

**Purchase Order General Conditions
For Supply of Goods and Services**

**PURCHASE ORDER GENERAL
CONDITIONS – NEW ZEALAND**

For the Supply of Goods and Services

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1. PREAMBLE

- 1.1. Brightwater Engineering Ltd hereinafter referred to as "Purchaser" wishes to purchase specified "Goods" and/or "Services" as defined in the "Purchase Order". Failure to adhere to the requirements of the Purchase Order will constitute a breach of contract.
- 1.2. Brightwater Engineering Ltd may have entered into a contract with a specific client hereinafter referred to as "Client" for completion of certain works. Where this applies the Purchaser wishes to subcontract the supply of the specified Goods and Services and the Purchase Order will incorporate terms and conditions of the Head Contract between the Client and Purchaser.

2. DEFINITIONS

The following definitions shall be used for the purpose of interpreting the Purchase Order. However, the headers and sub-headers are to be read as general, and not exhaustive, descriptions only:

"Authorisation"

Means an instruction from the Purchaser which could constitute the formation of a contract for which the Purchase Order defines the terms and conditions.

"Client"

Means the Purchaser's client.

"Commencement Date"

Means the date of the Purchase Order or the date of Authorisation to proceed with the Works, whichever is the earlier.

"Day"

Means calendar day.

"Delivery Point"

Means the delivery point for the Goods as defined in the Purchase Order delivery terms.

"Documentation"

Means drawings, specifications, data sheets, codes, designs, calculations, material and test certificates, QA records, installation and commissioning instructions, O&M manuals, parts lists and any other documents as defined in the Supplier Data Requirements List or elsewhere in the Purchase Order.

"Goods"

Shall mean materials, equipment and all things to be provided by Supplier in order to fulfill the requirements of the Purchase Order.

"Head Contract"

Means the Contract Agreement between the Purchaser and the Client.

"Intellectual Property Rights" or "IP"

Means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trademarks, designs, patents, inventions and confidential information, and other results of intellectual activity in any field whether or not registrable, registered or patentable. These rights include rights in applications to register these rights and all renewals and extensions of these rights.

"Month"

Means calendar month.

"Project IP"

Means all Intellectual Property Rights created, discovered or coming into existence as a result of, for the purpose of or in connection with the supply of the Works.

"Purchase Order"

Means the Purchase Order and all documents incorporated therein including but not limited to these General Conditions of Purchase.

"Purchaser"

Means Brightwater Engineering Limited, a company incorporated and existing under the laws of New Zealand and having its registered office c/o Dentons Kensington Swan, 89 The Terrace, Wellington 6011, New Zealand.

"SDRL"

Means Supplier Data Requirements List.

"Services"

Means the services specified in the Purchase Order (including any part of the specified services and the results of the specified services).

"Subcontractor"

Means any person or firm, other than the Supplier, named in the Purchase Order for any part of the Work, or any person or firm to whom any of the Purchase Order has been sub-let.

"Supplier"

Means the person or organisation on which the Purchase Order is placed.

"Supplier Critical Data"

Means the critical Documentation required to be submitted to Purchaser by Supplier as defined within the Purchase Order.

"Work" or "Works"

Means all Goods or Services to be provided and work to be done by the Supplier under the Purchase Order.

3. THE PURCHASE ORDER

- 3.1. The Purchase Order constitutes the entire agreement between the Purchaser and the Supplier and supersedes all previous communications between the parties oral or written.
- 3.2. The Supplier shall be deemed to have carefully examined these General Conditions of Purchase and the specifications, schedules, drawings and Documentation listed on the Purchase Order. If the Supplier has any doubt as to the meaning of any portion of the Purchase Order, the Supplier shall before accepting the Purchase Order set forth the particulars thereof and submit them to the Purchaser in writing in order that such doubt is removed. The Supplier shall be deemed to have satisfied itself as to all the conditions and circumstances affecting the Purchase Order price and to have fixed its prices according to its own view of these. No additional allowance except as otherwise herein expressly provided will afterwards be made to the Purchase Order price.
- 3.3. The Supplier warrants that it shall meet all the requirements of the Purchaser as set out in the Purchase Order. Any work, rework or additional work required to be performed by the Supplier in order to satisfy the said requirements shall not entitle the Supplier to any additional payments or any extensions of time.
- 3.4. The performance of any part of this Purchase Order will be deemed to be acceptance of the conditions stated herein, regardless of any inconsistency in the Supplier's correspondence.

4. NATURE AND CONSTRUCTION OF PURCHASE ORDER

- 4.1. The Purchase Order is a lump sum order and the Supplier shall supply the Goods or Services in accordance with the requirements of the Purchase Order and warrants that the Goods shall be manufactured in accordance with the Purchase Order specifications without adjustment to the Purchase Order price.

The price is fixed and firm and is therefore not subject to alteration due to any rise in costs which may be payable by the Supplier.

- 4.2. The Purchase Order shall be governed by and construed with reference to the laws in force in New Zealand.
- 4.3. Communications between the Purchaser and the Supplier, and documents to be provided under the Purchase Order shall be in the English language.

5. PRECEDENCE OF DOCUMENTS

- 5.1. The following order of precedence between the documents comprising the Purchase Order shall apply:
- Purchase Order standard form.
 - Purchase Order Special Conditions of Purchase.
 - General Conditions of Purchase.
 - Technical Specification.
 - Technical Standards.
 - Purchaser's Drawings.
 - Suppliers Drawings.
 - Conditions of Tendering/Request for Quotation.

Each item above shall prevail over any item appearing lower in the list where any conflict or ambiguity between them arises.

6. SUBCONTRACTORS AND ASSIGNMENT

- 6.1. The Supplier shall not without the Purchaser's prior written approval (which shall not be unreasonably withheld), subcontract or allow a Subcontractor to subcontract any portion of the Work or allow a Subcontractor to assign a subcontract or any payment or any other right, benefit or interest there under.
- 6.2. Consent by the Purchaser to the making of any subcontract by the Supplier shall not relieve the Supplier from full and entire responsibility for the Purchase Order. The Supplier shall be liable to the Purchaser for the acts, defaults or omissions of Subcontractors and employees and agents of Subcontractors as if they were those of the Supplier.
- 6.3. If so, required by the Purchaser the Supplier shall within 7 days of request: -
- make available to the Purchaser an un-priced copy of any instruction issued to the Subcontractor in relation to the Work; or
 - provide evidence that funds paid by the Purchaser for Goods or Services have been paid to Subcontractors.

