

**CONTRACTS MANUAL**

**APPENDICES  
TO  
PART FOUR**

**PURCHASING CONTRACTS**

## APPENDICES TO PART FOUR

Each appendix listed below is a sample of a standard document used for Hutt City Council Purchasing Contracts.

| <b>No.</b> | <b>Filename</b>                                     |
|------------|---|
| A-61       | Checklist – Administration                          |
| A-62       | Checklist – Tender Documents                        |
| A-63       | Checklist – Purchaser’s Set                         |
| A-64       | Liquidated Damages Assessment Sheet                 |
| A-65       | Schedule to Conditions of Tendering                 |
| A-66       | Form of Tender                                      |
| A-67       | Special Conditions of Contract                      |
| A-68       | Tender Advertisement                                |
| A-69       | Tender Opening Schedule                             |
| A-70       | Tender Report                                       |
| A-71       | Contract Agreement                                  |
| A 72       | Seller’s Performance Bond                           |
| A 73       | Certificate as to Seller’s Insurances               |
| A 74       | Instruction/Variation Price Request/Variation Order |
| A 75       | Progress Payment Certificate                        |
| A 76       | Certificate of Provisional Acceptance               |
| A 77       | Certificate of Final Acceptance                     |
| A 78       | Final Payment Certificate                           |
| A 79       | General Conditions                                  |

**Appendix 61**

## Contract Administration Checklist

Contract No:..... for .....

To be completed by the Contract Manager.

*Delete items that are not applicable to this contract.*

| ACTION   | DATE | INITIAL |
|--|------|---------|
| Plans and specifications circulated to: <ul style="list-style-type: none"> <li>• Utility Services</li> <li>• Water Services</li> <li>• Other Council Sections (Specify)</li> </ul> |      |         |
| Advice sought on currency fluctuations   |      |         |
| Liquidated damages assessment complete   |      |         |
| Tender Documents complete as per Appendix 62   |      |         |
| Tender Advertisement   |      |         |
| Customer Service Centre advised  |      |         |
| Tender evaluation and report with recommendations  |      |         |
| Letter of acceptance to successful tenderer  |      |         |
| Letters to unsuccessful tenderers  |      |         |
| Evidence of insurance  |      |         |
| Receipt of completed Bond form   |      |         |
| Contract documents completed and signed  |      |         |
| Certificate of provisional Acceptance  |      |         |
| Certificate of Final Acceptance  |      |         |
| Release of Bond  |      |         |
| Guarantees received  |      |         |
| Final Payment Certificate  |      |         |
| Engineer's file amalgamated with Purchaser's Set   |      |         |

**Appendix 62**

## Checklist – Tender Documentation

Contract No:..... for .....

*Delete items that are not applicable to this contract.*

| DOCUMENT   | DATE | INITIAL |
|--|------|---------|
| List of contents of tender documents                       |      |         |
| General Conditions of Contract and Conditions of tendering |      |         |
| Schedule to Conditions of Tendering                        |      |         |
| Form of Tender   |      |         |
| Schedule of Prices   |      |         |
| Special Conditions of Contract – including Spec 33         |      |         |
| Health and Safety Documentation (required by HCC Spec 33)  |      |         |
| Specification  |      |         |
| Standard Specifications (List here when applicable)        |      |         |
|  |      |         |
|  |      |         |
|  |      |         |
|  |      |         |
|  |      |         |
|  |      |         |
|  |      |         |
| Drawings   |      |         |

**Appendix 63**

**Checklist for Items to be Held on the Purchaser's Set of Documents**

Contract No:..... for .....

*Delete items that are not applicable to this contract.*

| <b>DOCUMENT</b>  | <b>DATE</b> | <b>INITIAL</b> |
|--|-------------|----------------|
| Liquidated damages Assessment  |             |                |
| List of contents of tender documents                                 |             |                |
| General Conditions of Contract and Conditions of Tendering           |             |                |
| Schedule to Conditions of Tendering                                  |             |                |
| Form of Tender   |             |                |
| Schedule of Prices   |             |                |
| Special Conditions of Contract – including Spec 33                   |             |                |
| Specification  |             |                |
| Standard Specifications (if applicable)                              |             |                |
| Newspaper advertisement  |             |                |
| Notice to Tenderers  |             |                |
| Tender Opening Report  |             |                |
| Tender Report including recommendation from Contract Manager         |             |                |
| The Seller's Tender  |             |                |
| Letters to successful and unsuccessful tenderers                     |             |                |
| Health and Safety response from Seller                               |             |                |
| Evidence of Insurance  |             |                |
| Contract Agreement   |             |                |
| Seller's Performance Bond  |             |                |
| Copies of Variation Orders   |             |                |
| All progress payment certificates                                    |             |                |
| Certificate of provisional Acceptance                                |             |                |
| Certificate of Final Acceptance                                      |             |                |
| Final payment Certificate  |             |                |
| Any correspondence between Council and others                        |             |                |
| Copies of correspondence copied to Council                           |             |                |
| At completion of the contract all documentation from Engineer's File |             |                |



**Appendix 64**

**Liquidated Damages Assessment Sheet**

Contract No:..... for .....

- |   |                |
|---|----------------|
| <b>1. Supervision and Administration</b>              | <b>\$/Week</b> |
| 1.1 Contract Manager.....hrs/week@\$...../hr          | -----          |
| 1.2 Engineer to Contract.....hrs/week@\$...../hr      | -----          |
| 1.3 Engineer's Representative.....hrs/week@\$...../hr | -----          |
| 1.4 Travel.....kms/week@\$...../km                    | -----          |

- 2. Council's Direct Additional Costs** (check with Client's Representative before completing this section)
- |  |       |
|--|-------|
| 2.1 Client' Representative.....hrs/week@\$...../hr | ----- |
| 2.2 Other: (State).....                            | ----- |
| (eg Maintenance).....                              | ----- |

- 3. Council's Loss of Revenue/Additional Finance Charges**
- |                     |       |
|---------------------|-------|
| Rates               | ----- |
| Rents               | ----- |
| Interest            | ----- |
| Other: (State)..... | ----- |
| .....               | ----- |

- 4. Other Items**
- eg: Specialists, Consultants, Lawyers, etc.
- |              |       |
|--------------|-------|
| (State)..... | ----- |
| .....        | ----- |
| .....        | ----- |

Total estimated additional costs per week (excl. GST) \$ \_\_\_\_\_

**Assessed Weekly Liquidated Damages (rounded up to nearest \$50) excluding GST** \$                     

Prepared by: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

**Appendix 65**

## Schedule to Conditions of Tendering

Contract No:..... for .....

The Conditions of Tendering are those set out in the Hutt City Council General Conditions of Contract and Conditions of Tendering for the Sale and Purchase of Goods. Clause numbers refer to the Conditions of Tendering.

102.2 A Tender Documents deposit is not required;

**or**

A Tender Document deposit of \$..... is required;

**or**

A Tender Document deposit of \$..... is required and is non-refundable.

*(delete provisions which do not apply).*

105.1 Tenders will close at NOON on the ..... day of .....

Tenders shall be enclosed in a sealed envelope addressed to “The Chief Executive, Hutt City Council, Private Bag 31 912, Lower Hutt”. Tenders may be posted or, if delivered, handed in at the Customer Service Centre, Ground Floor, Administration Building, 30 Laings Road, Lower Hutt. The envelope shall be marked on the outside top left-hand corner “Tender for Contract No. .... for .....”

105.3 Fax tenders will be acceptable provided that the tenderer has made prior arrangement.

**or**

Fax tenders will not be acceptable.

*(delete provision which does not apply)*

105.5 *(The inclusion of either or both of these following provisions must be agreed with the Client’s Representative).*

Tenders submitted with an endorsement (i.e. ‘Tag’) which clarifies any uncertainty or modifies the contract conditions will be considered. During the tender evaluation process the Engineer shall adjust the tender price if necessary to allow for the cost implications of the ‘Tag’ prior to converting the price to a score.

Tenders submitted for alternative designs or methods will be considered provided that full details or the alternative are included

with the tender. The details shall be to a similar standard of detail and presentation as the detail of the goods set out in the Tender Documents.

**105.8** Supplementary information required to be submitted with the tender is:

- (a) A signed completed schedule of Prices showing how the tendered sum has been arrived at.
- (b) A list of proposed Subcontractors to install and/or commission, or arrange the Plant.
- (c) Completed certification and other documentation required in terms of Hutt City Council Health and Safety Specification for Purchasing Plant – Spec 33.
- (d) Tenderers are required to submit details of their attributes as described below:

*Relevant Experience*

The Tenderer's experience in the relevant operations.

*Performance Record*

The Tenderer's record of completing similar supply contracts to the standards required and the customer's satisfaction with the goods.

*Technical and Management Skills*

The technical and management skills and experience of the personnel that the tenderer proposes to use for this contract.

*Resources*

This includes raw materials, manufacturing plant, storage and handling facilities.

*Quality*

The ability to ensure that the quality of the goods supplied meets requirements of the contract at all times.

**106.1 Acceptance of Tender**

Tenders from tenderers who do not meet the requirements of the Hutt City Council's "Health and Safety Specification for Purchasing Plant – Spec 33" will not be considered.

Tenders will be evaluated by the Weighted Attribute Method.  
Weightings for this contract are as follows:

|    |                                 |             |
|----|---------------------------------|-------------|
| 1. | Relevant Experience             | %           |
| 2. | Performance Record              | %           |
| 3. | Technical and Management Skills | %           |
| 4. | Resources                       | %           |
| 5. | Quality                         | %           |
| 6. | Price                           | %           |
|    | <b>Total</b>                    | <b>100%</b> |

The criteria and conduct of the tender evaluation will be at the Purchaser's sole discretion. No correspondence on this matter will be entered into with any tenderer.



**Appendix 66**

**Form of Tender**

Contract No:..... for .....

The Chief Executive  
Hutt City Council  
Private Bag 31 912  
LOWER HUTT

I/we hereby tender for the above contract according to the General Conditions of Contract and the Conditions of Tendering as set out in "Hutt City Council Conditions of Contract and Conditions of Tendering for the Sale and Purchase of Goods", the Special Conditions of Contract, the Schedule to Conditions of Tendering, the Drawings, the Specification and other named specifications for the sum of:

.....(\$.....) GST exclusive.

I/we submit the name of: .....  
address .....  
.....

as my/our surety (a bank, insurance company or recognised bonding company approved by the Hutt City Council is required as surety).

Annexed hereto are a completed Schedule of Prices, and the other information, set out in the Schedule to Conditions of Tendering, which is required to be included with this tender.

Dated this..... day of .....20.....

Tenderer's Signature:.....

Designation:.....

Seller's Name:.....

Address:.....

Contact Telephone: (Day)..... Fax.....

(Night)..... Email:.....

Seller's GST Registration Number:.....

