

STANDARD TERMS & CONDITIONS OF PURCHASE

1 APPLICATION

1.1 Purchase Order

These Terms apply whenever Lyttelton Port Company Limited ("LPC") issues a Purchase Order to any person ("Supplier") for the supply of Goods and/or Services. These Terms, together with the Purchase Order, shall govern the supply of such ordered Goods and Services to the exclusion of all other representations, undertakings, terms or conditions, whether express or implied (and including any Supplier terms or conditions), except to the extent LPC expressly agrees otherwise in writing. By accepting a Purchase Order or supplying any Goods or Services, the Supplier is deemed to accept these Terms.

1.2 Variation

- (a) LPC may amend these Terms from time to time by publishing updated Terms on LPC's website and/or on or accompanying Purchase Orders. The amended Terms will apply to any Purchase Order issued by LPC after the publication or other notice of such amended Terms.
- (b) LPC may amend a Purchase Order at any time prior to delivery of the Goods or the commencement of the Services by written notice to the Supplier. Any change to the Charges, delivery date or other applicable terms and conditions as a result of the variation must be agreed in writing.

1.3 LPC services

If LPC provides any facilities, equipment or services to the Supplier, LPC's prevailing standard conditions of business (available at <https://www.lpc.co.nz/customer-portal/pricing-conditions/>) will apply, unless LPC expressly agrees otherwise in writing.

2 INTERPRETATION

2.1 Definitions

In these Terms, unless the context otherwise requires:

"Charges" means the amount(s) specified in the Purchase Order which are payable by LPC for the supply of the Goods and Services in accordance with this Agreement;

"Deliverables" means any products, reports, information, documentation, data or other materials produced or required to be produced in connection with the performance of the Services;

"Force Majeure" means any event or circumstance beyond the reasonable control of the party claiming it, having exercised reasonable care and diligence to prevent the occurrence of that event or circumstance (but does not include lack of funds for any reason and the mere shortage of labour, materials, equipment or supplies, unless caused by events or circumstances which are themselves Force Majeure);

"Good Industry Practice" means the exercise of that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, diligent and experienced person engaged in New Zealand in the same type of undertaking under the same or similar circumstances, including compliance with applicable statutory, regulatory and recognised industry requirements and standards;

"Goods" means the goods to be supplied to LPC by the Supplier which are specified in a Purchase Order, and includes all incidental services for the proper supply of such goods in accordance with these Terms'

"Personnel" means, in respect of the Supplier, its employees, officers, agents, contractors, invitees and other persons under the Supplier's control;

"Purchase Order" means a written order or request for Goods and/or Services issued by LPC to the Supplier (and includes any specifications or other documents accompanying or referred to in the Purchase Order)

"Services" means the services and other requirements and Deliverables to be performed and provided to LPC by the Supplier which are specified in a Purchase Order; and

"Working Day" means any day of the week other than Saturday, Sunday and any statutory public holiday in Christchurch.

2.2 Construction

- (a) If there is a conflict or inconsistency between these Terms and any specific terms contained or referred to in the Purchase Order, the Purchase Order prevails over these Terms to the extent of that conflict or inconsistency.
- (b) In the construction of this agreement, unless the context requires otherwise:

Consent: where any consent or approval is required under this Agreement, that consent or approval may be withheld or given (with or without conditions) in the sole discretion of the party whose consent or approval is required;

Inclusion: referring to anything after the word "including", "include" or "includes" does not limit what else might be included and any such reference is without limitation to what else might be included;

Prohibitions: any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;

Statutes and Regulations: references to statutes or statutory provisions include those statutes or statutory provisions as amended, extended, consolidated, re-enacted or replaced from time to time and any orders, regulations, instruments or other subordinated legislation made under them;

Time is of the essence: time is of the essence in respect of the supply of the Goods and Services (including any delivery obligation) and the performance of the Supplier's other obligations in these Terms.

3 SUPPLY OF GOODS AND SERVICES

3.1 Engagement

The Supplier will supply the Goods and Services in accordance with the terms set out in the relevant Purchase Order and these Terms.