7. VARIATIONS TO THE PURCHASE ORDER

- 7.1. The Supplier shall not vary the Work except as directed in writing. The Purchaser may direct the Supplier to carry out any one or more of the following:
- Increase or decrease the quantities of the Goods or Services or any part of the Goods or Services.
 - Omit any part of the Goods or Services.
 - Change the character, quality or performance requirements of the Goods or Services.
 - Change the dimensions of the Goods or any part of the Goods or Services.
- 7.2. The Supplier shall as soon as practicable after receiving a written notice proposing a variation, notify the Purchaser whether the proposed variation can be effected, together with, if it can be effected, the Supplier's estimate of the:
- Effect on the manufacturing programme (including the time for delivery), and
 - Cost (including all time-related costs, if any) of the proposed variation.

The Purchaser may direct the Supplier to give a detailed quotation for the proposed variation supported by evidence of cost.

- 7.3. Difference in cost agreed to by the Purchaser, if any, occasioned by variations shall be added to or deducted from the Purchase Order price as the case may require.
- 7.4. The programme of works and time for delivery shall be adjusted by the effects of the variation agreed to by the Purchaser, if any.
- 7.5. The Purchaser shall not become liable for payment of any claims in respect of any variation unless the variation has been directed by or agreed to in writing by the Purchaser.

8. TERMS OF PAYMENT

- 8.1. In consideration of the Supplier complying with these General Conditions of the Purchase Order and supplying the Goods in accordance with the Purchase Order, the Purchaser shall pay the Supplier in accordance with the following subject at all times to any conditions of the Purchase Order:

a) Format of Tax Invoice

An invoice for Works conducted by the Supplier will only be received by the Purchaser if it includes the following:

- The words "Tax Invoice" in a prominent place,
- The name and address of the Supplier,
- The Purchase Order number,
- A description of the Goods and/or Services supplied,
- The total amount payable,
- Where required, the Supplier's GST number, and a statement that GST is included,
- The name and invoicing address of the Purchaser, and
- The date the tax invoice was issued.

b) Payment

Payment will be made by the 30th of the month following the month in which a correctly submitted tax invoice is received complying with the requirements of the Purchase Order.

c) Currency

Purchaser shall make payments to the Supplier in the currency of the items detailed in the Purchase Order. Payment will be made via telegraphic transfer directly into the Suppliers nominated bank account.

d) Reclaim

Purchaser shall have the right to reclaim from Supplier any payments made as a result of errors, omissions or inconsistencies in invoices for a period of two (2) years from the date of such payments.

e) Set-Off

Purchaser shall have the right to deduct or set off against any sums that would otherwise be due to the Supplier, any sums due and payable by Supplier to Purchaser whether in respect of the Purchase Order or otherwise. This includes but is not limited to amounts in respect of any claims for claims on another purchase order, damages, breach of contract by the Supplier, liquidated damages, rectification works and/or reclaims as described in clause 8.1d.

f) Disputed invoices

Purchaser shall not be required to make partial payments against any tax invoice in dispute. If Supplier requires payment against any disputed portion of such invoice then it shall issue a credit note against the full amount of the invoice and submit a separate invoice for the undisputed portion only.

g) Invoice Addressee

Tax invoices shall be fully supported by all appropriate documentation and sent for the attention of "Accounts Payable", Brightwater Engineering Limited, 7 Spencer Place, PO Box 43 Brightwater Nelson, New Zealand.

9. PROGRESS PAYMENTS

- 9.1. Where interim Progress Payments have not been specifically agreed in writing, no invoice will be recognized under clause 8.1a of these Purchase Order General Conditions until all obligations assigned to the Supplier in the Purchase Order are accepted as completed by the Purchaser.
- 9.2. Where Progress Payments are agreed and specified in the purchase order the following are applicable:
- a) The Deposit (as specified in Clause 9.3) can be invoiced upon receipt by Purchaser of Supplier Critical Data, based on the Purchaser having already received all of the following:
 - i. The Suppliers signed acceptance of the Purchase Order.
 - ii. A performance security acceptable to it, issued in NZD to the value of 10% of the Purchase Order price.
 - iii. Proof of insurance in accordance with section 30 of these of Purchase Order General Conditions.
 - b) Progress Payments to the value specified in Clause 9.3.
 - c) Final Payment to the value specified in Clause 9.3 upon receipt and final approval of all documentation.
- 9.3. Proportions as defined above to be as follows: -
- a) Deposit – 10% of the purchase price
 - b) Progress Payment(s) – up to 80% of the purchase price for each deliverable upon delivery (of Goods to the Delivery Point, or service deliverables to the purchaser).
 - c) Final Payment – 10% of the purchase price

In the event that a progress payment schedule is agreed prior to placement of the Purchase Order which would result in payment for Goods prior to delivery of the Goods to the Delivery Point, then a completed Off Site Materials Indemnity Form (refer to Appendix A) in favor of the Purchaser will be required against appropriate progress payments.

10. RETENTIONS

- 10.1. Where retentions are specified in the Purchase Order, the percentage to be retained from each Progress Payment for retentions is 10% and the defects liability retention held for the duration of the defects period is 50% of total retentions
- 10.2. Where the Purchaser has entered into an agreement as described in clause 1.2, the minimum retention fund to be held by the Purchaser out of progress payments due to the Purchasers obligations shall be:
- a) 10% of the Subcontract value, and
 - b) Upon completion of the Head Contract fifty percent (50%) of the retention fund as a defects retention, applying the same defects liability period as under the Head Contract.

11. PERFORMANCE SECURITY

- 11.1. Where a Performance Security is specified on the purchaser order or special conditions the following are applicable:
- a) Within seven (7) days from date of Purchase Order, Supplier is required to provide performance security as defined in Subclause 11.1b in order to

- guarantee the fulfilment by the Supplier of all its obligations under the terms of the Purchase Order.
- b) The performance security will be an unconditional first demand Bank Guarantee to the value of 10% of the total purchase price.
 - c) The Bank Guarantee is returnable upon completion of the defects liability period.
 - d) Bank guarantees shall be in a format acceptable to Purchaser and issued by a bank acceptable to Purchaser (refer to Appendix B for pro-forma). All costs associated with establishing and maintaining all guarantees shall be borne by the Supplier.