**Appendix 67**

## Special Conditions of Contract

Contract No:..... for .....

The General Conditions of Contract are Hutt City Council General Conditions of Contract for the Sale and Purchase of Goods. Clause numbers refer to General Conditions.

**1.2** The Purchaser is **The Hutt City Council**  
of **30 Laings Road, Lower Hutt**

**2.1.1** This contract is a lump sum contract.

**or**

**2.1.1** This contract is a measure and value contract.

**3.1.1** The Seller's Bond is required and shall be for the sum of  
\$.....

**5.6.1** A programme is required to be submitted to the Engineer within  
..... Working Days of the Date of Acceptance of Tender.

**or**

**5.6.1** A programme is not required.

**6.1.2** The Engineer is .....

**8.1 and 8.2**

The Seller shall insure as provided in *8.1 and 8.2*.

**8.1** The amount of the insurance to be effected in respect of the goods shall be for not less than the Contract Price.

The insurance shall make provision for automatic change of cover to provide insurance for any additions to or deductions from the Contract Price which occur after acceptance of the tender or other offer.

**8.2** Public liability insurance shall be effected for an amount not less than  
\$.....

9.1.1 The goods shall be delivered to .....  
.....

11.3.1 The period to be used for calculating the time for completion shall be ..... Weeks.

11.4.1 Liquidated damaged shall be \$..... per Week.

12.1.1 The Period of Defects Liability shall be ..... Months.

12.4.1 The Seller shall provide guarantees as set out below:

.....  
.....

The form of guarantee shall be in the form annexed as the ..... schedule

**or**

12.4.1 No guarantees are required.

13.3.1 The percentage to be retained from each progress payment and the limit of the total sums retained shall be:

- 10% of the first \$200,000, plus
- 5% of the next \$800,000, plus
- 1.75% of any amount in excess of \$1,000,000 with a maximum of \$200,000 when aggregated.

13.9.1 Cost fluctuation adjustments shall not be paid.

**Appendix 68**

## Draft Tender Advertisement

**Date :** \_\_\_\_\_ **Time:** \_\_\_\_\_

**No. of pages (including this sheet):** .....

**TO:** Utility Services Administration Coordinator

**Fax:** (04) 569 1625 / **Email:** [Helen.rudman@huttcity.govt.nz](mailto:Helen.rudman@huttcity.govt.nz)

**FROM:** \_\_\_\_\_

| Advertise via Tenderlink in |          | Day | Schedule |
|-----------------------------|----------|-----|----------|
| Dominion Post               | Yes / No |     |          |
| Hutt News                   | Yes / No |     |          |

### HUTT CITY COUNCIL

#### HEADING (Contract Name)

**Contract No:.....**

**Tenders are invited for:**

*(Project description here)*

Contract documents will be available from \_\_\_\_\_ 200..., at the Hutt City Council's Customer Service Centre, Ground Floor, 30 Laings Road, Lower Hutt. A deposit of \$\_\_\_\_\_ is required for uplifting documents.

Tenders in sealed envelopes clearly marked "Contract No. \_\_\_\_\_ for \_\_\_\_\_" and addressed to the Chief Executive, close on \_\_\_\_\_ 200\_\_ at \_\_\_\_\_ (time).

**Rik Hart**  
**CHIEF EXECUTIVE**

Copy: Customer Service Centre  
Contract File (Records)  
PA to General Manager

**Appendix 69**

## Tender Opening Schedule

Contract No:..... for .....

Tenders closed at \_\_\_\_\_ on \_\_\_\_\_  
(Time) (Day and Date)

Contract Manager's Estimate: \$ \_\_\_\_\_

Tenders Opened By: \_\_\_\_\_ and \_\_\_\_\_

at \_\_\_\_\_ on \_\_\_\_\_  
(Time) (Day and Date)

| No.      | Name and Address of Tenderer | Amount of Tender | Amount of Deposit | Receipt No. | Finance |
|----------|------------------------------|------------------|-------------------|-------------|---------|
| <b>1</b> |                              |                  |                   |             |         |
| <b>2</b> |                              |                  |                   |             |         |
| <b>3</b> |                              |                  |                   |             |         |
| <b>4</b> |                              |                  |                   |             |         |
| <b>5</b> |                              |                  |                   |             |         |
| <b>6</b> |                              |                  |                   |             |         |
| <b>7</b> |                              |                  |                   |             |         |

***Please mark late tenders with the time and date of receipt and rule line through spaces not used.***



**Appendix 70**

# Tender Report

Date:...../...../.....

Name (*Client's Representative*)  
Position  
Hutt City Council  
Private Bag 31 912  
LOWER HUTT

Dear Sir

## TENDER REPORT

**Contract No..... for .....**

Tenders were called by .....(*describe method*) ..... and closed on ..... 200.. ..... sets of documents were uplifted.

Tenders were received as follows:

| <b>Tenderer</b>                    | <b>Amount Tendered<br/>(Excl.GST)</b> |
|------------------------------------|---------------------------------------|
| 1. ....                            | \$.....                               |
| 2. ....                            | \$.....                               |
| 3. ....                            | \$.....                               |
| 4. ....                            | \$.....                               |
| <b>Contract Manager's Estimate</b> | <b>\$.....</b>                        |

### Alternative Tenders:

.....

### Tags:

.....

### Tender Evaluation:

.....

.....

.....

.....



**Finance:**

Key Activity:..... Divisional Project No:..... No:.....

Sub Activity:.....Renewal :..... No.....

Budget Provision (Excl GST) Capital Works Only \$.....

Charge to:.....

**Other Comments and Explanations** .....

.....  
.....  
.....

**Recommendation:**

I recommend that the tender from .....

in the sum of \$.....(excl.GST) be accepted.

Signature: .....

Name: .....

*Contract Manager*



**Appendix 70**

**Tender Acceptance**

...../...../.....

Name (*Contract Manager*)  
Address

Dear Sir

**TENDER ACCEPTANCE**

Contract No:..... for .....

On behalf of Council please accept the tender of .....  
for the above Contract in the sum of \$.....  
(excl GST).

**Acceptance:**

On behalf of Council please accept the tender of .....  
for Contract No..... for .....  
in the sum of \$..... (excl GST).

Signature: .....

Name: .....

Position: .....

Client's Representative

cc                   General Manager  
                      Divisional Manager  
                      Asset Manager  
                      Hutt City Council – Corporate Information Records

**Appendix 71**

**Contract Agreement**

**Contract No.** \_\_\_\_\_ **for** \_\_\_\_\_

THIS AGREEMENT is made on \_\_\_\_\_

**BETWEEN HUTT CITY COUNCIL** (The Purchaser)

**AND** \_\_\_\_\_ (The Seller)

IT IS AGREED as follows:

- (c) THE Seller shall supply and deliver the goods described in the Contract Documents.
- (d) THE Purchaser shall pay the Seller the sum of \$..... or such greater or less sum as shall become payable under the Contract Documents together with Goods and Services Tax at the times and in the manner provided in the Contract Documents.
- (e) EACH party shall carry out and fulfil all other obligations imposed on that party by the Contract Documents.
- (f) THE Contract Documents are this Contract Agreement and the following which form part of this agreement:
  - (a) The Conditions of Tendering;
  - (b) The Seller's Tender;
  - (c) The notification of acceptance of tender
  - (d) The Hutt City Council general Conditions of Contract for the Sale and Purchase of Goods;
  - (e) The Special Conditions of Contract;
  - (f) The Specification;
  - (g) The Drawings;
  - (h) The Schedule of Prices (delete if not applicable)
  - (i) The following additional documents (identify any additional documents to be included for example, notices to tenderers, agreed correspondence)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Signed on behalf of **The Hutt City Council**

by ..... pursuant to  
delegated Authority in the presence of: \_\_\_\_\_  
for the Hutt City Council

Name: \_\_\_\_\_

Occupation \_\_\_\_\_

Signature \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

---

If the Seller is a registered company, the Seller must execute this Agreement  
in accordance with the company's constitution.

Signed on behalf of \_\_\_\_\_ Ltd  
(Seller)

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

---

**OR**

Signed on behalf of the Seller in  
the presence of: \_\_\_\_\_  
Seller

Name: \_\_\_\_\_

Occupation \_\_\_\_\_

Signature \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

**Appendix 72**

## Seller's Performance Bond

Contract No. \_\_\_\_\_ for \_\_\_\_\_

**THIS DEED** is made on .....

BY.....

of.....("The Seller")

AND .....

of.....("The Surety")

**IT IS MADE IN THE FOLLOWING CIRCUMSTANCES**

- A. The Seller has entered into an agreement with the Hutt City Council (the "Purchaser") to supply and deliver certain goods described in the Contract Documents forming part of the agreement and to carry out and fulfil the obligations imposed on the Seller by the Contract Documents.
- B. The Contract Documents require the Seller to provide the Purchaser with security in the form of a bond to ensure performance of the Seller's obligations under the Contract Documents.

**BY THIS DEED**

- 1. **THE** Seller and Surety are jointly and severally held and bound to the Purchaser in the sum of \$..... and bind themselves, their successors and assigns jointly and severally for the payment of that sum.
- 2. **THE** Condition of this Bond is that it shall be null and void if:
  - (a) The Seller duly carries out and fulfils all the obligations imposed on the Seller by the Contract Documents prior to the issue of the Certificate of Final Acceptance referred to in the Contract Documents; or
  - (b) The Seller satisfies and discharges the damages sustained by the Purchaser in respect of all defaults by the Seller up to the issue of the Certificate of Final Acceptance or the termination of the contract; or
  - (c) The Surety satisfies and discharges up to the amount of the bond the damages sustained by the Purchaser in respect of all defaults by the Seller up to the issue of the Certificate of Final Acceptance or the termination of the contract; or
  - (d) A Certificate of Final Acceptance has been issued in respect of the supply of the goods in accordance with Clause 12.2 of the General Conditions of Contract.

3. **EXCEPT** as provided in Clause 2 above this bond shall be and remain in full force and effect.
4. **THE** Surety shall not be released from any liability under this Bond:
  - (a) By any alteration in the terms of the contract between the Purchaser and the Seller;
  - (b) By an alteration in the extent or nature of the supply and delivery of goods and having defects remedied;
  - (c) By any allowance of time by the Purchaser or by the Engineer appointed by the Purchaser under the Contract Documents;
  - (d) By any forbearance or waiver by the Purchaser or by the Engineer in respect of any of the Seller's obligations or in respect of any default on the part of the Seller.
5. **THIS** bond shall be governed by New Zealand law.

