



GENERAL TERMS AND CONDITIONS OF SERVICE

Bureau Veritas in New Zealand

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretations in this Article apply in these terms and conditions as follows:

"Agreement": all agreements or other arrangements of which these General Conditions constitute an integrate part, entered into by the Company with the Client.

"Affiliate": any company, legal entity or partnership which (a) controls either directly or indirectly a Party, or (b) which is controlled directly or indirectly by such Party, or (c) is directly or indirectly controlled by a company, legal entity or partnership which directly or indirectly controls such Party. "Control" means, in the case of a corporation or other legal entity, the right to exercise 50% or more of the voting rights in the meeting of shareholders of such company and, in the case of a partnership, the ability to determine material business decisions.

"Bureau Veritas Group": all Affiliates of Bureau Veritas New Zealand Limited

"Control": in the case of a corporation or other legal entity, the right to exercise 50% or more of the voting rights in the meeting of shareholders of such company and, in the case of a partnership, the ability to determine material business decisions.

"Company": Bureau Veritas (New Zealand) Limited (*Co. Registration No. AK/441921*)

"Client": any person, firm or company which acquires from the Company the Service (as defined below) and as identified in the Agreement.

"Client Information": all documents, instructions, Request Forms, specifications, codes, requirements, samples, measurements and other information and materials provided by the Client necessary for the performance of the Services.

"General Conditions": the present General Terms and Conditions of Service.

"Intellectual Property Rights": all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

"Party/ Parties": individually the Company or the Client and collectively the Company and the Client.

"POD" : the probability of detection in relation to Testing Services performed by the Company, being the statistical probability that a given test method or technique properly applied will detect a specific discontinuity

"Reports": all documents created by the Company or its agents, subcontractors, consultants and employees in relation to its performance of the Services.

"Services": the services to be provided by the Company to the Client under the Agreement and as set out in the applicable Request Form or other instruction from the Client to the extent that they are agreed by the Company and incorporated into the Agreement.

"Site": the place where the Services are to be performed

"Request Form": the Company standard form Request Form that shall be completed by the Client and shall set out the Services to be performed by the Company and the agreed respective Fees for those Services, together with any other information concerning the performance of the Services under the terms of the Agreement.

"Uncertainty" : refers to the uncertainty in accuracy of a measurement.

1.2 In these General Conditions, a reference to:

- a) an article or clause is a reference to an Article of these General Conditions;
- b) the singular includes the plural and vice versa and reference to any gender includes the other genders;



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- c) a statute or statutory provision includes a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (whether before or after the date of the Agreement) and any prior or subsequent subordinate legislation made under it (whether before or after the date of the Agreement).

2. GENERAL

- 2.1 Unless otherwise expressly agreed in writing and signed by both Parties on a valid Request Form, or otherwise required by mandatory implication by law, these General Conditions shall:
- apply to and be incorporated into the Agreement; and
 - prevail over any inconsistent terms or articles contained, or referred to, in Client Information, or implied by law, trade custom, practice or course of dealing.
- 2.2 A completed Request Form or other instruction by the Client, or the Client's acceptance of a quotation for Services by the Company, constitutes an offer by the Client to purchase the Services specified in it on these General Conditions. No offer placed by the Client shall be accepted by the Company other than by a written acknowledgement issued and executed by the Company, at which point a contract for the supply and purchase of the Services on these General Conditions will be established.
- 2.3 For the avoidance of doubt, the Client's standard terms and conditions (if any) attached to, enclosed with or referred to in any Request Form or other Document shall not govern the Agreement.
- 2.4 By signing the Agreement, authorizing or accepting all or any portion of the Services to be completed by the Company as specified in any of the Client Information, the Client shall be deemed to have accepted these General Conditions.
- 2.5 The Company shall not accept instructions in respect of the Services other than from the Client or from individuals representing the Client as identified in the relevant Request Form or as otherwise notified to the Company from time to time in writing by the Client.
- 2.6 If the Client anticipates the use of any Reports in any legal proceeding, arbitration, dispute resolution forum or other proceeding, it shall so notify the Company in writing prior to submitting the Request Form for the Services and in any event prior to the use of such Reports in any such proceeding. The Parties agree that, save where required by law, the Company has no obligation to provide an expert witness or witness of fact at such proceeding, unless the Company gives its prior consent in writing, such consent being subject to agreement of the Parties of a separate and additional fee in respect of such additional services.
- 2.7 By submitting a Request Form or other request for Services to the Company, the Client consents to the disclosure to accreditation bodies of Client Information relevant to the accreditation body's assessment of the Company's competence and compliance with relevant accreditation criteria.
- 2.8 The Company at its sole discretion may delegate the performance of all or a portion of the Services under the Agreement to an affiliate, agent or subcontractor of the Company or to an Affiliate of Bureau Veritas Group without prior notice to the Client. For the purposes of Article 13, the Client hereby consents to the Company disclosing any and all confidential information (as defined in Article 13) of the Client to such affiliate, agent or sub-contractor for the purposes only of performing the Services in whole or in part.
- 2.9 If an Affiliate in the Bureau Veritas group other than the Company provides all or a portion of the Services, these General Conditions will be deemed to apply to all or that portion of the Services as if the Affiliate had entered into these General Conditions as agent for the relevant Bureau Veritas company performing the Service. Any contract entered into the relevant Bureau Veritas company and the Company for the performance of the Services shall include an explicit reference to these General Conditions.