12. NOVATION

- 12.1. Where a Head Contract exists the following will apply:
- a) If required to do so by the Client and without consent of the Supplier, the Purchaser may transfer its rights under this Purchase Order to another party by novating the Purchase Order and substituting another party in its place. The Purchaser must do all things and execute all documents necessary to give effect of the novation.
 - b) If the Head Contract is cancelled, terminated or rescinded or the Purchaser's employment under the Head Contract is terminated for whatever reason whatsoever then, upon receipt by the Supplier of the written notice from the Purchaser notifying the Supplier of the said cancellation, termination or rescission and requiring the Supplier to execute a deed of novation, the Supplier must promptly execute a deed of novation in the form required by the Client novating this purchase order in favour of the Client or another party nominated by the Client.
 - c) For the purposes of affecting such novation only, the Supplier irrevocably appoints the Client to be the Supplier's attorney with the authority to execute such documents as are necessary to give effect to the novation and to bind the Supplier accordingly.

13. DIRECT AGREEMENT

- 13.1. Where the Purchaser has entered into an agreement with the Client as described in clause 1.2, a condition of this Purchase Order will be that the Supplier will enter into a Direct Agreement with both the Purchaser and the Client which provides the Client with limited step-in rights in respect of the Purchase Order.
- 13.2. A copy of this Direct Agreement is available upon request.
- 13.3. The acceptance of this Direct Agreement is a condition of your company being awarded the Purchase order for the Goods or Services.

14. PROGRAMME

- 14.1. The Supplier shall provide to Purchaser, a delivery schedule/ manufacturing programme within the timeframe stipulated on the SDRL. This shall be in a form of a Microsoft Project schedule, unless otherwise specified on the Purchase Order, and Supplier and will incorporate the following criteria:
- a) Work to be performed under the Purchase Order will be broken down into sufficient activities to enable accurate assessment of progress and the effects of any delays.
 - b) Critical paths will be clearly defined.
 - c) Relationship between activities will be sufficient in number to clearly indicate the intended sequence of work and will show all dependencies dictated by constructability and the availability of labour or equipment resources.
 - d) Procurement activities for bought out items will be shown, including preparation, submission and

- approval of shop drawings and order, manufacture and delivery periods for Goods.
- e) Key dates for inspection and testing activities including factory acceptance testing, must be clearly indicated.
- f) As a minimum, early start and early finish dates for all activities shall be indicated.
- g) Earliest access dates for training and commissioning activities will be indicated.
- h) The programme will be in sufficient detail to allow Purchaser to integrate the work of others, including the Purchaser.
- i) The programme will clearly demonstrate the Supplier's ability to achieve the agreed Purchase Order delivery dates.

15. QUALITY OF THE WORKS

15.1. Conditions as to the quality and description for the supply of Goods are as follows:

- a) The Goods must match the description (including performance criteria) in the purchase order. The Goods must correspond with any sample provided by the supplier in addition to matching the description.
- b) The Goods must comply with any relevant industry standard or those of the Standards Association of New Zealand.
- c) The Goods must be fit for the purpose for which Goods of the same kind are commonly supplied,
- d) The Goods must be new and of merchantable quality unless otherwise stated in the purchase order.
- e) The Goods must be clearly marked with the identification marks specified in the purchase order. These identification marks must also be shown on drawings and on dispatch and shop lists.
- f) The Goods must meet the safety performance requirements of the intended purpose.
- g) Where computer software or hardware is supplied in connection with the Goods they must operate properly and in accordance with any specifications set out in the Purchase Order.

15.2. Conditions as to quality and description for the supply of Services are as follows:

- a) The Services must match the description of the Services in the purchase order.
- b) The Services must correspond in nature and quality with any sample Services demonstrated by the Supplier.
- c) If the Supplier showed the Purchaser a result to be achieved by the Services before fulfilling the Purchase Order, the Services must correspond in quality with that result.
- d) The Services must be performed with due care and skill by appropriately qualified and trained personnel.
- e) The Services must be fit for the purposes for which those types of services are commonly bought and for any other purposes for which the Supplier is informed.
- f) Where there is a procedure for obtaining accreditation in relation to the provision of a service of the same nature as the Services then the Services must be provided to the standard required by the relevant accreditation body and the Supplier must be accredited by the accreditation body at the time that the Services are provided.

15.3. Where specified the Supplier shall establish and maintain for the purposes of monitoring the Work, a quality system in accordance with AS/NZS ISO9001: 2000 "Quality Management Systems" or equivalent.

The Supplier shall, in administering such Quality System:

- a) Plan, establish and maintain the quality system in a manner acceptable to Purchaser, and
- b) Ensure that the Purchaser or its nominated agents has access to the quality system of all nominated Subcontractors so as to enable monitoring and quality auditing.

15.4. If the Supplier executes any defective Work or supplies any equipment or materials whether fixed or not which does not conform with clause 15.1 or 15.2, notwithstanding that the Purchaser may previously have inspected or approved such equipment or materials or some portion thereof and notwithstanding that a progress payment may have been made in respect thereof, the Purchaser may give to the Supplier notice in writing setting forth the defect or deficiency and the Supplier shall at its own expense without undue delay alter or remove and reconstruct the Work or supply the materials in conformity with the Purchase Order. If the same is not carried out by the Supplier within the time stipulated by the Purchaser in its notice to the Supplier then the Purchaser shall be at liberty to employ other persons to effect the same and all expenses loss or damage as in the opinion of the Purchaser, that may have been occasioned thereby shall be borne by the Supplier and the amount thereof paid by the Supplier or deducted by the Purchaser from any money that may be or become due to the Supplier.

15.5. For the purpose of inspecting any portion of the Goods already assembled, otherwise than for the purposes of any tests as required by the Specification, the Purchaser may at any time direct the Supplier by notice in writing to dismantle any portion of the Goods. If it is found upon inspection that the Goods so dismantled are in accordance with the Purchase Order the whole of the expenses incurred in dismantling and re-assembly shall be borne by the Purchaser. If the Goods so dismantled are not in accordance with the Purchase Order the whole of the expenses incurred in dismantling and re-assembly shall be borne by the Supplier.

16. INSPECTION, TESTING AND EXPEDITING

16.1. The Purchaser or the Client or their nominated agents shall have the right to inspect, expedite and to test any part of the Works at any time. Inspection and testing requirements are as detailed in the Purchase Order. The Supplier shall carry out the tests and any such additional tests at the installation site, or elsewhere, as in the opinion of the Purchaser are necessary to determine that all parts of the Works comply with the Purchase Order. All test certificates shall be retained and supplied to the Purchaser for its records.