THE COMMON SEAL of  
was affixed in the presence of:

SIGNED by  
in the presence of:

(Seller)

THE COMMON SEAL of  
was affixed in the presence of:

SIGNED by  
in the presence of

(Surety)

NOTE: this bond must be executed by the Seller and by the Surety in the manner required for execution of a deed. Any of these parties which is a company or body corporate must execute by affixing its seal, which must be attested in the manner provided in its articles of association or other constitution. Alternatively, a company may execute the bond by having it signed, under the name of the company, by two or more directors. If there is only one director, it is sufficient if the bond is signed under the name of the company by that director, but the signature must be witnessed. In the case of a party who is an individual, the party must sign and the signature must be witnessed by another person. The witness must not only sign but must also add his or her occupation and address.

**Appendix 73**

## Certificate as to Seller's Insurances

**Re:** Contract No:..... for .....

**Purchaser:** The Hutt City Council

**Seller:** .....  
*(Insert name of seller)*

**From:** .....  
*(Insert name of insurer or broker giving the certificate)*

WE CERTIFY that we have issued/arranged (delete whichever does not apply) insurance cover with the following insurers for the purpose of the above contract, in accordance with the requirements of the Hutt City Council General Conditions of Contract and Conditions of Tendering for the Sale and Purchase of Goods.

| Clause | Type of Insurance | Insurer                 |
|--------|-------------------|-------------------------|
| 8.1    | Goods             | .....<br>.....<br>..... |
| 8.2    | Public Liability  | .....<br>.....<br>..... |

All of the above insurances satisfy the requirements of Clause 3 of the General Conditions of Contract (*where annual policies apply, expiry dates are to be shown*).

Signed on behalf of: .....  
*(Name of insurer or broker giving the certificate)*

by .....

Signatory's Title .....

Date: .....

**Note:** If one insurance company or one insurance broker is giving the certificate for both the insurances then one certificate can be issued. Where there is more than one certifier, additional certificates are to be issued so that all types of insurances are certified.

**Appendix 74**

**Instruction/Variation Price Request/Variation Order**

Contract No: \_\_\_\_\_ for \_\_\_\_\_

| ✓<br><input type="checkbox"/> |                                | <i>Number</i>        | <i>Authorised By</i> | <i>Date</i>          |
|-------------------------------|--------------------------------|----------------------|----------------------|----------------------|
| <input type="checkbox"/>      | <i>General Communication</i>   | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| <input type="checkbox"/>      | <i>Contract Instruction</i>    | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| <input type="checkbox"/>      | <i>Variation Price Request</i> | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| <input type="checkbox"/>      | <i>Variation Order</i>         | <input type="text"/> | <input type="text"/> | <input type="text"/> |

*Note: Services subject to VPR must have the Seller's price returned and approved by the Engineer as a VO prior to work commencing.*



Fax To:

*Copied to:*

Fax No:

*Client's Representative:*

E-mail:

\_\_\_\_\_

Attention:

\_\_\_\_\_

From:

Date:

No. of pages (incl. this page):



**Detail:**

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

\_\_\_\_\_  
*(Engineer to the Contract)*



**Appendix 75**

**Buyer Created Tax Invoice**

**Hutt City Council**  
Private Bag 31 912, Lower Hutt

**BUYER CREATED TAX INVOICE - IRD APPROVED**

**Invoice/Contract No.** \_\_\_\_\_ **PP No.** \_\_\_\_\_

HCC GST Registration No.: 52-097-053      Seller's GST Registration No. \_\_\_\_\_

**Contract:**

**Contract No:**

**Seller:**  
**Address:**

**Progress Payment No:** \_\_\_\_\_ **Payment Period Ending:** \_\_\_\_\_

Value of goods delivered as shown on attached schedule \$ \_\_\_\_\_

**Less** Retentions (.....% of \$.....) \$ \_\_\_\_\_

|                                      |    |
|--------------------------------------|----|
| Previous Retentions (excl.GST)       | \$ |
| Retention this payment (excl.GST)    | \$ |
| Minus Retention Released (excl. GST) | \$ |
| Balance Retentions Held (excl. GST)  | \$ |

**Less** Progress Payment No. \$ \_\_\_\_\_

**Plus** GST 12.5% \$ \_\_\_\_\_

**TOTAL AMOUNT PAYABLE TO SELLER** \$ \_\_\_\_\_

**DUE DATE FOR PAYMENT:** \_\_\_\_\_

**CERTIFICATION FOR PAYMENT:**

In terms of the Hutt City Council General Conditions of Contract for the Sale and Purchase of Goods, Clause 13.2, I certify that the above payment is due to the Seller.

\_\_\_\_\_  
**Engineer to the Contract**

\_\_\_\_\_  
**Date**



**CONTRACT PAYMENT VOUCHER**

Invoice/Contract No. \_\_\_\_\_

PP No. \_\_\_\_\_

Due Date for Payment: \_\_\_\_\_

Seller \_\_\_\_\_

Seller's GST No: \_\_\_\_\_

Vendor No. \_\_\_\_\_

Narration: (30 characters max)

---

**PAYMENT DETAILS:**

| Description | Debit Account | Acc.Payable<br>Excl. GST | Retention<br>Holding Acc. | TOTAL<br>PAYABLE<br>Incl. GST |
|-------------|---------------|--------------------------|---------------------------|-------------------------------|
|-------------|---------------|--------------------------|---------------------------|-------------------------------|

---

ACCOUNTS PAYABLE \$ \$ \$

---

PLUS PREVIOUS RETENTIONS (GST INCL)  
LESS RELEASED RETENTIONS (GST INCL) \_\_\_\_\_

TOTAL RETENTIONS HELD (GST INCL) \$-----

RETENTION RELEASE DATE: \_\_\_\_\_

---

**APPROVED FOR PAYMENT:**

**AUTHORISED FOR PAYMENT**

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title \_\_\_\_\_

Title: \_\_\_\_\_

ID: \_\_\_\_\_



*Appendix 76*

# Certificate of Provisional Acceptance

**PURCHASER**      **Hutt City Council**  
Private Bag 31 912  
Lower Hutt

**CONTRACT:**      Contract No:..... for .....

.....

.....

**SELLER**      .....

.....

.....

The following goods have been delivered to ..... and provisionally accepted in terms of Clause 9.2.1 of the General Conditions.

.....

.....

.....

.....

The Period of Defects Liability is ..... months, i.e. the Period of Defects Liability for the Goods described above ends on .....

Signed.....  
*(Engineer to the Contract)*

Date:...../...../.....



*Appendix 77*

## Certificate of Final Acceptance

**PURCHASER**      **Hutt City Council**  
Private Bag 31 912  
Lower Hutt

**CONTRACT:**      Contract No:..... for .....

.....

.....

**SELLER**      .....

.....

.....

The Period of Defects Liability for the following goods expired on .....

.....

.....

.....

.....

This Certificate is issued in terms of 12.2.1 of the General Conditions.

As the Certificate of Final Acceptance has been issued, the Purchaser is now required to release the Bond for this contract.

Signed.....  
*(Engineer to the Contract)*

Date:...../...../.....



**Appendix 78**

**Buyer Created Tax Invoice – Final Payment  
Certificate**

---

**Hutt City Council**  
Private Bag 31 912, Lower Hutt

**BUYER CREATED TAX INVOICE – IRD APPROVED**

**Invoice/Contract No.** \_\_\_\_\_ **PP No.** \_\_\_\_\_

HCC GST Registration No.: 52-097-053      Seller's GST Registration No.

---

**Contract:**

**Contract No:**

**Seller:  
Address:**

**Final Payment Certificate:** \_\_\_\_\_ **Date:** \_\_\_\_\_

---

Value of goods delivered as shown on attached schedule \$ \_\_\_\_\_

**Less** Retentions \$ \_\_\_\_\_

|                                      |    |
|--------------------------------------|----|
| Previous Retentions (excl.GST)       | \$ |
| Minus Retention Released (excl. GST) | \$ |
| Balance Retentions Held (excl. GST)  | \$ |

**Less** Progress Payment No. \$ \_\_\_\_\_

**Plus** GST 12.5% \$ \_\_\_\_\_

**TOTAL AMOUNT PAYABLE TO SELLER** \$ \_\_\_\_\_

**DUE DATE FOR PAYMENT:** \_\_\_\_\_

**CERTIFICATION FOR PAYMENT:**

In terms of the Hutt City Council General Conditions of Contract for the Sale and Purchase of Goods, Clause 13.5, I certify that the above payment is due to the Seller.

\_\_\_\_\_  
**Engineer to the Contract**

\_\_\_\_\_  
**Date**



**CONTRACT PAYMENT VOUCHER – FINAL PAYMENT**

Invoice/Contract No. \_\_\_\_\_

PP No. \_\_\_\_\_

Due Date for Payment: \_\_\_\_\_

Seller: \_\_\_\_\_

Seller's GST No: \_\_\_\_\_

Vendor No. \_\_\_\_\_

Narration: (30 characters max)

**PAYMENT DETAILS:**

| Description | Debit Account | Acc.Payable<br>Excl. GST | Retention<br>Holding Acc. | TOTAL<br>PAYABLE<br>Incl. GST |
|-------------|---------------|--------------------------|---------------------------|-------------------------------|
|-------------|---------------|--------------------------|---------------------------|-------------------------------|

|  |    |    |    |  |
|--|----|----|----|--|
|  | \$ | \$ | \$ |  |
|--|----|----|----|--|