3. COMMENCEMENT AND DURATION

- 3.1 The Services performed under the Agreement shall be provided by the Company to the Client from the date of acceptance by the Company of the Client's offer in accordance with Article 2.2.
- 3.2 Subject to Article 15, the Services supplied under the Agreement shall be supplied for the period as set out in the agreed Request Form or other Client instruction as agreed by the Company.

4. SCOPE OF SERVICES



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- 4.1 The Company, in the capacity of an independent third party, supplies information to its Client in the form of ascertainment, advice, assessment or recommendations, relative to regulatory requirements, general industry standards and/or any other standards that may be mutually agreed by the Parties.
- 4.2 To this end, the Company may perform actions including surveys, inspections, verifications, assessments, audits or appraisals with independence, impartiality and objectivity in collecting the information. Such information may be communicated to the Client in the form of the Reports including inspection sheets, reports, certificates, attestations or marks, or by any other suitable means agreed between the Parties.
- 4.3 It is agreed that only one copy of such Reports will be provided by the Company to the Client unless otherwise agreed in writing by both Parties. The Client may not make any other copy of such Reports without the prior written consent of the Company. Such Reports will be provided for the sole use of the Client and shall not be distributed by the Client or relied upon any third parties.
- 4.4 The Services provided under these General Conditions do not include re-testing or the provision of any computer software.

5. PERFORMANCE OF THE SERVICES

- 5.1 The Company shall, with reasonable care, skill and diligence as expected of a competent, conformity assurance body, testing body experienced in the testing and inspection industry and performing services of a similar nature under similar circumstances, supply the Services in compliance with:
 - a) its quality system requirements as set out in the Agreement,
 - b) the Client's special instructions as confirmed by the Company in writing, if any,
 - c) any relevant professional standard, trade custom, usage or practice,
 - d) such methods as the Company shall deem suitable on technical and/or financial grounds,
 - e) applicable statutes, codes, laws and regulations.
- 5.2 If the Client makes any changes to plans, specifications relating to the Services or Client Information, the Client shall hold the Company harmless from any liability arising out of such changes, and the Client assumes full responsibility unless the Client has given the Company prior written notice of such changes and has received the Company's written consent to the changes.
- 5.3 The Company shall not be responsible for failure to perform the Services if:
 - a) there is a failure or delay by the Client or any of the Client's personnel in providing the Company with the necessary access to the Site or Client Information; or
 - b) the Client or any of the Client's personnel fails to approve the Services; or

In any of these events, the Company's time for completion of the Services shall be extended accordingly and the Company may charge the Client for any additional costs and expenses incurred at the Company's usual hourly rate unless otherwise agreed in writing by the Company.

- 5.4 In providing the Services, the Company does not take the place of designers, architects, builders, contractors, manufacturers, producers, operators, transporters, owners or other third parties, who, notwithstanding the Company's actions, are not released from any of their obligations of whatever nature. In particular, any information and/or advice supplied by the Company shall not be held or construed to amount to approval or acceptance of the items in connection with which the information and advice are supplied. Such parties are responsible for acting as they see fit, according to the information and advice provided by the Company.
- 5.5 Neither the Company nor any of the Company's personnel guarantees the accuracy of such information or advice, or the quality, outcome, effectiveness or appropriateness of any decision or action undertaken on the basis of the said information or advice. Furthermore, none of the Services or information provided by the Company shall create any obligation on the Company or constitute any warranty of proper operation of any material that has been subject to any inspection by the Company using computer software or hardware of any sort or other comparable concepts (hereafter referred to as "**Equipment**") with respect to the absence of failures when processing or handling dates or performing other similar operations of any computer element, whether hardware or software, of said Equipment. The Company shall in no circumstances whatsoever incur any liability for, without limitation, any damage, loss, cost or expense arising from any such failures.
- 5.6 Unless otherwise stipulated in the Client Information, the Company's personnel are not expected to be in permanent attendance on the Site and their visits may be intermittent and/or unannounced. The Client



