14. CONSEQUENCES OF TERMINATION

- 14.1 On termination of the Contract:
- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - (b) the Customer shall return all of the Supplier Materials (as defined in clause 6.1(j)) and any deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 14.2 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 14.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

15. DISPUTE RESOLUTION

- 15.1 Either party may give the other party notice of any dispute arising in respect of, or in connection with, these Terms ("Dispute") and in such event they shall first meet at senior management level to discuss the Dispute and make a genuine effort to resolve the Dispute but if no resolution of the Dispute has occurred within 10 Business Days from the date of the giving of the said notice, then either party may pursue their remedies as they see fit.
- 15.2 Nothing in this clause shall prevent a party making application to a court for an injunction or other urgent interlocutory relief.

16. GENERAL

- 16.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the

period of delay or non-performance continues for 20 Business Days or more, the party not affected may terminate the Conditions by giving 5 Business Days' written notice to the affected party.

16.2 **Assignment and other dealings.**

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

16.3 **Confidentiality.**

- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 15.3(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 15.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

16.4 **Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

16.5 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16.6 **Review.** The Supplier reserves the right to review and update these Conditions at any time. If, following any such review, there is to be a change to these Conditions, then that change will take effect from the date on which the Supplier notifies the Customer of such change.

16.7 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

16.8 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

16.9 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by courier post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number. If the parties agree to receive notices by email, then an email notice shall be deemed received when receipt is acknowledged by the receiving party.
- (b) Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by post, 10 Business Days following sending; or, if sent by fax, at 9.00 am on the next Business Day after transmission.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

16.10 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights to any third party to enforce any term of the Contract.

16.11 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of New Zealand.

16.12 **Jurisdiction.** Each party irrevocably agrees that the courts of New Zealand shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.