16.2. If the Goods or Services fail any tests then the Supplier shall with all speed and at its own expense make good the defects.

16.3. The Works furnished under the Purchase Order shall be subject to expediting by the Purchaser or the Client or their nominated agents, all of whom shall be allowed reasonable access to the Suppliers works and those of its Subcontractors for expediting purposes.

Failure by the Purchaser to expedite under the Purchase Order will not absolve Supplier from its responsibility for progressing the Works in accordance with the Purchase Order.

16.4. The Works shall not be deemed accepted until issue of a final inspection release certificate by the Purchaser or its nominated agents.

17. HEALTH AND SAFETY

17.1. The Supplier shall exercise due care, skill and diligence and take all necessary measures and precautions to ensure that in the execution of the Work, safe working practices are observed and that the health and safety of

the Supplier's, Purchaser's or other third party personnel is not endangered.

- 17.2. The Supplier must cease or not proceed with any work that places the health or safety of any person at risk. The Purchaser or its nominated agents may also direct the Supplier to cease or not proceed with any such work and Supplier shall modify its method of work if necessary in order to satisfy the health and safety requirements of the Purchase Order.
- 17.3. The Supplier will be responsible for observing all applicable laws and regulations relating to Health and Safety throughout the execution of the Work.
- 17.4. The Supplier is to familiarize themselves with any Health and Safety requirements outlined in the Purchase Order or Special Conditions and ensure that their employees and subcontractors comply fully with these requirements.

18. MANAGEMENT AND REPORTING

- 18.1. The Supplier shall identify a management representative to represent it in all matters pertaining to the Work. The management representative shall have the authority to make commitment on behalf of the Supplier and shall attend all progress meetings. The management representative will be the single point for all communications with the Purchaser.
- 18.2. Where requested to do so and at no additional cost to the Purchaser, the Supplier is to provide a Progress Report at two (2) weekly intervals throughout the life of the Purchase Order. The report shall contain as a minimum but not be limited to, a narrative summary of the current position of the Work with regards to engineering design, procurement, manufacturing, assembly, testing, painting packing and delivery. Status of all documentation as detailed within the agreed SDRL together with a copy of the current programme. The Progress Report shall be provided via fax or email to the Purchaser's representative.
- 18.3. In order to establish and maintain effective control and co-ordination of all aspects of the Purchase Order, the Purchaser may require a series of co-ordination meetings with the Supplier, at no additional cost to the Purchaser, and any other person whom the Purchaser or the Client wishes to attend.

19. DELIVERY

- 19.1. Delivery shall be made to the place (Delivery Point) in the manner and by the date(s) specified in the Purchase Order or Special Conditions, or as may hereafter be subsequently agreed in writing.
- 19.2. Delivery of Goods shall be interpreted in accordance with Incoterms 2010 as amended from time to time thereafter. Unless otherwise specified in the Purchase Order the Delivery terms will be Delivered Duty Paid (DDP).
- 19.3. For deliveries originating in New Zealand, Supplier shall provide to Purchaser in writing, not less than five (5) working days notice of intended shipping dates and details of items being shipped. For deliveries originating from outside of New Zealand, the notice period shall be not less than fifteen (15) working days. Such notice shall include but not be limited to (where appropriate or required), the weight and dimensions of each package being shipped.
- 19.4. The Supplier agrees that the Purchase Order takes precedence over any delivery documentation; and that acknowledgement of delivery of any item on the Purchase Order is not to be taken as acceptance of either the quantity or quality of the items indicated on the delivery documentation. All Goods shall be subject to Purchaser's inspection within a reasonable time after delivery of the Goods, irrespective of the date of

payment. The Purchaser shall promptly notify the Supplier of any known defects and/or delivery discrepancies.

20. PERFORMANCE OFF SUPPLIERS PREMISES

- 20.1. In performing the Works at premises belonging to either the Client, the Purchaser, or third party premises as included in the Purchase Order, the supplier must:
- Use all best efforts not to interfere with any activities of any person,
 - Be aware of, comply with, and ensure that supplier personnel, subcontractors, agents etc comply with;
 - All applicable laws regulations and industrial awards and agreements, including all applicable safety, health and environment laws and regulations, and
 - All safety, health and environment guidelines, rules and procedures applicable or as specified in the Order, and
 - All directions and orders given by Purchaser representatives, and
 - Ensure that the premises are left secure, clean, orderly and fit for immediate use.

21. PACKAGING STORAGE AND MARKING

- 21.1. The Supplier shall package all Goods in such a manner as to ensure protection against damage and deterioration during shipment and storage which includes local transportation, air and ocean freight, and storage at the receiving site. Any Goods found to be damaged on delivery will not be accepted until such damage is rectified.
- 21.2. All cases, containers and packages from overseas are liable to be opened for examination by the Customs Authority and the Ministry of Primary Industries (MPI), and all such opening and subsequent re-packing shall be at the expense of the Supplier. The Supplier shall retain responsibility for proper repacking, storage and the prevention of items being mislaid prior to delivery to Site.
- 21.3. The Supplier shall have prepared for each consignment a numbered packaging specification which shall contain a full statement of the packages consigned with detailed particulars of the package dimensions, weights and contents identification of each package. Each package, including any delivered by a Subcontractor shall be consigned to the Purchaser and be clearly marked with:
- The Suppliers name,
 - The packaging specification number,
 - Contents identification,
 - Its shipping or transport weight and dimensions,
 - The Purchase Order number, and
 - The project name and project number.

A copy of invoice, packing list, Purchaser's inspection release certificate and any applicable material certificates must always be packed with the Goods. Material certificates shall be originals or certified copies. If the Goods are shipped unpacked, this documentation should be attached to the Goods in a sealed water proof envelope. Cases, packages, bundles, loose pieces are to be marked as instructed and show Purchase Order number and gross / net weights. All random materials shall be tagged for identification.

- 21.4. Unless otherwise stated in the technical specifications or elsewhere on the Purchase Order, the Supplier shall provide the following minimum protection for all Goods before shipment:
- All openings in the Goods furnished by the Supplier shall be securely plugged, capped or otherwise blanked off, sealed with tape and suitably protected against damage and entry of foreign materials and

moisture. For shop fabricated Goods this shall be done as soon as possible after shop cleaning.