**PLUS PREVIOUS RETENTIONS (GST INCL)**  
**LESS RELEASED RETENTIONS (GST INCL)** \_\_\_\_\_

**TOTAL RETENTIONS HELD (GST INCL)** \$-----

**RETENTION RELEASE DATE:** \_\_\_\_\_

**APPROVED FOR PAYMENT:**

**AUTHORISED FOR PAYMENT**

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title \_\_\_\_\_

Title: \_\_\_\_\_

ID: \_\_\_\_\_

**Appendix 79**

**General Conditions of Contract and Conditions of  
Tendering for the Sale and Purchase of Goods**

**Index**

| <b>SECTION</b>                                   | <b>PAGE</b> |
|--|-------------|
| <b>INTERPRETATION</b>                            | <b>235</b>  |
| 1.1 APPLICATION                                  | 235         |
| 1.2 DEFINITIONS                                  | 235         |
| 1.3 GENERAL                                      | 237         |
| 1.4 LAW, CURRENCY AND LANGUAGE                   | 237         |
| 1.5 ENTIRE AGREEMENT                             | 237         |
| 1.6 NON-WAIVER                                   | 238         |
| 1.7 COMPUTATION OF TIME                          | 238         |
| 1.8 DUTIES OF THE ENGINEER                       | 238         |
| <b>SECTION 2</b>                                 | <b>238</b>  |
| <b>THE CONTRACT</b>                              | <b>238</b>  |
| 2.1 TYPE OF CONTRACT                             | 238         |
| 2.2 LUMP SUM CONTRACT                            | 238         |
| 2.3 MEASURE AND VALUE CONTRACT                   | 239         |
| 2.4 CONTRACT AGREEMENT                           | 240         |
| 2.5 USE OF DOCUMENTS                             | 240         |
| <b>SECTION 3</b>                                 | <b>241</b>  |
| <b>BONDS</b>                                     | <b>241</b>  |
| 3.1 SELLER'S BOND                                | 241         |
| <b>SECTION 4</b>                                 | <b>242</b>  |
| <b>SUB-CONTRACTS</b>                             | <b>242</b>  |
| 4.1 GENERAL                                      | 242         |
| 4.2 ASSIGNMENT                                   | 242         |
| <b>SECTION 5</b>                                 | <b>242</b>  |
| <b>GENERAL OBLIGATIONS</b>                       | <b>242</b>  |
| 5.1 GENERAL RESPONSIBILITIES                     | 242         |
| 5.2 SELLER'S REPRESENTATIVE                      | 242         |
| 5.3 SEPARATE CONTRACTORS                         | 243         |
| 5.4 RESPONSIBILITY FOR GOODS                     | 243         |
| 5.5 MATERIALS, LABOUR AND PLANT                  | 244         |
| 5.6 PROGRAMME                                    | 244         |
| 5.7 COMPLIANCE WITH LAWS                         | 245         |
| 5.8 HEALTH AND SAFETY LEGISLATION                | 245         |
| 5.9 PERMITS AND FEES                             | 245         |
| 5.10 PATENTS AND ROYALTIES                       | 246         |
| 5.11 QUALITY ASSURANCE                           | 246         |
| <b>ENGINEER'S POWERS AND RESPONSIBILITIES</b>    | <b>246</b>  |
| 6.1 APPOINTMENT OF ENGINEER                      | 246         |
| 6.2 ROLE OF ENGINEER                             | 247         |
| 6.3 ENGINEER'S REPRESENTATIVE                    | 247         |
| 6.4 INSPECTION, RECORDING, MEASURING AND TESTING | 248         |

|  |   |     |
|--|---|-----|
| 6.5  | CERTIFICATION                                   | 250 |
| 6.6  | SUSPENSION OF SUPPLY                            | 250 |
| <b>SECTION 7 251</b>   |   |     |
| <b>INDEMNITY 251</b>   |   |     |
| 7.1  | INDEMNITY                                       | 251 |
| <b>SECTION 8 252</b>   |   |     |
| <b>INSURANCE 252</b>   |   |     |
| 8.1  | SELLER TO INSURE GOODS                          | 252 |
| 8.2  | SELLER TO INSURE AGAINST PUBLIC LIABILITY RISKS | 252 |
| <b>DELIVERY AND ACCEPTANCE 253</b>   |   |     |
| 9.1  | DELIVERY OF GOODS                               | 253 |
| 9.2  | ACCEPTANCE OF GOODS                             | 254 |
| 9.3  | PROPERTY IN THE GOODS                           | 254 |
| <b>VARIATIONS 255</b>  |   |     |
| 10.1   | VARIATION PERMITTED                             | 255 |
| 10.2   | VARIATION ORDERS                                | 255 |
| 10.3   | VALUATION OF VARIATIONS                         | 255 |
| <b>COMPLETION 256</b>  |   |     |
| 11.1   | COMMENCEMENT                                    | 256 |
| 11.2   | EXTENSION OF TIME                               | 256 |
| <b>DEFECTS LIABILITY 258</b>   |   |     |
| 12.1   | DEFECTS LIABILITY PERIOD                        | 258 |
| 12.2   | CERTIFICATE OF FINAL ACCEPTANCE                 | 258 |
| 12.3   | EFFECT OF CERTIFICATE OF FINAL ACCEPTANCE       | 258 |
| <b>PAYMENTS 259</b>  |   |     |
| 13.1   | SELLER'S CLAIMS                                 | 259 |
| 13.2   | PROGRESS PAYMENT CERTIFICATES                   | 259 |
| 13.3   | RETENTION MONIES                                | 259 |
| 13.4   | FINAL CLAIM                                     | 260 |
| 13.5   | FINAL PAYMENT CERTIFICATE                       | 260 |
| 13.7   | INTEREST  | 261 |
| 13.8   | PRICE VARIATION DUE TO LEGISLATION CHANGES      | 261 |
| 13.9   | COST FLUCTUATIONS                               | 261 |
| <b>DISPUTES 262</b>  |   |     |
| 14.1   | GENERAL   | 262 |
| 14.2   | ENGINEER'S REVIEW                               | 262 |
| 14.3   | MEDIATION                                       | 263 |
| 14.4   | ARBITRATION                                     | 264 |
| 14.5   | SUSPENSION DURING DISPUTE                       | 265 |
| 14.6   | AWARD OF INTEREST                               | 265 |
| <b>DEFAULT 266</b>   |   |     |
| 15.1   | DEFAULT BY THE SELLER                           | 266 |
| 15.2   | DEFAULT BY THE PURCHASER                        | 267 |
| <b>CONTRACT FOR THE SALE AND PURCHASE OF GOODS – CONDITIONS OF TENDERING 268</b> |   |     |
| 101  | INTERPRETATION                                  | 268 |
| 102  | ISSUE OF DOCUMENTS                              | 268 |
| 103  | SUFFICIENCY OF TENDER                           | 268 |
| 104  | AMBIGUITIES IN TENDER DOCUMENTS                 | 269 |



|     |  |     |     |
|-----|--|-----|-----|
| 105 | SUBMISSION OF TENDERS                  | 269 |     |
| 106 | ACCEPTANCE OF TENDER                   | 270 |     |
| 107 | NOTIFICATION OF UNSUCCESSFUL TENDERERS |     | 270 |

## **GENERAL CONDITIONS OF CONTRACT FOR THE SALE AND PURCHASE OF GOODS**

### **Section 1**

#### **INTERPRETATION**

##### **1.1 Application**

This Section shall apply to the Contract Documents except where inconsistent with the context.

##### **1.2 Definitions**

“Certificate of Final Acceptance” has the meaning assigned to it in 12.2.

“Certificate of Provisional Acceptance” has the meaning assigned to it in 9.2.

“Contract Agreement” means the written agreement for the fulfilment of the contract signed by the Purchaser and the Seller.

“Contract Documents” means the Contract Agreement, and the documents referred to in and forming part of the Contract Agreement or the documents which constitute the contract under.

“Contract Price” means the sum named in the Contract Documents as payable for the completion of the supply of the Goods subject to such adjustments as are provided for in the Contract Documents.

“Date of Acceptance of Tender” means the date on which the successful tenderer is notified in writing that the tender is accepted.

“Days” when used to express a period of time means Working Days.

“Drawings” or “Plans” means the drawings or plans referred to in the Contract Documents and any modification of such drawings or plans approved in writing by the Engineer and such other drawings or plans as may from time to time be furnished or approved in writing by the Engineer.

“Engineer” means the one natural person named or identified in the Special Conditions or such other one natural person as may be subsequently appointed by the Purchaser. The Engineer shall not be a body corporate or a firm.

“Final Payment Certificate” has the meaning assigned to it in 13.5.

“General Conditions” means these General Conditions of Contract for the Sale and Purchase of Goods.

“Goods” means material, machinery and/or equipment to be sold under the contract together with any supplies, services, and other matters necessary for the completion of the contract.

“Month” means a calendar month.

“Place of Manufacture” means the Seller’s factory or workshop where they propose to manufacture and test the Goods to be sold under the contract.

“Progress Payment Certificate” has the meaning assigned to it in 13.2.

“Purchaser” means the Hutt City Council, a local authority incorporated under the provisions of the Local Government Act 1974, and its successors and assigns.

“Schedule of Prices” means any schedule included in the Contract Documents which shows price payable for the Goods and may also include quantities, rates, provisional sums, and contingency sums.

“Seller” means the person whose tender to sell Goods has been accepted by the Purchaser and includes their executors, administrators and successors.

“Special Conditions” means such other documents as are included in the Contract Documents that add to or delete from or modify these General Conditions.

“Specifications” means documents included in the Contract Documents containing descriptions of materials and workmanship and other details of the Goods to be supplied together with any additions to or modifications of such documents approved in writing by the Engineer and supplied by the Engineer to the Seller for the purpose of the contract.

“Tender Documents” means the documents which are issued to prospective tenderers.

“Variation” means any variation to the supply of the Goods pursuant to 10.1 and any other matter which is stated to be a Variation or to be treated as if it was a Variation by the Contract Documents.

“Week” means a period of seven consecutive days.

“Working Day” means a calendar day other than any Saturday, Sunday, Public Holiday, or any day falling within the period from 24 December to 5 January both inclusive.

### **1.3 General**

1.3.1 Where the context so requires, words importing the singular shall include the plural and vice versa and words importing the masculine, feminine and neuter shall include all three.

1.3.2 Cross references to other clauses or clause subdivisions within these General Conditions quote the number only.

1.3.3 The headings to clauses are for convenience only and shall not effect their interpretation.

1.3.4 A reference to any Act or Regulation shall include all subsequent Acts or Regulations in amendment of or substitution for the same.

1.3.5 Except where inconsistent with the context, “approved”, “directed,” “instructed” and “required” mean respectively approved, directed, instructed and required by the Engineer and the corresponding nouns shall be similarly construed.

### **1.4 Law, Currency and Language**

1.4.1 The contract shall be governed by New Zealand law.

1.4.2 All prices and payments made under the contract shall be in New Zealand currency and payable in New Zealand. All prices and rates stated exclusive of goods and services tax, which is to be added and paid where appropriate.

1.4.3 All communications between the Purchaser, the Seller, and the Engineer shall be in the English language.

### **1.5 Entire Agreement**

1.5.1 This contract shall constitute the entire agreement between the parties hereto for the supply of goods by the Seller. This contract supersedes all negotiations, representations and warranties except insofar as the same are expressly incorporated herein.

## **1.6 Non-waiver**

1.6.1 None of the provisions of this contract shall be regarded as waived or amended by either the Purchaser or the Seller unless the same be agreed in writing and signed as a separate written memorandum. Any such waiver shall relate only to such matters as it expressly relates to and shall not apply to any subsequent or other matter.

## **1.7 Computation of Time**

1.7.1 Where any period of time from a given day, act, or event is prescribed or allowed for any purpose, the period shall, unless a contrary intention appears, be determined as exclusive of that day or the day of the act or event.

## **1.8 Duties of the Engineer**

1.8.1 The duties which the parties to the Contract Agreement intend should be carried out by the Engineer are set out in this document.

## **Section 2**

### **THE CONTRACT**

#### **2.1 Type of Contract**

2.1.1 The contract shall be a lump sum contract or a measure and value contract as stated in the Special Conditions.

#### **2.2 Lump Sum Contract**

2.2.1 In a lump sum contract the Seller shall supply the Goods described in the Contract Documents and fulfil all obligations required. The Purchaser shall pay to the Seller the Contract Price.

2.2.2 If a Schedule of Prices is included in the Contract Documents the quantities and prices shown are intended as a basis for computing progress payments and for valuing Variations and for no other purpose. Any quantities included in the schedule of Prices are not warranted as complete or accurate by the Purchaser.