3.2 Non-exclusive and no minimum commitment

The relationship between the parties pursuant to this Agreement is non-exclusive. LPC is not required to engage the Supplier to supply any particular Goods or Services. LPC gives no assurance as to any particular volume of Goods or Services or minimum Charges payable under these Terms. Any forecast issued by LPC is indicative and non-binding.

3.3 Performance requirements

The Supplier will supply the Goods and Services and perform its other obligations under this Agreement:

- (a) in accordance with any particular requirements of the Purchase Order, including any specifications, timeframes or service levels specified in the Purchase Order;
- (b) in accordance with Good Industry Practice;

- (c) in compliance with all LPC instructions, directions, signage and other operational, security, health & safety or environmental processes, procedures, plans, policies and requirements notified or otherwise published by LPC from time to time;
- (d) in accordance with all applicable laws and legal requirements; and
- (e) in a manner which avoids or minimises any obstruction, disruption or interference with the conduct of LPC's business (and that of its customers) or the operation of LPC's facilities.

3.4 Supplier's obligations

The Supplier will:

- (a) provide at the Supplier's cost all services, labour, materials, infrastructure, consumables, transportation, tools and equipment (including all appropriate personal protective equipment) necessary to supply the Goods and Services and perform its other obligations properly, safely and in accordance with this Agreement, except to the extent expressly stated otherwise in this Agreement;
- (b) provide, supervise and be responsible for sufficiently trained, qualified, educated, experienced and skilled Personnel in sufficient numbers to supply the Goods and Services, including ensuring that any specific Personnel named in the Purchase Order perform the roles described in the Purchase Order;
- (c) hold and maintain in good standing all licences, registrations, permits, authorisations, consents and approvals that are necessary in order to supply the Goods and Services and perform and its other obligations under this Agreement,
- (d) notify LPC immediately upon becoming aware of:
 - (i) any matter or circumstance which will, or is reasonably anticipated to, prevent, impede or delay the supply of the Goods and Services and/or the performance of any of the Supplier's other obligations under this Agreement; and
 - (ii) any actual or threatened suspension or revocation or non-compliance notification received by the Supplier in relation to any qualification or accreditation required to be held by the Supplier or its Personnel under this Agreement;
 - (iii) any actual or threatened claim, proceeding or investigation against the Supplier in connection with the supply of Goods and Services or this Agreement;
- (e) not do or omit to do (and will ensure that its Personnel do not do or omit to do) anything which will or ought reasonably be anticipated to harm LPC's goodwill or reputation or bring LPC or any of its personnel into disrepute, including publicly making any objectionable or derogatory comments about the Goods and Services or LPC or its personnel; and
- (f) provide LPC with evidence of compliance with the Supplier's obligations under these Terms from time to time on request.

3.5 Code of Conduct

The Supplier will at all times comply and ensure that, the conduct and performance of its Personnel comply with LPC's Supplier Code of Conduct (located at <https://www.lpc.co.nz/our-services/procurement/>).

3.6 Data security

The Supplier will, in respect of any personal information (as that term is defined in the Privacy Act 2020) and any data

accessed, transmitted or generated by the Supplier in connection with the Services ("Data"):

- (a) use all reasonable endeavours in accordance with Good Industry Practice to ensure that such information and Data is protected against unauthorised or accidental access, disclosure, alteration, loss or destruction ("Privacy Breach"), and immediately notify LPC of any Privacy Breach which the Supplier detects or is made aware of;
- (b) only use such information and Data to the extent reasonably necessary for the purpose of performing the Services;
- (c) not transfer any Data outside New Zealand without LPC's prior written consent; and
- (d) comply with all data security and system access requirements specified by LPC from time to time.