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acknowledges that the Company's Reports relate the facts as recorded at the time of the Company's Site attendance only, are performed on a random sampling basis, cannot be considered exhaustive and are within the limits of instructions received from the Client.

- 5.7 Any samples taken by the Company in carrying out the Services will be retained for thirty (30) days after the performance of the Services and, unless otherwise agreed in writing by the Client, will be disposed of after that period. If the Client requires samples to be retained after that period, the Company will be entitled to charge the Client reasonable costs of storage for such samples.
- 5.8 Where any analysis or test is to be made neither the Company nor its agents or sub-contractors shall be liable for any loss, deterioration, or destruction of or damage to any of the Client's samples or property, but at all times the samples or property shall be at the risk of the Client who shall indemnify Company and its agent or sub-contractors against any action, claim, suit or demand arising from any such loss, deterioration, destruction or damage.
- 5.9 The Client accepts that at all times the Client retains ownership of all quantities of material delivered to the Company and any products produced including, but not limited to, tailings, concentrates and samples. The client shall at all time keep Company indemnified from all costs associated with the safe disposal of these products and excess material in accordance with the most recent statutory requirements. The Client shall notify Company where any sample to be received by the Company includes material which is classified as a dangerous substance or which requires special handling procedures.

6. SPECIFIC REQUIREMENTS

- 6.1 If the Company requires any specialised equipment which it must rent or hire to enable it to provide the Services, the Company may charge the Client an amount equal to the cost of the hire or rental plus fifteen per cent (15%).
- 6.2 If surface preparation of materials is required to be performed, the costs of such surface preparation will be an additional cost and is not included in the fees for the Services. The Client must ensure that for radiographic, magnetic particle or penetrant interpretation, the surface must be in accordance with the New Zealand standard or any other standard advised by the Company and there must be no surface indications which could impair interpretation. The Client must ensure that for ultrasonic examination provided as part of the Services, the scanning services must have a surface roughness not exceeding 3.2mM. Where surface preparation is necessary and has not been carried out by the Client, any delay caused while surface preparation is carried by the Company will be charged at the Company's usual hourly rate unless otherwise agreed in writing by the Company.

7. CLIENT'S OBLIGATIONS

- 7.1 The Client shall provide the Company with all information required to enable the Company to perform the Services. The Company shall not be liable for any incorrect advice, judgment, recommendation, finding, decision or conduct based upon any inaccurate or incomplete information supplied by the Client. The Company is under no obligation to refer to or report upon any facts or circumstances which are outside the specific agreed scope of the Services and accepts no liability in respect of the same.
- 7.2 Where the Services are to be provided at a Site, the Client must provide the Company with access to the Site to enable the Company to provide the Services. If access to the Site is unavailable for any reason other than the fault of the Company and the Company's personnel is standing by to access the Site, the Client must pay the Company the Company's usual hourly rates for the standby time unless otherwise agreed in writing by the Company. If the fee for the Services is charged on a time basis, the Client must pay for travel time by the Company's personnel to the Site at the Company's usual hourly rate unless otherwise agreed in writing by the Company. The Company may also charge the Client for all reasonable accommodation and meal costs of the Company's Personnel related to or in connection with the provision of the Services.
- 7.3 The Client must ensure that the Company has access to power, water, telecommunications infrastructure, toilets and other amenities and any other general utilities at the Site necessary to allow the Company to provide the Services. The Client must ensure that the Site complies with all applicable statutes, codes, laws and regulations, including without limitation, those laws related to environmental, fire and health and safety matters. If the Company considers in its reasonable opinion that the Site is unsafe, the Company may suspend the performance of the Services until such time as the Client makes the Site safe. In such circumstances, the Client must reimburse the Company for all costs and expenses incurred in connection with the delay at the Company's usual hourly rates unless otherwise agreed in writing by the Company.