- b) Ends on all valves, fittings, pipes, nozzles etc. shall be capped and sealed with suitable, firmly attached protectors. Butt weld ends and ferrous materials shall be coated with anti corrosion paint prior to capping, back to a ring 50 mm from the end.
 - c) Protectors for bevelled ends designed for backing ring or consumable insert shall have a plywood or hard board liner disc held securely against the bevelled end. Protectors shall not be welded to weld end.
 - d) All flange facings, bolt holes and other machined surfaces of ferrous materials (except butt weld end preparation) shall be coated with a suitable removable anti-rust compound.
 - e) All flanged connections and loose flanges shall be provided with suitable full face flange protectors bolted in place and sealed.
 - f) All machined surfaces shall be protected with wooden blocks or similar means and reinforced externally with metal bands or plates.
 - g) All protectors for openings and all braces, brackets, spacers, ties, bindings and other shipping, packaging and packing materials and appurtenances used for protection in shipping, storing and handling of non-ferrous piping and materials shall be of such design, type and/or arrangements as to prohibit contact between ferrous and non ferrous metals.
 - h) Each section of pipe for lube oil systems and other systems, if specified in the Specification, shall be coated properly and sealed.
 - i) All bearing surfaces shall be properly protected. Anti-friction bearings shall be pre-loaded to prevent brinelling.
 - j) Each component of equipment/plant to be shipped in sections shall be reinforced to minimize distortion during shipping and handling. Disconnected piping and wiring shall be properly supported and braced for shipment.
 - k) All moving parts requiring lubrication shall be greased in at the Suppliers works before packing.
- 21.5. Electronic or electrical Goods must be suitably protected in air tight or anti static enclosures as applicable. Sufficient desiccant as recommended by the manufacturer should be used.
- 21.6. Items shipped in bundles should be adequately secured and not exceed 2 tonnes. Small loose objects shipped with main equipment should be adequately identified and tagged with Purchase Order and item number.
- 21.7. Equipment should clearly show lifting points.
- 21.8. Spare parts shall be packed to a standard that will ensure preservation for a minimum of two years indoor storage. Each item is to be metal tagged with description. This will include Purchase Order number, item number, tag number (where applicable, and as specified within the Purchase Order) and manufacturer's part number.
- 21.9. Packaging for fragile articles must be clearly identified as such.
- 21.10. Items which may be hazardous to health must be accompanied by the relevant Material Safety Data Sheet (MSDS).
- 21.11. All wooden packaging must comply with ISPM15.
- 21.12. The Supplier shall comply with the New Zealand Produce Import and Export Regulations 1766/122 for all wood products including packing materials supplies. The following extract from the Regulations defines the requirements:
- "No person shall import into New Zealand any wooden or plywood packing case, crate, wooden container,

cargo pallet or packing block unless it is completely free from bark and visible signs of infection".

Note: The importation of packing materials with bark attached is absolutely prohibited. If wood packing materials are found to be infested by insects or fungi upon being inspected when landed in New Zealand, the cost of any treatment ordered, including destruction of the cases and repacking and cost incidental thereto will be charged to the Supplier. All crates and box skids shall be of marine grade plywood or a good grade hardwood.

22. HAZARDOUS MATERIALS

- 22.1. When materials considered hazardous to health are supplied, the Supplier must provide Purchaser with details of the formal assessment as required by any current legislation associated to supply and the procedure to be adopted to control exposure.

The applicable Materials Safety Data Sheet (MSDS) shall be forwarded to Purchaser for review prior to shipment of the Goods and a copy of the Data Sheet shall accompany the Goods in transit.

23. TIME FOR DELIVERY

- 23.1. The Supplier will proceed with the Work under the Purchase Order with due expedition and without delay, and the Supplier shall take all reasonable steps to prevent and minimize delay.
- 23.2. If it ever appears that the time for delivery of the Goods will not be met, the Supplier must immediately notify Purchaser in writing of any actual or anticipated delays. Such notices shall contain details of cause, estimated period of delay and corrective action being taken. The Purchaser may (without prejudice to any other rights) terminate all or any part of the Purchase Order in accordance with section 37 of these Purchase Order Conditions.
- 23.3. The Purchaser may at any time for any reason it deems sufficient, extend the time for delivery of the Goods and notify the Supplier of that extension. The Purchaser will not be liable to pay the Supplier any costs, expenses, losses or damages in respect of an extension, acceleration, disruption or delay.

24. LIQUIDATED DAMAGES

- 24.1. Supplier hereby acknowledges that compliance with the delivery date(s) defined within the Purchase Order or Special Conditions is an essential condition of the Purchase Order. Should Supplier fail to comply, for all the Work or part thereof, within the time(s) specified in the Purchase Order or such extended time(s) as may be allowed in accordance with the Purchase Order, then without prejudice to any other remedy, the Purchaser shall be entitled to recover from the Supplier by way of compensation, or Set-Off, or reimbursement, or damages for such failure liquidated in the sum (where applicable), or percentage of the Purchase Order price specified in the Purchase Order or Special Conditions at Purchaser's sole option. The terms of this Article shall be without prejudice to any other rights of Purchaser under the Purchase Order or at law.

Time is of the essence for the performance of section 23.

25. WARRANTY FOR THE WORK

- 25.1. The Supplier warrants to the Purchaser that:
- a) The Goods or Services will be completed to the standard of a competent Supplier, experienced in the design, supply and commissioning of Works of the type required by the Purchase Order,