2.2.3 If the total of the prices in the Schedule differs from the lump sum tendered then the scheduled prices shall be adjusted by the

engineer after consultation with the Seller to agree with the tendered lump sum. The amended prices shall then become the Schedule of Prices referred to in 2.2.2.

2.2.4 If any discrepancy is disclosed in the schedule of Prices the Engineer or the Seller shall so notify the other. The engineer shall issue a written direction to resolve the discrepancy. For the purposes of this clause discrepancy shall mean:

- (a) Any inconsistency between the Drawings of Specification on the one hand and the schedule of Prices on the other either as to measurement or description, or
- (b) Any omission or inaccuracy in the compilation, preparation, or copying of the quantities included in the Contract Documents not being an omission or inaccuracy for which the Seller is responsible.

2.2.5 If a significant discrepancy has occurred it shall be treated as if it was a Variation.

### **2.3 Measure and Value Contract**

2.3.1 In a measure and value contract the Seller shall supply the goods described in the Contract Documents and fulfil all obligations required. The Purchaser shall pay the Seller for the measured quantity as determined by the Engineer of each item at the rate set out in the Schedule of Prices.

2.3.2 The Seller shall be deemed to have checked the accuracy of the descriptions of the various items in the Schedule of Prices and to have allowed in the prices to cover all its obligations under the contract and for any incidental work necessary for the manufacture, testing and supply of goods.

2.3.3 When the Engineer requires any part or parts to be measured for the purpose of payment, the Engineer shall give notice to the Seller who shall attend or send an agent to assist the Engineer or the Engineer's Representative in making such measurements.

If the Seller shall fail to attend or to send an agent, then the measurements made by the Engineer shall be deemed to be the correct measurement of the Goods supplied.

2.3.4 If the tendered schedule contains any errors in extension of rates or in the summation such as to vary the tendered sum, then the

unit rates shall be adjusted by the Engineer after consultation with the Seller to agree with the tendered sum. The adjusted rates shall then become the contract rates for payment in accordance with 2.3.1.

## **2.4 Contract Agreement**

2.4.1 Unless and until the Contract Agreement is executed by the parties, the tender or other offer and its acceptance between the Seller and the Purchaser shall, together with the other documents intended to form part of the contract, constitute the contract between them.

2.4.2 Within ten working days from the date of acceptance of the tender, the Purchaser shall prepare the Contract Agreement in the form required by the Contract Documents and attach correct copies of all the Contract Documents. The Seller shall be advised that the Contract Documents are ready for execution.

2.4.3 Within ten working days of being advised that the Contract Documents are ready for execution, the Seller shall execute the Contract Agreement at the Purchaser's main office.

2.4.4 Within one month from execution of the Contract Agreement by the Seller, the Purchaser shall execute the Contract Documents.

2.4.5 Unless specifically requested by the Seller, only one Contract Agreement and set of Contract documents will be executed and will be retained by Council at all times.

2.4.6 Failure by either party to execute the Agreement within the time provided shall be a default under Section 15.

## **2.5 Use of Documents**

2.5.1 The Contract Documents shall remain the property of the Purchaser and shall not be copied or used for any purpose other than the contract. The Engineer shall supply copies of the Contract Documents as may reasonably be required free of cost to the Seller.

2.5.2 The Seller shall maintain at the Place of Manufacture at least one copy of the Drawings and Specifications marked to show where superseded or modified, together with a copy of all amended Drawings, supplementary drawings, information or directions as may be issued by the Engineer during the contract.

- 2.5.3 The Contract Documents shall be taken as mutually explanatory of one another and if there are any ambiguities or omissions these shall not invalidate the contract.
- 2.5.4 Where the Contract Documents are considered to be ambiguous or unclear, the Seller may request and the Engineer shall issue explanations or supplementary instructions. If compliance with the explanations or instructions causes delay or additional cost to the Seller which in either case the Seller could not reasonably have foreseen, the explanation or instruction shall be treated as if it was a Variation.

### **Section 3**

#### **BONDS**

##### **3.1 Seller's Bond**

- 3.1.1 The Seller shall within two months of the Date of Acceptance of the tender provide the Purchaser with security in the form of a bond to ensure performance of the seller's obligations under the contract. The bond shall be for the amount specified in the Special Conditions. The bond shall be in the form set out in the documents and shall be executed by the Seller and the Surety named in the tender or approved by the Purchaser.
- 3.1.2 The cost of obtaining the bond shall be borne by the Seller.
- 3.1.3 Non-execution and delivery of the bond in the time prescribed may be considered by the Purchaser as a default under 15.1.1.
- 3.1.4 No payment under the contract shall become due until the Seller and the surety have executed and delivered the bond to the Purchaser.
- 3.1.5 Within five working days after the receipt of the engineer's Certificate of Final Acceptance or any earlier termination of the contract, the Purchaser shall by notification in writing, advise the Seller and the Surety that either they are released from the Bond or give particulars of the respects in which the Purchaser contends that the Seller has failed to perform the obligations under the Contract or has otherwise failed to satisfy the conditions of the bond.

## **Section 4**

### **SUB-CONTRACTS**

#### **4.1 General**

- 4.1.1 The Seller shall not sublet any part of the contract without the prior written consent of the Engineer whose consent shall not be unreasonably withheld.
- 4.1.2 Any such consent may be given subject to such reasonable conditions as the engineer may impose but no such consent shall relieve the Seller from any liability or obligation under the contract.

#### **4.2 Assignment**

- 4.2.1 The Seller shall not assign the contract or any part thereof, or any benefit or interest therein or thereunder, otherwise than by a charge in favour of the Seller's bankers or any moneys due or to become due under this contract without the prior written consent of the Purchaser.
- 4.2.2 The Purchaser shall be permitted to assign the contract or any part thereof, or any benefit or interest therein or thereunder, without the prior consent of the Seller.

## **Section 5**

### **GENERAL OBLIGATIONS**

#### **5.1 General Responsibilities**

- 5.1.1 The Seller shall manufacture and supply goods in strict accordance with the Contract Documents.
- 5.1.2 The Seller shall comply with all proper instructions issued by the Engineer in relation to the contract.

#### **5.2 Seller's Representative**

- 5.2.1 The Seller shall provide all necessary supervision during manufacture, testing, supply, installation, commissioning where specified, and maintenance of the goods. The Seller shall have at the place of manufacture, or the place of delivery as appropriate, a competent representative who shall be authorised to receive

on behalf of the Seller, any directions and instructions from the Engineer or the Engineer's Representative.

The Seller's Representative's name shall be notified to the Engineer in writing.

### **5.3 Separate Contractors**

5.3.1 Where provided for in the Contract Documents the Purchaser may arrange for work at the place of delivery or commissioning not included in the contract to be carried out under separate contracts by parties other than the Seller and concurrently with the supply and commissioning of the goods. Such parties shall be engaged directly by the Purchaser and are referred to as "separate contractors". The Purchaser shall ensure that in carrying out any such work any separate contractor shall in all respects comply with all reasonable requests from the Seller.

5.3.2 The Seller shall afford all reasonable facilities for separate contractors in accordance with the instructions of the Engineer provided that the requirements of such facilities has been described in the Contract Documents. If the Seller suffers delay in the completion of the contract and incurs additional costs arising from the activity of separate contractors which is not otherwise provided for in the Contract Documents, then the effect of that activity shall be treated as if it was a Variation.

### **5.4 Responsibility for Goods**

5.4.1 From the commencement of manufacture to the acceptance of goods into the Purchaser's store, stockpile site or place of installation the Seller shall take full responsibility for the care thereof. If any loss, damage or injury happens to the goods or to any part thereof from any cause other than from an excepted risks defined in 5.4.2 the Seller shall replace, repair or as the case may be, make good the same so that the goods shall be supplied and if as required in terms of the contract installed and commissioned in good order and condition in conformity with the requirements of the Contract Documents.

5.4.2 The excepted risks are:

- (a) Riot, civil commotion or disorder except where solely restricted to employees of the Seller.

- (b) War and other hostilities (whether war to be declared or not), civil war, rebellion, revolution, insurrection of military or usurped power.
- (c) Ionising radiations or contamination by radioactivity or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive, or other hazardous properties of any nuclear explosive, nuclear assembly, or unclear components thereof.
- (d) Any such operation of the forces of nature as an experienced contractor could not foresee or reasonably make provision for or insure against.

## **5.5 Materials, Labour and Plant**

- 5.5.1 The Seller shall, except where otherwise specified in the Contract Documents, supply at the Seller's cost everything necessary for the completion of the supply and the performance of all the Seller's obligations under the contract including minor items not expressly mentioned in the Contract Documents and of a type not normally detailed but necessary for the completion and performance of the contract.
- 5.5.2 All materials and workmanship shall conform to the provisions of the Contract Documents with all work being carried out in a tradesman-like manner. Unless otherwise specified, all materials used shall be new.

## **5.6 Programme**

- 5.6.1 Where required by the Contract Documents, the Seller shall prepare a programme and submit it to the Engineer within the nominated time. The programme shall show the proposed order of manufacture, delivery, and commissioning if specified, and give dates for completion of these.
- 5.6.2 If it becomes evident to the Seller that achievement of the programme dates is unlikely, the Seller shall notify the Purchaser as soon as practicable.

Further, if the rate of supply of Goods is at any time in the opinion of the Engineer such that achievement of the programme dates are unlikely, then the Engineer may so notify the Seller and the Seller shall take all necessary in order to expedite progress so that the Goods may be supplied, and

commissioned if specified, by the programmed dates. Any costs incurred by the Seller to expedite progress shall be borne by the Seller.

- 5.6.3 If the Purchaser wishes to accelerate the programme so that the manufacture and delivery is ahead of the programmed dates, the Engineer shall notify the Seller who shall then advise on the practicability and additional costs (if any) of an accelerated programme. Should the Purchaser wish to proceed with the accelerated programme, it shall be a Variation.

## **5.7 Compliance with Laws**

- 5.7.1 In carrying out the contract, the Purchaser and Seller shall comply with the provisions of all statutes, regulations and by-laws of government, local and other public authorities that may be applicable to the sale of goods except insofar as any such provisions, regulations or by-laws have been lawfully modified or varied by the Contract Documents.

## **5.8 Health and Safety Legislation**

- 5.8.1 The Seller shall comply with all requirements of the Health and Safety in Employment Act 1992 and any amendments thereto, and shall adhere to the Health and Safety in Employment Regulations 1995 and any amendments thereto, and shall adhere to the "Hutt City Council Health and Safety Specification for Purchasing Plant - Spec 33. Copies of this Specification are available from the Hutt City Council offices.