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- 7.4 The Company's presence on the Site does in any way guarantee the completion, quality or performance of the Services by any other party retained by the Client. Unless agreed in writing, the Company is not responsible for, and does not have control or charge of, the specific means, methods, techniques, sequences or procedures of construction or remediation of any personnel, agent or of the Client.
- 7.5 Where the Company provides a Health & Safety Officer on the Site, the Company will be authorised to take any and all measures on behalf of the Client that, in the Company's opinion, will maintain generally accepted health and safety standards for Personnel at that Site. The Company will advise the Client of any deficiencies with respect to specifications and/or applicable regulations. The Company is not responsible for the failure of the Client or the Client's personnel to follow the recommendations of the Company or the Company's personnel.
- 7.6 The Client shall maintain at its own cost all applicable insurance policies with a reputable insurance company to cover the potential liabilities which the Client may have to the Company in connection with the Agreement.

8. CHARGES AND PAYMENT

- 8.1 Fees payable for the Services may be either a fixed amount or a percentage of the value of the item in relation to which those Services are to be supplied.
- 8.2 Unless otherwise stipulated, the fees for the Services shall be subject to revision:
- if the duration of the Services exceeds one (1) year; or
 - where the Services cannot be performed by the Company (other than due to the fault of the Company) within 30 days after the request for the Services by the Client; or
 - in the case of suspension of the Services.
- 8.3 However, if the fees for the Services represent a percentage of the value as defined above, the fees need not be revised if the said value is itself subject to revision. Whenever the fees for the Services are a fixed amount and there is an increase either of the items on the basis of which the amount has been calculated or of the expected duration of the Services, the amount of fees shall be increased in the same proportion. Whenever the fees for the Services are a percentage of the value of the item in relation to which the Services are to be supplied, the said value shall be defined, or at least estimated, in the request for Services from the Client, as well as any items which should not be taken into account for the purposes of calculating the fees. The Client shall regularly and on request by the Company supply the Company with the data or documents that will serve as a basis for the calculation of the fees for the Services.
- 8.4 All fees and other charges for the Services will be invoiced by the Company to the Client immediately after completion of the services. Any amount referred to in the Agreement is exclusive of GST and any other tax unless it is expressly included. If GST is imposed on any supply (or deemed supply) made by any Party under or in connection with the Agreement, then the consideration for that supply is increased by an amount equal to the amount of that consideration multiplied by the rate at which GST is imposed in respect of that supply. The party which makes the supply under or in connection with the Agreement must provide to the recipient of that supply a GST tax invoice as required by any relevant legislation.
- 8.5 Invoices shall be paid by the Client within thirty (30) days of the date of the invoice.
- 8.6 Time for payment shall be of the essence of the Agreement.
- 8.7 Without prejudice to any other right or remedy that it may have, if the Client fails to pay the Company on the due date, the Company may:
- charge interest on such sum from the due date for payment at the monthly rate of 1.5%, accruing on a daily basis and being compounded monthly until payment is made, whether before or after any judgment; and
 - suspend all Services until payment has been made in full. Notwithstanding any such suspension of the Services, the Client shall pay the Company for all rendered Services by the Company up to the date of suspension of Services, plus all interest and suspension costs and expenses incurred by the Company. The Client shall reimburse the Company for all costs and expenses of collection of the invoiced amount, including reasonable legal fees.
- 8.8 The Client is not entitled to offset any amount owed to the Company against amounts owed to the Client.