3.7 Service levels/KPIs

The Supplier will report as reasonably requested by LPC on the Supplier's performance in meeting any service levels or key performance indicators set out in the Purchase Order ("KPIs"). If any report reveals a failure by the Supplier to meet the KPIs:

- (a) that report will also provide details of the reasons for such non-compliance and the steps taken or to be taken to remedy such non-compliance; and
- (b) Service credits (at the rate set out in the Purchase Order or otherwise agreed) will be incurred by the Supplier (and deducted from any invoice payable by LPC) for each breach of the KPIs.

4 DELIVERY, QUALITY AND ACCEPTANCE

4.1 Timeliness of delivery/performance

The Goods shall be delivered by the Supplier to LPC (adequately packaged and protected to ensure safe delivery), and the Services will be performed, by the date(s) specified in the Purchase Order. If the Purchase Order does not specify a particular time for delivery of the Goods or performance of the Services, the Supplier must deliver or perform them within a reasonable time.

4.2 Inspection, testing and acceptance

- (a) For the purposes of these Terms, delivery of the Goods will be deemed to have occurred when:
 - (i) the Goods have been unloaded at the relevant delivery point and LPC is provided with a delivery docket detailing the quantity and description of the Goods delivered; and
 - (ii) LPC has inspected and accepted the Goods.
- (b) LPC may inspect and test the Goods and Services at any time (whether before or after physical delivery to LPC). Any such inspection or testing does not relieve the Supplier from any liability in respect of the Goods and Services nor imply acceptance.

4.3 Warranties

The Supplier warrants that the Goods (and any Deliverables):

- (a) will be free from defects and comply with, and perform in accordance with, the requirements of the Purchase Order and these Terms (and with all other descriptions and specifications agreed and approved by LPC) on delivery and for the warranty period specified in the Purchase Order (or, if no such warranty period is specified, for 12 months from delivery and acceptance);
- (b) (unless otherwise stated in the Purchase Order) will be new and unused on delivery;

- (c) will be of merchantable quality and fit for their intended purpose (including any purpose LPC has made known in the Purchase Order); and
- (d) will be subject to any applicable additional third party manufacturer or supplier warranties, each of which shall be enforceable by LPC.

4.4 Rejection

Without limiting LPC's rights under this Agreement or otherwise, if the Goods or Services are found to be defective or otherwise not in accordance with the requirements of the Purchase Order or these Terms (including if the Supplier fails to deliver the Goods and perform the Services by the date(s) required by these Terms), then, at LPC's option:

- (a) the Supplier shall immediately remedy the defect or non-compliance at no cost to LPC (whether by repair, replacement, re-performance or otherwise) and if the Supplier fails to do so within a reasonable time, LPC may itself remedy the defect or non-compliance (or engage third parties to do so) at the risk and cost of the Supplier; or
- (b) LPC may, by written notice to the Supplier, reject such Goods or Services, in which case the Supplier must remove the Goods (if applicable) and make good any damage caused by such removal at the risk and expense of the Supplier and the Supplier shall immediately reimburse LPC any money which LPC has paid in respect of such rejected Goods or Services; or
- (c) In the case of late delivery/performance, the Supplier will, on demand, pay LPC such sum as is specified in the Purchase Order or which is otherwise required to compensate LPC for unavoidable, reasonable costs incurred due to the delay.

5 CHARGES, INVOICING AND PAYMENT

5.1 Charges

The Charges for the supply of the Goods and Services are specified in, and unless otherwise agreed in writing may only be varied in accordance with, the Purchase Order.

5.2 Invoicing and payment

Unless otherwise specified in the Purchase Order:

- (a) the Supplier will invoice LPC for the Charges at the end of each calendar month; and
- (b) LPC will pay each valid invoice by the 20th day of the month following the month in which the invoice is received by LPC.

The Supplier will ensure that each invoice: (i) is a valid tax invoice; (ii) includes reference to the relevant Purchase Order and a description of the Goods and Services; (iii) sets out in reasonable detail the calculation of the amounts so invoiced (including any time periods relevant to the calculation of the Charges); (iv) is accompanied by such supporting documentation as LPC may reasonably require (including time records); and is emailed to accounts@lpc.co.nz.