- b) The Goods or Services will be fit for the purpose for which they are intended as specified in, or as may be reasonably inferred from the Purchase Order.
 - c) Goods will be designed and manufactured in a manner which is consistent with the aim of minimising maintenance costs,
 - d) The Works will be planned, designed, produced and manufactured in accordance with the principles of industry best practice,
 - e) The materials comprising the Goods will be new, unused and fit for their intended purpose,
 - f) The Goods or Services will achieve the performance standards stipulated in the Purchase Order,
 - g) The Goods will be designed and manufactured so that they are capable of being operated in accordance with the requirements of the Purchase Order in a safe manner and free from risk to the health and wellbeing of persons involved in the use of the Goods after delivery.
 - h) The Works will comply with all required statutory regulations,
 - i) The Supplier is, at all times, suitably qualified and experienced to carry out the Work, has the necessary resources and will exercise due care and diligence in the execution of the Work, and
 - j) The Supplier does not rely on any representation or warranty made by or on behalf of the Purchaser's nominees which is not specified in the Purchase Order.
- 25.2. The Supplier will, in respect of any materials or equipment forming part of the Goods, procure warranties from the suppliers or manufacturers of such material or equipment to comply with the requirements of the Purchase Order. The Supplier shall ensure that the Purchaser will have the benefit of any such warranties obtained.
- 25.3. Any warranties obtained in accordance with section 25 of these Purchase Order General Conditions shall not be construed in any way to modify or limit any:
- a) Right, power or remedy of the Purchaser against the Supplier, whether under the Purchase Order or otherwise, in respect of the Goods, or
 - b) Liability, responsibility or obligation of the Supplier under the Purchase Order.
- 25.4. The defects liability period shall be:
- a) Eighteen (18) months from the date that Goods are placed into use or operation; or,
 - b) Twenty four (24) months from the date of delivery in accordance with the Purchase Order, whichever is the earlier.
- 25.5. If, during the defects liability period, any defect is found which, in the opinion of the Purchaser, affects any part of the Works, the Supplier shall be responsible and liable for the prompt rectification of such defect and any consequence of the defect in accordance with clause 25.4. Further to any such rectification work, the defects liability period for the Works shall be extended by the period of time during which the Goods, or any part of the Works, was unable to be used for the purpose for which they have been designed and manufactured.
- 25.6. If defective Works are the cause of any defect in the contract works under the Head Contract, then the supplier is responsible to remedy the resulting defects and the consequence of the defects.
- 25.7. The Purchaser shall notify the Supplier of any defect that in the opinion of the Purchaser, affects the Works. Any such defect shall be rectified promptly, at the Supplier's sole expense, and in accordance with any direction of the Purchaser.
- Rectification work may be effected, or replacements may be made by the Purchaser or by a third party on the

Purchaser's behalf, at the Suppliers expense and without authorisation by Supplier if:

- a) The Supplier does not comply with any direction of the Purchaser,
- b) The Supplier has failed to inspect or to repair the defects in the Goods within a reasonable time after having been notified by Purchaser, and/or
- c) In cases where it would be highly unreasonable or impractical for Purchaser to give to Supplier an opportunity to inspect and/or remedy such defects, or to obtain Supplier's authorisation, and has notified Supplier accordingly.

In the event of (a) (b) and (c), repairs and replacements effected by Purchaser or a third party shall be deemed to be effected and made by Supplier and this Article shall remain in effect, except in case of repairs resulting in any detriment of the repaired Goods.

- 25.8. Purchaser shall have the right to assign the benefit of the warranties and remedies provided in the Purchase Order to any successor.
- 25.9. The rights and remedies of the Purchaser provided under this Article are without prejudice to the Purchaser's other rights or remedies under the Purchase Order and at law.

26. PATENTS, COPYRIGHT, LAWS & REGULATIONS

- 26.1. The Supplier shall indemnify and save harmless the Purchaser and the Client against all costs and claims due to infringement of any patent, registered design, copyright, trade mark or trade name or other Intellectual Property Right in relation to the Goods or Services ordered and used for their intended use. The Supplier warrants that all Goods supplied under the Purchase Order shall be produced, sold, delivered and furnished in strict compliance with all applicable laws and regulations to which the Goods are subject. In carrying out the Purchase Order the Supplier shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods.

27. INTELLECTUAL PROPERTY

- 27.1. The Purchaser owns all rights, title and interest in their own technical materials and that subject to clause 27.2, the Supplier has no right, title or interest in the Purchaser's technical materials.
- 27.2. The Purchaser grants the Supplier a license to reproduce and use the Purchaser's technical materials and/or the Project IP as necessary for the purpose of completing the Works. The Supplier must not reproduce, use or otherwise deal with the Purchaser's technical materials and/or Project IP, or allow any other person to do the same, for any other purpose. The Purchaser has the right to revoke this license at any time by notice in writing to the Supplier.
- 27.3. The Supplier gives the Purchaser a non-exclusive, transferable, royalty free license to use all Supplier IP, in existence at the date of Purchase Order, or comes into existence otherwise than in connection with the Purchase Order, to the extent necessary to enable the Purchaser to exercise rights in the Project IP.
- 27.4. All rights, title and interest in and to the Project IP will be the property of the Purchaser as and when created (including but not limited to the Project IP created prior to or after the date of the Purchase Order).
- 27.5. The Supplier warrants that:
- a) The supply of the Works do not and will not infringe the rights (including, but not limited to, Intellectual Property Rights) of any third party,
 - b) At no further cost to the Purchaser, the Supplier will procure all licenses and consents to use any

- Intellectual Property Rights of a third party which are necessary to supply the Goods and/or provide the Services,
- c) The Project IP does not and will not infringe any rights of third parties (including without limitation any Intellectual Property Rights), and
 - d) The Supplier has the right to assign all Project IP to the Purchaser in accordance with section 27.4.
- 27.6. The Supplier agrees that any sub-contract entered into in relation to the Purchaser Order will contain a condition that the Subcontractor agrees to assign to the Purchaser all Intellectual Property Rights in any Project IP created by it for the purposes of the Purchase Order.
 - 27.7. The Supplier agrees to provide all reasonable assistance the Purchaser may request to protect the Intellectual Property Rights in the Purchaser's technical material and the Project IP.
 - 27.8. The obligations in this section continue after the contract in relation to the Purchase Order is terminated.
- 28. CONFIDENTIALITY**
- 28.1. Except where necessary for the purposes of this Purchase Order, the Supplier shall not, without the prior written approval of the Purchaser, use or divulge in any way to any third party any information concerning the Purchase Order or the Purchaser or Client's business operations acquired or received by the Supplier in contemplation of, or under, this Purchase Order or otherwise in relation to the execution of the Purchase Order (including, without limitation, any drawings in connection with those business operations). The Supplier shall use all reasonable endeavors to prevent any unauthorized use or disclosure and, without limiting the generality of the foregoing, shall ensure that each and any Subcontractor who is at any time in possession of any confidential information concerning the Purchaser or Client's business operations described above does not disclose or suffer or permit the disclosure of the same. The obligations imposed by this clause shall survive the termination of the Purchase Order.
- 29. DOCUMENTATION**
- 29.1. Originals or certified copies of all requested material and test certificates must accompany all deliveries of Goods.