## **5.9 Permits and Fees**

- 5.9.1 Unless otherwise provided, the Seller shall obtain all permits and consents and shall pay all charges and fees and give all notices required by Government, local authority, including the Hutt City Council in its regulatory capacity, or other legally constituted authority. If default is made by the Seller in this respect it shall be lawful for but not obligatory upon the Purchaser to pay such sums and in that event the Purchaser may recover such moneys from payment due or that may become due to the Seller. Once any sum is not so met in full the said sum shall be recoverable in a Court of competent jurisdiction.

## **5.10 Patents and Royalties**

5.10.1 The Purchaser shall indemnify the Seller against any action, claim, costs and proceedings arising from infringements of any patent rights, designs, trade marks or names or other protected rights, in respect of any design, method or article supplied by the Purchaser or the Engineer to the Seller. The indemnity shall not apply where the Seller is aware of infringement and does not notify the Engineer.

5.10.2 The Seller shall indemnify the Purchaser against any action, claim, costs and proceedings arising from infringements of any patent rights, designs, trade marks or names or other protected rights, in respect of any design, method or article not supplied by the Purchaser or the Engineer. The indemnity shall not apply where the Purchaser or Engineer is aware of the infringement and does not notify the Seller.

## **5.11 Quality Assurance**

Where required by the Contract Documents, the Seller shall maintain and operate a quality assurance system to the standard specified (eg ISO 9000).

# **SECTION 6**

## **ENGINEER'S POWERS AND RESPONSIBILITIES**

### **6.1 Appointment of Engineer**

6.1.1 The Purchaser shall ensure that at all times there is an Engineer, and that the Engineer fulfils all aspects of the role and functions reasonably in good faith.

6.1.2 The name of the Engineer shall be set out in the Special Conditions.

6.1.3 Should the Engineer be no longer authorised by the Purchaser or no longer available to be the Engineer, the Purchaser shall forthwith:

- (a) Appoint a suitably qualified person to act as Engineer in the interim.
- (b) Notify the Seller of the person it then proposed to appoint as Engineer.
- (c) After considering any representations made on behalf of the Seller, notify the Seller of the appointment of the new Engineer.

Every appointment under this Clause 6.1 shall be of one person only not being a body corporate or firm.

## **6.2 Role of Engineer**

6.2.1 The dual role of the Engineer in the administration of the contract is:

- (a) As expert advisor to and representative of the Purchaser, giving directions to the Seller on behalf of the Purchaser, and
- (b) Independently of either contracting party, fairly and impartially to make the decisions entrusted to him or her under the Contract Documents, to value the work and to issue certificates at due times.

6.2.2 Except where the contract otherwise provides, directions or instructions necessary for the administration of the contract shall be given only through the Engineer.

## **6.3 Engineer's Representative**

6.3.1 The Purchaser or Engineer may, from time to time appoint an Engineer's Representative to watch and supervise the manufacture of goods and to test and examine the goods or any materials to be used or workmanship employed in connection with the manufacture of goods. The representative shall have no authority to relieve the Seller of any of their duties or obligations under the contract. Except as expressly provided hereunder, the representative shall have no authority to order any materials to be supplied which may involve delay or any extra payment by the Purchaser, or make variations in the goods to be sold.

6.3.2 The Engineer may from time to time in writing delegate to the Engineer's Representative any of the powers and authorities

vested in the Engineer and shall furnish to the Seller a copy of all such written delegations of powers and authorities.

- 6.3.3 Any written instruction or written approval given by the Engineer's Representative to the Seller within the terms of such delegation (but not otherwise) shall bind the Seller and the Purchaser as though it had been given by the Engineer.

Provided always that:

- (a) Failure of the Engineer's Representative to inspect or disapprove any goods shall not prejudice the power of the Engineer thereafter to disapprove such goods and to order the replacement of such goods or materials if not in accordance with the contract.
- (b) If the Seller shall be dissatisfied by reason of any decision of the Engineer's representative the Seller shall be entitled to refer the matter to the Engineer who after investigation shall confirm, reverse or vary such decision.

#### **6.4 Inspection, Recording, Measuring and Testing**

6.4.1 The Engineer or any person authorised in writing by the Engineer shall be entitled at all reasonable times during manufacture to inspect, examine and test on the Seller's premises, the materials and workmanship of all goods to be supplied. If part of the goods or the goods themselves are being manufactured on other premises, the Seller shall obtain permission for the inspection, examination testing of the said goods as if they were being manufactured on the Seller's premises. Such inspection, examination or testing shall not release the Seller from any obligations in terms of the Contract Documents.

6.4.2 Where the Contract Documents specify that the goods or parts of the goods require inspection, measuring or testing at particular stages of manufacture or prior to delivery, the seller shall notify the Engineer the date and place at which any goods will be ready for inspection, measuring or testing as provided in the contract. The Engineer shall within a reasonable period of time inspect, measure or test the goods unless the Engineer considers it unnecessary. In such case the Engineer shall advise the Seller accordingly. If the engineer fails to carry out the inspection, measuring, or test in a reasonable time, and the

Seller thereby suffers a delay in completion or incurs additional costs, the failure shall be treated as if it was a Variation.

6.4.3 All samples shall be supplied by the Seller, at the Seller's own cost if the supply thereof is clearly intended by or provided for in the Contract Documents but if not then at the cost of the Purchaser.

6.4.4 The cost of making any test shall be borne by the Seller if:

(a) Not provided for in the Contract Documents, or

(b) A test under load or if a test to ascertain whether the design of any finished or partially finished item is appropriate for the purposes which it was intended to fulfil is particularised in the contract documents in sufficient detail to enable the Seller to price or allow for the same in the tender.

6.4.5 If any test is ordered by the Engineer which is:

(a) Not provided for in the Contract Documents, or

(b) Though intended or provided for in the Contract Documents, is ordered by the Engineer to be carried out by an independent person at any place other than the place of manufacture or fabrication of the goods tested

Then the cost of such test shall be borne by the Seller if the test shows the workmanship or materials not to be in accordance with the provisions of the contract but otherwise by the Purchaser.

6.4.6 The Engineer may at any time, prior to the issue of the Certificate of Final Acceptance, by notice in writing instruct the Seller to remove and replace, or repair any goods which are not in accordance with the contract. The cost of complying with the instruction shall be borne by the Seller.

6.4.7 In the case of default of the Seller in carrying out such instruction of the Engineer, the Purchaser shall be entitled to employ other persons to carry out the work and all expenses consequent thereon or incidental thereto shall be borne by the Seller and shall be recoverable from the Seller by the Purchaser as a debt or may be deducted by the Purchaser from any moneys due or which may become due to the Seller by the Purchaser on any account whatsoever.

- 6.4.8 The Engineer may allow acceptance of goods not in accordance with the contract and may fix the price or rate of payment for such goods.

## **6.5 Certification**

- 6.5.1 The Engineer shall issue Certificates for Payment, the Certificate of Provisional Acceptance, and the Certificate of Final Acceptance is required by the Contract Documents. Each certificate shall be sent to the Purchaser and a signed copy shall be sent at the same time to the Seller.

- 6.5.2 The Engineer may by any certificate for payment correct any previous progress payment certificate which has been issued provided that the Seller is notified of the reasons for so doing.

## **6.6 Suspension of Supply**

- 6.6.1 The Seller shall on the written instructions of the engineer suspend the supply of goods or any part thereof for such time or times and in such manner as the Engineer may consider necessary and shall during such suspension properly protect and secure the Goods.

- 6.6.2 Unless the suspension is otherwise authorised by the Contract Documents or arises by reason of default on the part of the Seller, the suspension shall be treated as if it was a Variation.

- 6.6.3 If the suspension remain in effect for more than three Months the Seller may serve a written notice on the Engineer requesting permission to proceed with the supply of Goods or that part thereof, in regard to which supply is suspended. If such permission is not granted within one Month from the receipt of the request the Seller shall be entitled to treat the suspension as a Variation deleting the remaining supply where it affects only part of the Goods or, where it affects the whole, as an abandonment of the Contract by the Purchaser.

## SECTION 7

### INDEMNITY

#### 7.1 Indemnity

7.1.1 Except as otherwise provided in the Contract Documents the Seller shall indemnify the Purchaser against:

- (a) Any losses suffered by the Purchaser which may arise out of or in consequence of the manufacture, testing, supply, installation, maintenance, commissioning, or completion of the goods.
- (b) Any liability incurred by the Purchaser in respect of the death or injuries to any persons (excepting any liabilities pursuant to the Injury Prevention Rehabilitation and Compensation Act 2001) or damage to property which may arise out of or in consequence of the manufacture, testing, supply, installation, maintenance, commissioning, or completion of the goods.
- (c) Any claims, demands, proceedings, damages, costs, charges and expenses the Purchaser may incur in respect to that loss or liability.

7.1.2 The Seller's liability to indemnify the Purchaser shall not extend to any loss, liability or cost in respect of:

- (a) The use or occupation of land by the Purchaser for storage.
- (b) Death of or injuries or damage to persons (excepting any liabilities pursuant to the Injury Prevention Rehabilitation and Compensation Act 2001) or property resulting from any act or neglect done or committed during the currency of the contract by the Purchaser or any of the Purchaser's agents, or other contractors who are not being employed by the Seller nor under his/her direction or for or in respect of any claims, demands, proceedings, damages, cost charges and expenses in respect thereof or in relation thereto.
- (c) The excepted risks as set out in 5.4.2.

7.1.3 The Purchaser will save harmless and indemnify the Seller from and against all claims, demands, cost, charges and expenses in respect of the matters referred to in paragraph (a) and (b) of 7.1.2.

7.1.4 The Seller shall in respect of the manufacture testing supply or installation of goods within New Zealand ensure compliance with the Injury Prevention Rehabilitation and Compensation Act 2001. In respect of any contract involving the manufacture or supply of goods in any country outside New Zealand the Seller shall comply with the statutory or regulatory obligations of that country.

## **SECTION 8**

### **INSURANCE**

#### **8.1 Seller to Insure Goods**

8.1.1 The Seller shall insure the goods in the joint names of the Purchaser and Seller against all loss, damage or injury from whatever cause arising and in such a manner that the Purchaser and Seller are covered for their respective rights and interests during the manufacture and testing of goods, the storing of goods by the Seller and delivery by the Seller of goods to the nominated storage area, stockpile site or point of installation.

8.1.2 The insurance required by 8.1.1 shall be maintained throughout the contract, including the defect liability period.

#### **8.2 Seller to Insure Against Public Liability Risks**

8.2.1 The Seller shall in the joint names of the Seller and the Purchaser, effect public liability insurance against any liability for any damage, loss, or injury in respect of which the Seller is required to indemnify the Purchaser for the amount set out in the Special Conditions. Such insurance shall not limit the Seller's obligations and responsibilities under 7.1.1.

8.2.2 The insurance required by 8.2.1 shall be maintained throughout the contract, including the defect liability period.