5.3 Taxes

- (a) The Charges are inclusive of all taxes, duties, levies and other governmental or regulatory charges or fees, other than any goods and services tax ("GST") chargeable under the Goods and Services Tax 1985. GST is payable by LPC at the same time as payment is due for the relevant Charges.
- (b) LPC shall deduct resident and non-resident withholding taxes and other taxes, if any, required to be deducted or withheld pursuant to any applicable laws from any payments made under this Agreement. LPC is not required to, and will not, make any additional payment by way of gross-up, indemnity or

otherwise with respect to any such deduction or withholding from any such payment, or with respect to any other taxes.

5.4 Set-off

In addition to any rights which it may have by law, LPC may at any time without notice to or consent of the Supplier, set-off against any Charges or other amounts payable by LPC to the Supplier under these Terms any debts or liabilities of the Supplier to LPC (whether under this Terms or otherwise and notwithstanding that such amounts may not be expressed in the same currency).

5.5 Disputes

LPC will promptly notify the Supplier in writing if it disputes the accuracy of any invoice or other matter relating to any payment under these Terms. If a bona fide dispute is notified prior to the due date for payment, LPC may withhold the disputed part of the payment until the dispute is resolved but must pay any undisputed amount. The dispute will be determined in accordance with clause 14.

5.6 No additional charges

Except as expressly set out in the Purchase Order, the Charges are the only amounts payable by LPC, and LPC will not be liable to the Supplier for any other amount, for the supply of the Goods and Services and the performance by the Supplier of its other obligations under these Terms.

6 HEALTH, SAFETY, SECURITY AND ENVIRONMENTAL

6.1 Access

- (a) LPC may require the Supplier to supply details of its Personnel who are proposed to access LPC's premises in connection with the supply of the Goods and Services;
- (b) The Supplier and its Personnel shall only access those parts of the LPC's premises reasonably necessary for the proper supply of the Goods and Services and will use (and ensure that the Supplier's Personnel use) only access routes designated by LPC;
- (c) The Supplier will provide LPC on request with signed written, irrevocable and continuing, authorisations in a form satisfactory to LPC to enable LPC to carry out such background and security checks of the Supplier's Personnel as LPC may require, including checks of police records, charges, and convictions; and
- (d) LPC may require certain photographic identification and/or security access cards to be obtained and carried by Supplier Personnel in order to gain access to all or part of LPC's premises. LPC may in its sole discretion, prohibit particular Personnel from accessing part of or all of LPC's premises, or require any activity carried out by the Supplier to be suspended if it considers that person or activity presents a health and safety risk.

6.2 Health and safety

Without limiting the Supplier's obligations under clause 3.3, the Supplier will, in respect of the supply of the Goods and Services and when it or any of its Personnel are on LPC's premises:

- (a) consult, co-operate with and coordinate activities with LPC and other persons conducting a business or undertaking (as defined in the Health and Safety and Work Act 2015) who are accessing the area where the Supplier's activities are carried out in order to ensure the health and safety of its Personnel and all other workers whose activities are influenced or directed by the Supplier in relation to its activities at LPC's premises;

- (b) ensure that its Personnel complete a site induction in accordance with LPC's requirements prior to, or immediately upon, arrival;
- (c) establish its own health and safety management system which is fit for purpose in relation to the supply of the Goods and Services, and manage, monitor, ensure that its Personnel comply with, and provide a copy to LPC of, that health and safety management system;
- (d) immediately notify LPC of any property damage or any notifiable event (as defined in the Health and Safety at Work Act 2015), which occurs at LPC's premises and affects any of the Supplier's Personnel or arises from the Supplier's activities and provide all information as LPC may request in relation to such incidents;
- (e) ensure all tools and equipment used in connection with the supply of the Goods and Services is fit for purpose, complies with all applicable laws and legal requirements and is in a safe working condition; and
- (f) ensure that no oil, oil refuse, petroleum of any kind or liquid or non-liquid pollutant or waste material of any kind shall be spilled, discharged or allowed to escape into the harbour, on to any part of LPC's premises, or on to any other neighbouring property in connection with the supply of the Goods and Services; and
- (g) not cause or permit LPC's facilities to be used for any unauthorised, noisy, obnoxious, illegal or offensive activity or for any illegal purpose.