Where the Supplier fails to submit any required documents, the Purchaser reserves the right to withhold payment of any outstanding invoices, until the required documents are received.
 - 29.2. The Supplier shall be liable for the correctness and completeness of all Documentation and shall not be released from any liability by any acceptance of any kind by the Purchaser. Documentation shall be clearly marked with the Purchase Order number, item number, unit type and serial number of the Goods to which they relate.
 - 29.3. Where the Purchaser's approval of Documentation is required, manufacture of Goods shall not commence before the Purchaser's approval has been received. Such approval shall not relieve the Supplier of any obligation to deliver the Goods on time, provided the Purchaser's approval is not unreasonably delayed.
- 30. RISK AND INSURANCE**
- 30.1. Risk in the Goods shall pass to the Purchaser only upon delivery of the Goods in accordance with the Purchase Order. Until such time, the Supplier shall insure the Goods against loss or damage from any cause for full replacement value and shall ensure the noting of the Purchaser's interest upon the policy.
 - 30.2. The Supplier shall effect and maintain from the Commencement Date the following insurances: -
 - a) **Third Party Liability Insurance**
Insurance against liability to third parties for any death or personal injury and loss of or damage to any physical property arising out of the performance of the Purchase Order. The Supplier agrees to indemnify the Purchaser against all losses, expenses, claims or any liability under statute or at common law for death, personal injury or property damage caused by the Supplier, its employees, agents or Subcontractors.
 - i. The Third Party Liability Insurance shall be for not less than NZD\$10,000,000 for site works and NZD\$5,000,000 for offsite works.
 - ii. The deductible limits in the Third Party Liability Insurance covers shall not exceed NZD\$5,000.
 - b) **Other Insurances**
As specified in the Purchase Order or Special Conditions.
 - 30.3. Cost of effecting such insurances and the payment of any excesses shall be payable by the Supplier.
 - 30.4. Subcontractors shall be required to provide policies of insurance equivalent to that required of the Supplier. To the extent that the Supplier fails to require, or Subcontractors fail to provide such coverage, the Supplier agrees to indemnify the Purchaser and the Client against any resulting uninsured claims.
 - 30.5. Where this Purchase Order requires insurance to be effected in joint names then such policies of insurance shall provide that the Insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties comprising the Insured and that failure by any Insured to observe and fulfill the terms of the policy shall not prejudice the insurance in regard to any other Insured. Upon request by Purchaser, the Supplier shall provide written confirmation from its insurer that this is in place.
 - 30.6. The Supplier shall provide on request by the Purchaser, an insurance information form from its Insurers which shall certify that the Supplier has affected insurances as required under the Purchase Order. The Certificate of Insurance shall be stamped and signed by the Supplier's insurer; a broker stamp is not satisfactory.
- 31. LIABILITY AND INDEMNITIES**
- 31.1. The Supplier acknowledges that upon entering the Purchaser's premises, to the extent permitted by law, the Supplier does so at the Supplier's risk. This extends to all Supplier personnel.
 - 31.2. The Supplier will be liable for, and will indemnify the Purchaser keeping the Purchaser indemnified from and against any liability and any loss or damage of any kind whatsoever arising directly or indirectly from:
 - a) Any breach by the Supplier of any warranty or any of the other conditions of the Purchase Order by the Supplier,
 - b) Any loss or damage arising out of, or in connection with, any personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind whatsoever caused or contributed to by;
 - i. the Goods and the performance of any Services by the Supplier, and/or
 - ii. the entry onto, and the activities undertaken on and in, the Purchaser's Premises by the Supplier or the Suppliers personnel,
 - c) Any negligence or wilful act or omission by the Supplier and/or any of the Supplier's personnel in connection with fulfilment of the Purchase Order,

- d) Any claim made against the Purchaser by or on behalf of any of the Supplier's personnel, in respect of any relevant legislation concerning pay-roll tax, remuneration, income tax, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal,
 - e) Any penalty imposed for breach of an applicable law in connection with the performance of the Services by the Supplier,
 - f) Loss or damage to any plant, equipment, tools, appliances or other property owned, rented or hired by the Supplier and used in relation to the Purchase Order, and
 - g) Any claim that the Works, anything the Supplier does in supplying the Goods or providing any Services, or the Purchaser's use of the Goods or the results of the Services infringes or allegedly infringes the Intellectual Property Rights of any person.
- 31.3. Except to the extent that any liability, loss or damage is solely and directly caused by the Purchaser's willful misconduct or gross negligence or that of the Purchaser's personnel.
- 31.4. Every exemption, limitation, defense, immunity or other benefit contained in the Purchase Order to which the Purchaser is entitled will also be held by the Purchaser to the benefit of, and will extend to protect, Purchaser personnel (excluding the Supplier and Supplier personnel).
- 31.5. Each indemnity in the Purchase Order is a continuing obligation separate and independent from the Supplier's other obligations and survives termination of the Purchase Order.
- 31.6. It is not necessary for the Purchaser to incur expense or make payment before enforcing a right of indemnity conferred by the Purchase Order.
- 31.7. If the Purchaser enters the Purchase Order as agent for and on behalf of joint venture partners, the liability of each of those joint venture partners under the Purchase Order is several and not joint, nor joint and several.

32. GENERAL LIMITATION OF LIABILITY

- 32.1. The Purchaser shall not be liable to the Supplier for any loss of profit, loss of use, loss of production, loss of contracts or for any other indirect or consequential damage that may be suffered by the Supplier.

33. TITLE AND OWNERSHIP OF THE WORKS

- 33.1. Ownership of, and unencumbered title in, the Goods, Services or any part of the Work to be supplied pursuant to the Purchase Order shall pass to the Purchaser at the first to occur of the following events:
- a) Upon completion of unloading of the Goods at the Delivery Point.
 - b) When Purchaser pays for any of the Works in accordance with the Purchase Order.
- 33.2. Notwithstanding the provisions of clause 33.1 above, the risk in the Goods shall remain vested in Supplier until the Goods or Services are delivered in accordance with the Purchase Order, and Supplier shall indemnify Purchaser in respect of the Works until delivery, as if the same were Supplier's property.
- 33.3. The Supplier warrants that the Work furnished by the Supplier in the performance of its obligations under the Purchase Order shall be free and clear of all liens, restrictions, reservations, security interests and encumbrances.

34. FREE ISSUE MATERIAL

- 34.1. Where under the Purchase Order the Purchaser's representative or the Purchaser is required to provide at the premises of the Supplier and/or its Subcontractor on a free issue basis, material or equipment for incorporation by the Supplier into the Works or for repair, modification or treatment of the Works, the property in the material or equipment so delivered shall remain vested in the Purchaser but the Supplier shall be responsible for and be deemed to have legal custody of such material or equipment from the time of receipt by the Supplier or its Subcontractor of such material or equipment until the Works shall be taken over by the Purchaser in accordance with the Purchase Order.
- 34.2. Where under the Purchase Order the Supplier is responsible for the Goods whilst in transit from its premises or from its Subcontractors premises to the Delivery Point, the Goods shall be deemed to include the free issue material incorporated therein and the Supplier shall insure same whilst in transit for such value as is specified in the Purchase Order or if not so specified then for such value as it shall ascertain from the Purchaser's representative prior to transit taking place.