9. FORCE MAJEURE

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- 9.1 The Company shall not be responsible for failure to perform the Services if such failure is due to any of the following events:
- acts of war (whether declared or undeclared), armed conflict, civil unrest or insurrection, blockade, embargo, riot, sabotage, malicious damage, acts of terrorism or the specific threats of such acts or events, or conditions attributable to such acts or events;
 - strike, work slow down, lockout or other industrial disturbance or labour dispute (whether involving the workforce of the Party so prevented or of any other Party), or default of suppliers or of sub-contractors;
 - epidemics or plague;
 - fire, earthquake, cyclone, hurricane, flood, drought, lightning, storms, storm warnings, navigational and maritime perils, or other acts of God;
 - breakage, fire, freezing, explosion, mechanical breakdown or other damage or malfunction resulting in the partial or complete shutdown of the facilities of the claiming Party;
 - a change in law, hindrance of government or other act or failure to act by any government claiming jurisdiction over the Agreement or the Parties and which renders either the Client or the Company unable, wholly or in part to carry out its obligations under the Agreement (other than the obligation to make payments of sums due to the other Party), which inability could not have been prevented or overcome by the claiming Party exercising reasonable foresight, planning and implementation.
- 9.2 If as a result of Force Majeure any Party is rendered unable, wholly or in part, to carry out its obligations under the Agreement, other than the obligation to pay any amounts due, then the obligations of the Party giving such notice, so far as and to the extent that the obligations are affected by such Force Majeure, shall be suspended during the continuance of any inability so caused and for such reasonable period thereafter as may be necessary for the Party to put itself in the same position that it occupied prior to the Force Majeure, but for no longer period.
- 9.3 In the event of the Company being prevented for any reason beyond its control, including events of Force Majeure, from performing or completing the Services, the Client agrees:
- to reimburse the Company for any expenditures actually made or incurred,
 - to pay the proportion of fees due for the Services which have been actually carried out and to release the Company from all responsibility for partial or total non-performance of the Service.
- 9.4 The Party claiming Force Majeure shall notify the other Party of the Force Majeure within forty eight (48) hours after the occurrence of the facts relied on and shall keep the other Party informed of all significant developments. Such notice shall give reasonably full particulars of the Force Majeure and also estimate the period of time which the Party will probably require to remedy the Force Majeure.
- 9.5 The affected Party shall use all reasonable diligence to remove or overcome the Force Majeure situation as quickly as possible in an economic manner, but shall not be obligated to settle any labour dispute except on terms acceptable to it, and all such disputes shall be handled within the sole discretion of the affected Party.

10. LIMITATION OF LIABILITY

- 10.1 this article 10 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the client in respect of:
- any breach of the agreement;
 - any use made by the client of the services, the reports or any part of them; and
 - any representation, statement or tortious act or omission (including negligence) arising under or in connection with the agreement.
- 10.2 all warranties, articles and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the agreement.
- 10.3 subject to the limitations contained in this clause, the Company shall indemnify and hold harmless the client from and against all losses, liabilities, and reasonable costs and expenses for property damage and bodily injury (including reasonable legal fees), to the extent arising from the Company's proven negligent performance of the services or breach of statutory duty under the agreement.



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- 10.4 the total aggregate liability of the Company whether arising under or in connection with the agreement, whether by way of indemnity, statute, in tort or on any other basis in law or in equity shall not exceed ten (10) times the amount of the fees paid by the client to the Company for the specific services which give rise to the claim.
- 10.5 where the fees relate to the number of services and a claim arises in respect of one or more of those services, the relevant fees for the purpose of determining the total aggregate liability shall be in proportion to the estimated time spent on the performance of each service.
- 10.6 for claims concerning services for which no invoice has been issued by the Company, the total aggregate liability of the company will in no circumstances exceed a fixed sum of nzd \$1,000. in the event of any claim by the client, notice must be given to the Company's head office within thirty (30) days of discovery of the facts alleged to justify such a claim, or six (6) months from the date of completion of the services, whichever is the earlier or the company will not be liable for the claim.
- 10.7 the Company shall not, under any circumstances whatsoever, be liable to the client for any matter arising out of the performance of the services in respect of any indirect, consequential or special loss including without limitation loss of profits or revenue, loss of business opportunity, loss of production or loss of goodwill suffered by the client whether arising under or in connection with or incidental to the agreement, whether by way of indemnity, by statute, in tort or on any other basis in law or in equity.
- 10.8 without limiting the provisions of clause 10.1, the company will not be under any liability to the customer in respect of any loss or damage (including consequential loss or damage) which may arise directly or indirectly from:
- (a) the Customer drawing conclusions from reports or certification reports beyond the scope of any investigation or inspection undertaken as part of the testing services;
 - (b) any expectation by the Customer or any third party that any tests carried out as part of the testing services will have a higher pod to that generally accepted in accordance with good industry practice, having regard to the variability in discontinuity, form, size, orientation or texture and the limitations of relevant test methods used in the testing services; and
 - (c) any expectation by the Customer or any third party that measurements referred to in a report or certification report will have an uncertainty less than that referred to in any relevant standard.
- 10.9 the client shall defend, indemnify and hold harmless the Company and the Company's personnel from and against any and all claims, losses, liabilities, and reasonable costs and expenses (including reasonable legal fees) that are related to, caused in any way by or in connection with:
- (a) the negligence or wilful misconduct of the Client or the Client's personnel;
 - (b) a breach by the Client or the Client's personnel of the agreement; or
 - (c) claim by the Client in breach of the limitations of liability set out in this article 10.
- to the extent that the aggregate of such claims for any one service exceeds the limitation of liability as set out in articles 10.4, 10.5 and 10.6 above.