7 RISK AND TITLE

7.1 Risk

Unless otherwise agreed in writing, the risk of loss or damage to the Goods or a Deliverable passes to LPC only on delivery and acceptance in accordance with these Terms.

7.2 Title

Title to the Goods and Deliverables passes to LPC, free of any security interest or other encumbrances whatsoever, on the earlier of delivery to LPC or payment by LPC of the Charges for those Goods or Deliverables.

8 INSURANCE

The Supplier shall at all times during the supply of the Goods and Services (and for at least 12 months after the supply is completed) maintain a minimum level of public liability, product liability (for the supply of Goods) and professional indemnity (for the supply of design, consultancy or advisory Services) insurance cover of \$2,000,000 per claim (or such higher amount as may be specified in a Purchase Order or LPC may reasonably require) with a reputable insurer. The Supplier shall, before commencing the supply of the Goods and Services, and from time to time as reasonably required by LPC, provide LPC with written evidence of the required cover.

9 RELATIONSHIP MANAGEMENT

9.1 Reporting

The Supplier will provide LPC with the written reports and information, at the times, specified in a Purchase Order or otherwise reasonably requested by LPC from time to time.

9.2 Records

The Supplier will keep and maintain accurate, complete and legible records regarding the supply of the Goods and Services and the performance of its other obligations under these Terms, together with any particular records required by a Purchase Order. The Supplier will provide LPC with access to, and/or copies of, those records at any reasonable time on request (including after the end of the term).

9.3 Review

The parties will meet (in person or remotely by audio or audio-visual communication including teleconference) regularly, promptly following a request by either party, and at any times specified in the Purchase Order to review their relationship and the supply of the Goods and Services.

9.4 Audit and inspection

Any or all aspects of the Supplier's performance of its obligations under these Terms, including the calculation of the Charges, may be audited or inspected at any time by LPC (or its nominated representative) following reasonable prior notice. The Supplier will co-operate with LPC (and its nominated representative) in relation to, and fully participate in, such audit or inspection, including by providing access to the Supplier's relevant premises, personnel and records. The third party costs of the audit or inspection will be met by LPC unless the audit or inspection demonstrates a breach by the Supplier of its obligations under this Agreement, in which case such costs will be met by the Supplier. Each party will bear their own costs incurred in undertaking and participating in the audit or inspection.

10 TERMINATION

10.1 Termination

- (a) Either party may terminate a Purchase Order by giving written notice to the other, if:
 - (i) the other party commits a material breach of these Terms and, where capable of remedy, has not remedied that breach within 10 Working Days after the date on which the other party receives notice from the first party requiring it to remedy the breach;
 - (ii) the other party is unable to perform any material obligation under these Terms for a period of 30 calendar days or more as a result of Force Majeure;
 - (iii) the other party (or any of its holding companies) becomes bankrupt or insolvent in that the other party (or that holding company) is not able to pay its debts as they fall due or is placed in liquidation, statutory management, receivership, voluntary administration, is dissolved, or enters into any arrangement for the benefit of its creditors (other than for the purposes of a solvent reconstruction approved by the terminating party), or suffers any analogous event or circumstance under the laws of any applicable jurisdiction;
- (b) where the terminating party is LPC:
 - (i) the Supplier repeats (on at least 3 occasions in any 12 month period) or continues, after having been warned, any breach of this Agreement (including any breach of any service level or other performance requirement set out in the Purchase Order); or
 - (ii) the Supplier undergoes any "change of control" which is unacceptable to LPC, where a "change of control" means an event or series of related events resulting in a change in the legal or beneficial ownership of more than 50% of the shares or ownership interest in the Supplier or any holding company or controlling entity of the Supplier (including by way of an issue of new capital); or
 - (iii) any other event or circumstance specified in the Purchase Order occurs which entitles a party to terminate.
- (c) Without limiting paragraphs (a) or (b) above, LPC may at any time prior to delivery of the Goods or the

commencement of the Services terminate a Purchase Order by written notice.