#### **8.3 Insurance General**

8.3.1 The insurances required under 8.1 and 8.2 shall be effected with an Insurer acceptable to the Purchaser and in terms approved by the Purchaser and shall be in effect prior to the commencement of the supply. The approval by the Purchaser shall not be unreasonably withheld.

- 8.3.2 The Seller shall if requested by the Engineer provide a certificate from an approved insurer or insurance broker that all the insurances required by the contract are in force. The Seller shall produce to the Purchaser, if requested, the policies of insurance or certified copies thereof and the receipts for the payment of all current premiums.
- 8.3.3 The insurances required under 8.1 and 8.2 shall provide that, in the event of a claim being made and accepted, the amount of cover shall be automatically reinstated to the full cover required by the Contract Documents.
- 8.3.4 Where by reason of a Variation or any extension of time due to a Variation, the cost of insurance is increased; the Purchaser shall reimburse the Seller for the amount of the increase.
- 8.3.5 If the Seller shall fail to arrange and keep in force any of the foregoing insurances or any other insurance which may be required under the terms of the contract the Purchaser may after notifying the Seller in writing, arrange or keep in force any such insurances. The Purchaser may pay such premium or premiums and deduct the amounts so paid from any monies due or which may become due to the Seller or recover the same as debt due from the Seller.
- 8.3.6 Insurance by the Purchaser shall not relieve the Seller of any of the Seller's obligations under the Contract Documents.

## **SECTION 9**

### **DELIVERY AND ACCEPTANCE**

#### **9.1 Delivery of Goods**

- 9.1.1 The Seller shall be responsible for delivery of goods in good order and condition to the stockpile site, or storage area or place for installation nominated by the Purchaser in the Special Conditions.
- 9.1.2 The Seller shall give to the Engineer adequate prior notice of intention to deliver goods to the nominated delivery point.

9.1.3 Where the goods have been inspected, examined or tested by the Engineer or the Engineer's Representative at the place of manufacture only those goods which have not been rejected by the Engineer or the Engineer's Representative pursuant to 6.4.6 shall be delivered.

## **9.2 Acceptance of Goods**

9.2.1 As soon as the supply of goods has been completed and the Goods have satisfactorily passed any final test prescribed by the Contract Documents, the Engineer shall issue a Certificate of Provisional Acceptance. The Engineer may give a Certificate with respect to any part of the Goods to be supplied before the completion of the whole of the supply.

9.2.2 Notwithstanding such provisional acceptance of Goods by the Engineer at the point of delivery the Seller shall if required by the Engineer within such defects liability period as is specified in the Special Conditions replace, make good, or pay the full cost of making good:

- (a) Any Goods to which damage has occurred before or during delivery and which becomes apparent at any time during the defects liability period specified in the Special Conditions; and
- (b) Any Goods in which inherent faults of materials, manufacture or design or workmanship failures or any failures to be fit for purpose become apparent during the said period.

9.2.3 The liability of the Seller under 9.2.2 shall extend to cover all costs in any way related to the replacement or making good of the Goods including in the appropriate case the costs of removal from the delivery point. Where Goods are replaced, the Seller's liability shall also extend to cover all costs in any way related to reinstallation and commissioning.

## **9.3 Property in the Goods**

9.3.1 Subject to the provisions of 9.2.2 and 9.2.3, the property in the Goods shall be deemed to pass to the Purchaser when the Engineer issues the Certificate of provisional Acceptance.

## **SECTION 10**

### **VARIATIONS**

#### **10.1 Variation Permitted**

10.1.1 The engineer may order any variations to the Supply of Goods within the scope of the contract which:

- (a) Increase or decrease the quantity of the Goods to be supplied.
- (b) Change the character or quality of the Goods to be supplied.

10.1.2 The Seller shall carry out and comply with any Variation ordered under this Clause.

10.1.3 The value of Variations shall be added to or subtracted from the Contract Price.

#### **10.2 Variation Orders**

10.2.1 The Seller shall not alter the quantity, quality, or type of Goods without an order in writing from the Engineer.

10.2.2 Where an instruction is given by the Engineer or the Engineer's Representative which is not in writing or is not expressly stated to be a Variation, and the Seller considers the instruction involves a Variation, the Seller shall within one month of receiving the instruction or as soon as practicable thereafter give written notice to the Engineer to that effect. Unless the Engineer by notice in writing within a reasonable time rejects the Seller's claim, the instruction shall be treated as if it was a Variation.

#### **10.3 Valuation of Variations**

10.3.1 The Engineer shall determine the value, if any, of each Variation on the basis of the Schedule of Prices where applicable.

10.3.2 Where there is no applicable item or where it would be unreasonable to apply the Schedule of Prices to a Variation by reason of the Variation:

- (a) Not being similar to the original Goods; or

- (b) Being affected by its timing; or
- (c) Involving quantities increased or decreased from the original amount to such an extent as to make the schedule prices unreasonable;

The Engineer shall fix the applicable price or the method of payment for the Variation having regard to the Schedule of Prices, the Seller's costs and a reasonable margin of profit, or may direct that the Variation be carried out on a cost plus basis.

10.3.3 The valuation of each Variation shall be notified to the Seller in writing.

10.3.4 Wherever practicable, all Variations shall be valued prior to any work involved is commenced, but any failure to do so shall not invalidate the Variation.

10.3.5 The Seller shall provide without undue delay such evidence as the Engineer may require to establish the correctness of all quantities and costs claimed in respect of the Variations.

## **SECTION 11**

### **COMPLETION**

#### **11.1 Commencement**

11.1.1 The Contract Period shall commence from the date of acceptance of the tender.

#### **11.2 Extension of Time**

11.2.1 The Seller may claim an extension of the time for completion of the contract if the Seller is or will be delayed by reason of:

- (a) The net effect of any Variation; or
- (b) Exceptional adverse weather conditions; or
- (c) Any strike, lockout or other industrial action; or
- (d) Delays by the Purchaser or the Engineer; or

- (e) Any circumstances which could not reasonably have been foreseen by the Seller at the time of tendering and not due to the fault of the Seller.

11.2.2 The Seller shall give notice to the Engineer of his intention to make a claim for an extension of time within twenty Working Days of the circumstances becoming known to the Seller. The notice shall be followed as soon as practicable by the claim with full supporting details.

11.2.3 The Engineer shall, after due consultation with the Purchaser and the Seller, grant the Seller, either prospectively or retrospectively, such extension of time as may be justified. The Engineer shall notify the Seller and Purchaser accordingly.

### 11.3 Time for Completion

11.3.1 Subject to the requirements of the Contract Documents as to the supply of the Goods by progressive delivery of portions of the whole supply, the whole of the supply shall be completed within the time stated in the Special Conditions as determined by reference to the date of the acceptance of the tender or such extended time as may be allowed under 11.2.

### 11.4 Liquidated Damages

11.4.1 Where provided in the Special Conditions, liquidated damages shall be paid by the Seller to the Purchaser for the period between the time for completion as defined in 11.3 and the date of Provisional Acceptance.

11.4.2 The Purchaser may without prejudice to any other method of recovery deduct the amount of such damages from any moneys due or which may become due to the Seller. The payment or deduction of such damages shall not relieve the Seller from any obligation to complete the supply of the Goods or from any other obligations and liabilities under the contract.

## **SECTION 12**

### **DEFECTS LIABILITY**

#### **12.1 Defects Liability Period**

12.1.1 The Defects Liability Period for the Goods supplied shall commence on the date of Provisional Acceptance. The Defects Liability Period shall be as stated in the Special Conditions.

#### **12.2 Certificate of Final Acceptance**

12.2.1 The Engineer shall issue a Certificate of Final Acceptance to the Purchaser the Seller certifying the due completion of the contract when:

- (a) The Period of Defects Liability has expired; and
- (b) The Seller has satisfied any requirement of 9.2.2 and 9.2.3.

#### **12.3 Effect of Certificate of Final Acceptance**

12.3.1 Notwithstanding the issue of the Certificate of Final Acceptance, the Seller shall remain liable for the fulfilment of any obligation of the Seller under the Contract Documents which then remains unperformed or not properly performed.

#### **12.4 Guarantees**

12.4.1 The Seller shall provide the Purchaser with written guarantees where required by the Contract Documents.

## **SECTION 13**

### **PAYMENTS**

#### **13.1 Seller's Claims**

13.1.1 The Seller may submit to the Engineer after the end of each month or after each major delivery, as the case may be, a claim showing the estimated contract value of the Goods supplied to the Purchaser up to the end of that month or upon the completion of that major delivery.

13.1.2 The Engineer shall assess each claim and may amend them as necessary to comply with the contract and the Engineer's valuation of the goods supplied.

#### **13.2 Progress Payment Certificates**

13.2.1 Within ten Working Days after receipt of the Seller's claim, the Engineer shall issue a Progress Payment Certificate for a sum comprising the value of the Seller's claim amended as necessary under 13.1.2, less previous payments certified and less any other deductions and retentions which are required by the terms of the contract or by law.

13.2.2 The Engineer shall send the original of each Payment Certificate to the Purchaser and a duplicate copy of each certificate to the Seller.

13.2.3 Progress payments upon each of the engineer's Certificates shall be made within seven Working Days after such certificates have been delivered to the Purchaser by the Engineer.

#### **13.3 Retention Monies**

13.3.1 The Purchaser shall, in accordance with the Progress Payment Certificate, retain out of the amount which would otherwise be payable, such retention monies as are required under the Special Conditions.

13.3.2 The monies retained, less any deductions which the Purchaser is entitled to make, shall be paid to the Seller within ten Working Days of the date of the issue of the Certificate of Final Acceptance.

## **13.4 Final Claim**

- 13.4.1 Not later than two months after the expiration of the Defects Liability Period, or such further time as the Engineer may reasonably allow the Seller shall submit to the Engineer a final account of all the Seller's claims in relation to the contract. The final claim shall state the amount or amounts claimed by the Seller in respect to all outstanding claims. This account shall be endorsed "final claim" and signed by the Seller.
- 13.4.2 Submission of the final claim by the Seller shall be conclusive evidence that the Seller has no outstanding claim against the Purchaser except that contained therein, and except for any item which has been referred to arbitration under Section 14. The Purchaser shall not be liable to the Seller for any matter in connection with the contract unless contained within the final claim, but this shall not preclude the later correction of any clerical or accounting error.

## **13.5 Final Payment Certificate**

- 13.5.1 As soon as practicable after receipt of the Seller's final claim and the issue of the Certificate of Final Acceptance, the Engineer shall issue a Final Payment Certificate for a sum comprising the Seller's claim amended as necessary under 13.1.2.
- 13.5.2 If the Seller fails to submit a final account as stipulated in 13.4.1 the Engineer may issue a Final Payment Certificate for such amount, if any, as the Engineer may assess.
- 13.5.3 A further Certificate of Payment shall be issued by the Engineer subsequent to any decision under 14.2.1 which amends the Final Payment Certificate.
- 13.5.4 The amount certified by the Engineer in the Final Payment Certificate shall be paid by the Purchaser to the Seller within ten Working Days of the date of the Final Payment Certificate.