11. CAUSE OF ACTION

Should either Party to the Agreement commence any legal action against the other Party arising out of the Agreement, the prevailing Party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses and legal fees. If the Client makes a claim against the Company in relation to the performance of the Services and to the extent the Client fails to prove such claim, then the Client shall pay all costs including legal fees incurred by the Company in defending the claim.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 All Intellectual Property Rights arising out of or in connection with the provision of the Services by the Company to the Client (including any Reports) vests in the Company and nothing in the Agreement confers any Intellectual Property Rights on the Client. The Company retains ownership and title to any such Report and reserves its



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ownership right to such documents until payment for the Services is received in full by the Company from the Client.

- 12.2 The Client grants to the Company, its agents and sub-contractors, and the Affiliates, a non-exclusive royalty-free licence to make use of any Intellectual Property Rights owned by the Client as at the commencement date of the Agreement or otherwise created out with the scope of the Agreement, for the duration of the Agreement for the purposes of carrying out the Services.
- 12.3 If, as part of the Services, computer software is to be provided by the Company to the Client, a separate contract between the Company and the Client will govern the terms and conditions of the provision of such computer software.
- 12.4 The Client shall not contest the validity of the Intellectual Property Rights or take any action that might impair the value or goodwill associated with the Marks or the image or reputation of Bureau Veritas Group.

13. CONFIDENTIALITY

- 13.1 Each of the Parties shall not disclose or use for any purpose whatsoever any of the confidential knowledge or confidential information or any financial or trading information which it may acquire within the scope of the performance of the Agreement, without the prior written consent of the other Party.
- 13.2 Confidential information means all non public information passing between the Parties, including but not limited to data, know-how, designs, sketches, photographs, plans, drawings, specifications, layouts, ideas, concepts, reports, manuals, prototypes, trade secrets, trademarks, company logos, sources and object codes, business and marketing information, and all proprietary information whatsoever whether in writing or oral.
- 13.3 The confidentiality undertaking shall not apply to any information:
- which is publicly available or becomes publicly available through no act of the disclosing Party;
 - which was in the possession of the disclosing Party prior to its disclosure;
 - which is disclosed to the disclosing Party by a third party who did not acquire the information under an obligation of confidentiality;
 - which is independently acquired by the disclosing Party as the result of work carried out by an employee to whom no disclosure of such information had been made;
 - which is disclosed in accordance with the requirements of law, any stock exchange regulation or any binding judgment, order or requirement of any court or other competent authority;
 - which is disclosed to an affiliate of the Party on a need to know basis.
- 13.4 The Reports are issued by the Company and are intended for the exclusive use of the Client and shall not be published, used for advertising purposes, copied or replicated for distribution to any other person or entity or otherwise publicly disclosed without the prior written consent of the Company.
- 13.5 Each Party shall be responsible for ensuring that all persons to whom confidential information is disclosed under the Agreement shall keep such information confidential and shall not disclose or divulge the same to any unauthorized person or entity, and shall assume full responsibility for any breach of said undertaking.
- 13.6 All materials, equipment and tools, drawings, specifications and data supplied by the Company to the Client (including the Company's Equipment) shall, at all times, be and remain as between the Company and the Client the exclusive property of the Company, but shall be held by the Client in safe custody at its own risk and maintained and kept in good article by the Client until returned to the Company and shall not be disposed of or used other than in accordance with the Company's written instructions or authorisation.
- 13.7 On expiry or termination of the Agreement for any reason and at the direction of the other Party, each Party shall return or destroy the other Party's confidential information which is at that time in its possession or under its control.

14. AUDIT

Unless otherwise required by law and/or accreditation bodies or contractually, the Company will retain all pertinent records relating to the Services performed for a period not exceeding three (3) years following completion of the Services.