10.2 Consequences of termination or expiry

On termination of a Purchase Order or completion of the supply of the Goods and Services (including on expiry of any applicable fixed term set out in a Purchase Order), the following provisions will apply:

- (a) the Supplier shall deliver any Goods or Deliverables which LPC has paid for and vacate LPC's premises and remove any of its tools and equipment or other property located at LPC's premises in an orderly manner without causing any disruption or interference to LPC's business or to its customers;
- (b) each party will promptly return to the other any property or information of the other party in its possession or control;
- (c) each party will pay the other party any amount payable pursuant to these Terms in respect of the period before termination or expiry;
- (d) the termination or expiry will be without prejudice to either party's rights and remedies in respect of any breach of these Terms by the other party, where the breach occurred before the termination or expiry;
- (e) before and after the date of termination or expiry, the Supplier shall provide such reasonable assistance to LPC in managing that termination or expiry (including, if applicable, LPC's transition to alternative service arrangements) as LPC may reasonably request; and
- (f) clauses 4.3 (warranties); 8 (insurance), 11 (intellectual property), 13 (liability and indemnity), 14 (dispute resolution), 15 (miscellaneous), this clause 10.2 and any other term which impliedly is intended to survive termination shall continue.

11 INTELLECTUAL PROPERTY

11.1 Pre-existing IP

Neither these Terms, nor the issue of a Purchase Order, will entitle a party to any right, title or interest in or to any intellectual property rights owned by or licensed to the other party and existing as at the date of issue of the Purchase Order, or developed independently of this Agreement ("**Pre-Existing IP**"). The Supplier grants to LPC a non-exclusive, royalty-free licence to use the Supplier's Pre-Existing IP to the extent reasonably required to enable LPC to use the Goods and obtain the benefit of the Services and any Deliverables.

11.2 Developed IP

- (a) Subject to and without limiting clause 11.1, all intellectual property rights arising from the supply of the Goods and Services, including in any Deliverables, is LPC's exclusive property and the Supplier waives any claim over, or entitlement to, any of that work or those intellectual property rights (including moral rights under the Copyright Act 1994).
- (b) The Supplier shall, promptly at LPC's request, sign such documents and do or procure to be done all such further acts and things as LPC may from time to time require in order to give effect to paragraph (a) and vest such intellectual property rights in LPC absolutely and exclusively immediately on their creation.

11.3 No infringement

The Supplier warrants that the Services and LPC's use of the Goods and any Deliverables do not and will not infringe upon or violate any intellectual property rights of any third party.

12 FORCE MAJEURE

12.1 No liability for Force Majeure

Neither party shall be liable to the other party for any loss, damage, delay or failure to perform any obligation under this Agreement which is caused by Force Majeure.

12.2 Notice and mitigation

A party wishing to claim the benefit of this clause must promptly notify the other party in writing of the nature and effect of the Force Majeure and use all reasonable endeavours to avoid or mitigate such effects.

13 LIABILITY AND INDEMNITY

13.1 No consequential loss

Notwithstanding any other provision of these Terms, neither party shall be liable under or in connection with these Terms or the supply of the Goods and Services, whether in contract, tort or otherwise, for any indirect or consequential loss or any loss of profit, loss of goodwill or loss of opportunity (howsoever caused).

13.2 Indemnity

The Supplier shall be liable for and indemnifies LPC, its employees, officers, agents, contractors and advisors (each an "**Indemnified Person**"), from and against any loss, cost, liability, claim or expense (including legal costs on a solicitor-client basis) suffered or incurred by an Indemnified Person in connection with any:

- (a) breach of these Terms by the Supplier (including any breach of warranty);
- (b) property damage caused by any act or omission of the Supplier (or its Personnel).