35. DUTIES AND TAXES

- 35.1. Supplier is responsible for informing itself fully of its obligations regarding all duties and taxes and the Supplier shall indemnify the Purchaser regarding any failure by the Supplier to comply.
- 35.2. Suppliers obligations with regards to import duties and tax implications for Goods supplied from outside New Zealand will be determined by the delivery terms specified in the Purchase Order (Incoterms latest edition refers).
- 35.3. Goods and Services Tax (GST) is a New Zealand tax on consumption. Supplier is responsible for making itself fully aware of the implications of GST and its obligations for same.
- 35.4. For the avoidance of doubt, and notwithstanding any other clause of this Purchase Order, if the Supplier is a non-resident company for the purposes of the Income Tax Act 1994, Non-Resident Contractor Withholding Tax will be deducted by the Purchaser from the payments and be paid to the Inland Revenue Department on behalf of the Supplier in accordance with the Income Tax (Withholding Payment) Regulations 1979, unless the Supplier provides the Purchaser with the necessary documentation to exempt the payments from such withholding.

Note: This Article will only be applicable to non-resident companies who elect to mobilise personnel to New Zealand to carry out any part of the Work.

36. SUSPENSION

- 36.1. The Purchaser may at any time instruct the Supplier to suspend, the progress of Work on or the delivery of, the whole or any portion of the Works.
- 36.2. When the Supplier is prevented from delivering the Goods by the date specified on Purchase Order, the Purchaser shall be deemed to have instructed a suspension except when such prevention is caused by the Supplier's default. The Supplier shall during suspension protect and secure the Goods affected against any deterioration, loss or damage.
- 36.3. All reasonable additional costs incurred by the Supplier in protecting, securing and insuring the Goods arising from suspension of the Work shall be added to the Purchase Order value unless such suspension is necessary by reason of a default on the part of the Supplier. The Supplier shall not be entitled to additional costs unless it notifies the Purchaser in writing of its

intention to make such a claim, within 14 days after receipt of an instruction to suspend.

36.4. In the event of suspension the Supplier shall be entitled to payment for the Work or Goods which have not been delivered to the Delivery Point if the delivery has been suspended for more than 49 days. After 49 days of suspension, the Supplier shall be entitled to payment of the value of such Work or Goods as at the date of suspension provided:

- a) The Supplier has marked the Goods and or Work as the Purchasers property,
- b) The suspension is not due to the Suppliers default, and

37. DEFAULT

37.1. If the Supplier is not executing or performing in accordance with its obligations under the Purchase Order, the Purchaser may give notice to the Supplier requiring it to make good such failure or neglect.

37.2. If the Supplier:

- a) Has failed to make good such failure or neglect within a reasonable time, or
- b) Assigns the Purchase Order or subcontracts the whole of the Purchase Order without the Purchaser's consent, or
- c) Becomes bankrupt, insolvent, has a receiving order made against it or compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors, or commences to be wound-up or goes into liquidation,

The Purchaser may, after having given seven (7) days notice to the Supplier, terminate the Purchase Order. Any such termination shall be without prejudice to any other rights or powers of the Purchaser under the Purchase Order. The Purchaser may upon such termination complete the Work to be carried out under the Purchase Order itself or by contracting any other Supplier.

37.3. The Purchaser shall after such termination certify the value due to the Supplier as at the date of termination. The Purchaser shall not be liable to make any payments to the Supplier against this certified value until the scope of supply has been completed by Purchaser, or any other Supplier contracted by Purchaser. Upon completion the Purchaser shall be entitled to recover from the Supplier any extra costs of completing the Work and deduct such costs from the certified payment due to the Supplier upon termination.

38. CANCELLATION

38.1. The Purchaser may at its sole discretion cancel the Purchase Order.

38.2. The Purchaser shall assess payment due to the Supplier in respect of any cancellation which was not occasioned by the default or neglect of the Supplier. Such assessment for payment shall be the amount of Work complete as at date of cancellation. The amount determined under this calculation shall be deemed to cover all cost, overheads, margin and profit.

39. DISPUTES AND ARBITRATION

39.1. All disputes arising in connection with this Purchase Order which cannot be settled by proper and continuous discussion between the parties shall be referred to the Chief Executive of both parties for resolution. If resolution cannot be reached within a reasonable time and to the mutual satisfaction of both parties, and the dispute cannot be consolidated into a dispute with the Client (per Clause 39.4), the dispute shall be submitted for Arbitration to a person to be mutually agreed

between both parties or in the event of no agreement or the mutually agreed person unable or unwilling to act, then the sole Arbitrator shall be the President of the Institution of Professional Engineers New Zealand or their nominated representative.

39.2. An award pursuant to any arbitration shall be final and binding and sufficient for execution by any court of competent jurisdiction.

39.3. Reference to arbitration shall not relieve the Supplier of its obligation to proceed with the Work and complete its obligations under the Purchase Order.

39.4. Where a dispute is able to be consolidated with a dispute between the Purchaser and the Client the Supplier agrees to provide all assistance necessary or desirable and further agrees that the purchaser may without reference to the Supplier:-

- a) negotiate and settle the matter with the Client; and/or
- b) direct the manner in which the dispute may be settled.

40. BUSINESS ETHICS

40.1. The Supplier shall not give or offer any commission, gift, loan or incentive of any kind to any of the Purchaser's employees in relation to this Purchase Order. Breach of the Article by the Supplier entitles the Purchaser to terminate the Purchase Order and recover from the Supplier the cost of any loss or damage resulting from such termination.

41. NOTICES

41.1. All notices sent in connection with the Purchase Order by one party to the other (including a notice of award or acceptance) shall be in writing and addressed to the party being notified at its address as identified in the Purchase Order document, or at such other address as may be subsequently notified.

41.2. A notice sent by facsimile transmission or electronic data interchange is effective upon transmission but if transmitted after the close of normal business hours, or on a Saturday, Sunday or public holiday, the notice is effective on the opening of business on the next business day of the recipient. A notice sent by registered mail or delivered by hand is effective upon receipt.