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15. TERMINATION

- 15.1 Notwithstanding any other provisions of the Agreement, the Company may terminate at any time by giving a minimum of thirty (30) days prior written notice to the Client.
- 15.2 Without prejudice to any other rights or remedies which the Parties may have, either Party may terminate the Agreement without liability to the other on giving the other not less than 30 days written notice to the other if:
- the other Party fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than seven (7) days after being notified in writing to make such payment; or
 - the other Party commits a material breach of any of the terms of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that Party being notified in writing of the breach; or
 - the other Party repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement; or
 - the other Party has a receiver or administrative receiver appointed, or passes a resolution for winding up (other than for the purpose of a scheme of solvent amalgamation or restructuring) or if a court having proper authority makes an order to that effect; or
 - the other Party is the subject of any similar event which occurs in any country outside New Zealand where it has assets; or
 - the other Party becomes unable to pay its debts as and when they become due; or
 - the other Party suspends or ceases or threatens to suspend or cease to carry on all or a substantial part of its business; or
 - there is a change of control of the other Party.

On termination of the Agreement for any reason:

- the Client shall immediately pay to the Company all of the company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt;
- the Client shall return all of the Company's Equipment. If the Client fails to do so, then the Company may enter the Client's premises and take possession of them. Until they have been returned or repossessed, the Client shall be solely responsible for their safe keeping; and
- the accrued rights and liabilities of the Parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected;
- Articles 10, 12, 13 and 22 shall survive and continue in full force and effect.

16. NON-SOLICITATION/HIRING OF EMPLOYEES

- 16.1 The Client agrees not to directly or indirectly solicit, employ or otherwise engage any employee of the Company during the term of the Agreement. This restriction shall apply during the term of and for a period of one (1) year after the termination or expiry of the Agreement.
- 16.2 The Client further agrees that loss of any such employee would involve considerable financial loss of an amount that could not be readily established by the Company. Therefore, in the event that the Client breaches this provision and without limiting any other remedy that may be available to the Company, the Client shall pay to Company a sum equal to the employee's current annual salary plus twelve (12) additional months of the employee's current annual salary for training of a new employee as liquidated damages.

17. INDEPENDENT CONTRACTOR

In performing the Services, the Company shall be deemed to be acting as an independent contractor, and nothing in the Agreement shall be deemed or construed to give rise to or create the relationship of master and servant or any employment relationship between the Client and the Company or constitute a partnership between the parties.

18. ASSIGNMENT

The Company may assign its rights or subcontract its obligations in connection with the performance of the Services in its discretion without the consent of the Client. The Client may only assign its rights under the Agreement with the prior written consent of the Company.

19. WAIVER

Failure of either Party to enforce any of its rights shall not constitute a waiver of such rights. If any provision herein is held invalid or unenforceable, such provision shall thereupon be deemed modified only to the extent necessary to render it valid or excluded from the Agreement, as the situation may require, and the Agreement shall be enforced and



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construed as if such provision has been included herein as so modified in scope or applicability or had not been included herein, as the case may be.

20. COMPLETE AGREEMENT

The Agreement constitutes the full and complete agreement of the Parties in relation to the Services and prevails over all terms or conditions of the Client. The Agreement may only be amended in writing signed by both Parties that specifically states that it is an amendment of the Agreement. Reference by the Company or the Client to any purchase or work number or order supplied by the Client shall be for accounting identification purposes only and shall have no other legal effect.

21. INTERPRETATION OF AGREEMENT

The Agreement shall be interpreted as though prepared by the Parties and shall not be construed unfavourably against either Party.

22. GOVERNING LAW AND SURVIVAL

The Agreement shall be governed by the laws of New Zealand. If any of the provisions contained in the Agreement are held to be illegal, invalid, or unenforceable, the relevant provision will be severed from the Agreement and the enforceability of the remaining provisions will not be impaired.

23. RESOLUTION OF DISPUTES

All claims, disputes, controversies or matters in question relating to or in connection with the Agreement or any breach thereof shall be submitted to mediation before and as a condition precedent to pursuing any other remedy. Upon written request by either the Company or the Client for mediation of any dispute, the Company and the Client shall select a neutral mediator by mutual agreement. Such selection shall be made within ten (10) calendar days of the date of receipt by the other party of the written request for mediation. In the event of failure to reach such agreement or in any instance when the selected mediator is unable or unwilling to serve and a replacement mediator cannot be agreed upon by the Company and the Client within ten (10) calendar days, the parties must request the President of the Arbitrators and Mediators Institute of New Zealand to appoint a mediator.

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