14 DISPUTE RESOLUTION

14.1 Negotiation

If any dispute or difference of any kind whatsoever shall arise between LPC and the Supplier under or in connection with these Terms (a "**Dispute**"), the parties will enter into negotiations in good faith to resolve the Dispute promptly following either party invoking this clause in writing.

14.2 Arbitration

If the Dispute is not resolved within 10 Working Days of the commencement of negotiations (or within such longer period as the parties may agree), the Dispute shall be referred to arbitration before a single independent arbitrator subject to and in accordance with the provisions of the Arbitration Act 1996 (excluding clauses 4 and 5 of the Second Schedule). If the parties are unable to agree on an arbitrator within 10 Working Days of referral of the Dispute to arbitration, one shall be appointed by the President of the New Zealand Law Society (or his or her nominee) upon application by either party. The place of arbitration will be Christchurch, New Zealand and the language of arbitration will be English. The arbitrator's decision shall be final and binding on the parties (subject to manifest error).

14.3 Interim relief

Nothing in this clause 14 shall prevent either party from seeking or obtaining any order or relief by way of injunction or declaration or other equitable or statutory remedy against the other party or any other person where the party believes the order or relief is necessary for the urgent protection of the party's rights or property.

15 MISCELLANEOUS

15.1 Notices

All notices, demands, requests and other communications under or in connection with these Terms shall be given in writing to the address specified on the Purchase Order (or such other address notified in accordance with this clause) and will be deemed to have been received:

- (a) in the case of hand delivery, at the time of actual delivery to the recipient's address;
- (b) in the case of delivery by pre-paid post within New Zealand, on the fourth Working Day after posting;
- (c) in the case of delivery by pre-paid post internationally, on the twelfth Working Day after posting; and
- (d) in the case of delivery by email, at the time of transmission, provided that the message is not returned undelivered or as an error or an automatically generated "out of office" message (or other indication on non-receipt) is received by the sending party,

provided that if a notice or other communication is received or deemed to have been received after 5 pm on a Working Day or on a day which is not a Working Day, it will be deemed not to have been received until 9 am on the next Working Day.

15.2 Confidentiality

Each party agrees that the Purchase Order and any information disclosed or made available by one party to the other under or in connection with the supply of the Goods and Services (including information regarding a party's business, operations, finances, customers and shareholders, but excluding information already in the public domain without any breach of this agreement) is confidential and shall not (including after the end of the term) be disclosed to any other person, nor used for any purpose other than that for which it was disclosed or made available, except to the extent required by law or to the extent agreed in writing.

15.3 Assignment and subcontracting

The Supplier shall not assign these Terms or any interests under these Terms, nor sub-contract the supply of the Goods and Services (in whole or in part), without LPC's prior written consent (which may be given or withheld in LPC's sole discretion). In any event, the Supplier will remain fully responsible and liable for the performance of any obligations which have been subcontracted.

15.4 Non-solicitation

The Supplier will not, during the supply of the Goods and Services and for a period of 3 months after the supply is completed, directly or indirectly, solicit, canvass or endeavour to entice away from LPC, or discourage from being employed by LPC, any employee of LPC.

15.5 Nature of relationship

Nothing in these Terms constitutes a partnership, joint venture or relationship of employer and employee between the parties. Except as otherwise provided in these Terms or a Purchase Order or expressly authorised by LPC in writing, the Supplier may not act or hold itself out as an agent or representative of LPC, nor assume or create any obligations on behalf of LPC.

15.6 Severability

If any part of these Terms is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination will not impair the enforceability of the remaining parts of these Terms.

15.7 No waiver

A waiver of any provision of these Terms will not be effective unless given in writing, and then it will be effective only to the extent that it is expressly stated to be given. A failure, delay or indulgence by either party in exercising any power or right will not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right will not preclude further exercises of that power or right or the exercise of any other power or right.

15.8 Governing law and jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of New Zealand (excluding the United Nations Convention on Contracts for the International Sale of Goods), and the parties hereby submit to the non-exclusive jurisdiction of the Courts of New Zealand.