## **13.6 Effect of Final Payment Certificate**

- 13.6.1 Upon the issue of the Final Payment Certificate the Purchaser shall cease to be liable to the Seller in respect to any of the Purchaser's obligations under the Contract Documents except for the Purchaser's obligations:

- (a) To pay the moneys certified in the Final Payment Certificate.
- (b) To pay any outstanding retention monies.
- (c) To pay any monies which are or become payable under Section 14.
- (d) To pay interest which is or becomes payable under 13.7.
- (e) To pay monies certified prior to the issue of the Final Payment Certificate but unpaid at that time.

### **13.7 Interest**

13.7.1 The Purchaser shall pay the Seller interest on all monies certified as payable and remaining unpaid after the time provided for payment.

13.7.2 The rate of interest shall be equal to the average Monthly interest rate as certified by a chartered accountant or trading bank manager, which is currently payable or would be payable by the Seller for overdraft facilities.

### **13.8 Price Variation Due to Legislation Changes**

13.8.1 If after the date of closing of tenders, the making of any statute, regulation, or bylaw, or the imposition by Government or by a local authority of any royalty, fee or toll increases or decreases the cost to the Seller of performing the contract, such increase or decrease not being otherwise provided for in the Contract Documents, the effect shall be treated as a Variation.

### **13.9 Cost Fluctuations**

13.9.1 Unless otherwise provided in the Special Conditions, cost fluctuations due to increases in the cost of materials, labour, transport or other items that are outside the Seller's control, may be allowed at the sole discretion of the Purchaser. An auditor's certificate may be requested to verify any variations in these costs. If required the certificate shall be accompanied by all relevant invoices and documentation. The Auditor shall be a member of the New Zealand Society of Accountants and shall hold a Public Practice Certificate.

## **SECTION 14**

### **DISPUTES**

#### **14.1 General**

14.1.1 No decision, valuation or certificate of the Engineer shall be questioned or challenged more than three months after it has been given unless notice has been given to the Engineer within that time.

14.1.2 Every dispute or differences concerning the contract or the supply of Goods which is not precluded by 13.4, 13.6 or 14.1.1 shall be dealt with under the following provisions of this Section.

#### **14.2 Engineer's Review**

14.2.1 Every dispute or difference under 14.1.2 shall be referred to the Engineer not later than one Month after the issue of the Final Payment Certificate. The Engineer shall give the decision in writing, except in the case of a decision under 14.2.4 the Engineer may modify or correct his or her decision by a subsequent decision in writing.

14.2.2 The Engineer or the Seller may before or after the Engineer has given a decision (other than a decision under 14.2.4) ask for a meeting, and in such case the Engineer and a representative of the Seller shall meet as soon as practicable and endeavour to resolve the dispute amicably.

14.2.3 The Engineer and the Seller may with the consent of the Purchaser jointly submit the dispute or any question arising in connection with it to an agreed expert, with a request to make a recommendation to assist them to resolve the matter. The Purchaser and the Seller shall each pay one half of the costs of the agreed expert.

14.2.4 Unless the dispute or any question arising in connection with it has been referred under 14.2.3 and is awaiting a recommendation from the agreed expert, the Engineer may, at any time, in respect of any dispute or difference under 14.2.1 give a decision (in this Section called "a formal decision") which states expressly that it is given under this subclause 14.2.4. The

Engineer shall give a formal decision on the matter within 20 Working Days of receiving notice in writing from the Purchaser or the Seller requiring him or her to give a formal decision and expressly referring to this subclause 14.2.4. Upon making a formal decision the engineer shall forthwith send copies of it to both the Purchaser and the Seller. The Engineer's formal decision shall, subject to 14.3 and 14.4 be final and binding.

### **14.3 Mediation**

#### **14.3.1 If either:**

- (a) The Purchaser or the Seller is dissatisfied with the Engineer's decision under 14.2.4; or
- (b) No decision is given by the Engineer within the time prescribed by 14.2.4 then either the Purchase or the Seller may by notice require that the matter in dispute be referred to mediation.

14.3.2 A notice requiring mediation shall be in writing and shall be given by the Purchaser or the Seller to the other of them within one Month after the time prescribed for the giving of the Engineer's decision under 14.2.4.

14.3.3 Where a request for mediation is made and is acceded to by the other party then the Purchaser and the Seller shall endeavour to agree on a mediator and shall submit the matter in dispute to him or her. The mediator shall discuss the matter with the parties and endeavour to resolve it by their agreement. All discussions in mediation shall be without prejudice, and shall not be referred to in any later proceedings. The Purchaser and the Seller shall; bear their own costs in the mediation, and shall pay half the costs of the mediator.

14.3.4 The Purchaser and the Seller may at any stage agree to invite the mediator to give a decision to determine the matter. The mediator's decision shall in such case be binding on both parties unless within 10 Working Days either party notifies the other in writing that it rejects the mediator's determination.

#### **14.3.5 If:**

- (a) Mediation has been requested, but has not been agreed upon with 10 Working Days of the request; or

- (b) The parties have agreed upon mediation but have been unable within 10 Working Days of such agreement to agree upon a mediator; or
- (c) No agreement has been reached in mediation and no determination has been issued by the Mediator within two months of the request for mediation, or within such further time as the parties may agree; or
- (d) Either party has within the prescribed time rejected the mediator's determination.

Then the matter in dispute may be referred to arbitration.

## **14.4 Arbitration**

### **14.4.1 If either:**

- (a) The Purchaser or the Seller is dissatisfied with the Engineer's decision under 14.2.4; or
- (b) No decision is given by the Engineer within the time prescribed by 14.2.4;

Then either the Purchaser or the Seller may by notice require that the matter in dispute be referred to arbitration.

### **14.4.2 A notice requiring arbitration shall be in writing and shall be given by the Purchaser or the Seller to the other of them:**

- (a) Within one Month after the Engineer's formal decision under 14.2.4 or after the time prescribed for the giving of the Engineer's formal decision, whichever shall be the earlier; or
- (b) Within one Month after the happening of the event described in 14.3.5 which gives rise to the right to arbitration.

### **14.4.3 The dispute shall be referred to a sole arbitrator if the Purchaser and the Seller agree upon one, and if not then to two arbitrators, one appointed by each party, and a third appointed by those two. References in the Section to "the arbitrator" shall include three arbitrators.**

- 14.4.4 The arbitrator shall have full power to open up, review and revise any decision, opinion, instruction, direction, certificate or valuation of the Engineer and to award upon all questions referred to him or her. Neither party to the arbitration shall be limited to the evidence or arguments put before the Engineer for his or her review or put before a mediator.
- 14.4.5 No decision given by the Engineer in accordance with his or her duties under the contract shall disentitle him or her from being called as a witness and giving evidence before any hearing on any matter relevant to the dispute.
- 14.4.6 Where the matter has been referred to mediation the mediator shall not be called by either party, as a witness, and no reference shall be made to the determination, if any, issued by the mediator in respect of the matter in dispute.
- 14.4.7 The award in the arbitration shall be final and binding on the parties.

#### **14.5 Suspension During Dispute**

- 14.5.1 No dispute proceedings shall entitle the Seller to suspend progress on the supply of Goods, except in accordance with the instructions of the Engineer.
- 14.5.2 No progress payment certificate nor payment due or payable shall be withheld on account of dispute proceedings other than a certificate for, or payment of, so much of the item as is in dispute.

#### **14.6 Award of Interest**

- 14.6.1 The arbitrator may award interest upon any amount due and payable under the award from the Purchaser to the Seller or vice versa at such rate and for such period as the arbitrator considers just, down to the date of the award.

## SECTION 15

### DEFAULT

#### 15.1 Default by the Seller

15.1.1 The Purchaser may at its option after giving notice to the Seller terminate the contract in the event of:

- (a) The Seller failing to execute the Contract Agreement or the bond; or
- (b) The Seller subletting or assigning the contract without the consent in writing of the Purchaser or Engineer; or
- (c) The Seller becoming bankrupt, or going into liquidation or having a receiver appointed and the assignee, liquidator or receiver fails within Ten Working Days to make arrangements satisfactory to the Purchaser for the continuation of the contract; or
- (d) The Engineer certifying in writing to the Purchaser that the Seller:
  - (i) Has abandoned the contract; or
  - (ii) Without any reasonable cause has failed to commence the manufacture, testing, supply, or commissioning and maintenance if specified, of the Goods at the time or in the manner required by the Contract Documents; or
  - (iii) Has failed to proceed with the manufacture or supply of the Goods with due diligence or has failed to employ sufficient labour, plant or materials or has otherwise failed to make such progress with the supply of Goods as the Engineer deems sufficient to ensure their completion or supply within the time specified under the Contract Documents; or
  - (iv) Has failed to make good or remove and replace Goods within twenty-eight days after receiving from the Engineer written notice that the said

Goods have been condemned and rejected by the Engineer under 6.4.6; or

- (v) Has failed to provide within twenty-eight days after receiving written notice from the Engineer to provide proper facilities for inspecting the Goods or failed to submit work, materials or Goods for proper test; or
- (vi) Is not manufacturing the Goods in accordance with the Contract or is persistently, flagrantly or wilfully neglecting to carry out all obligations under the contract; or

And the Seller's default has not been remedied within ten Working Days of receiving the notice.

15.1.2 If the Purchaser elects to terminate the contract, it shall give written notice to the Seller of its election. The contract shall thereupon be terminated. All monies which shall have been previously paid by the Purchaser to the Seller under the contract shall, if the Purchaser thinks fit be deemed to be the full value of the Goods supplied. It shall be taken and accepted by the Seller in full payment and satisfaction of all claims and demands under the contract. All deposits, percentages or retention moneys shall remain the absolute property of the Purchaser.

15.1.3 Any election made by the Purchaser to terminate the contract shall not void or violate the contract or release the Seller from any obligations or liabilities under the contract or affect the rights and powers conferred on the Purchaser or the Engineer under the Contract Documents.

## **15.2 Default by the Purchaser**

15.2.1 If the Purchaser without good cause founded on the terms of the Contract Documents, abandons this contract, the Seller may thereupon suspend delivery of the Goods and shall not be bound to complete the contract. The Seller shall be entitled to be paid such balance as the Engineer shall certify to be due to the Seller for the Goods supplied without prejudice to any other claims or demands which the seller may have against the Purchaser under the Contract Documents.

## **CONTRACT FOR THE SALE AND PURCHASE OF GOODS – CONDITIONS OF TENDERING**

### **101 Interpretation**

101.1 The provisions of Section 1 of the Hutt City Council General Conditions of Contract for the sale and Purchase of Goods shall apply to these conditions of tendering.

### **102 Issue of Documents**

102.1 All information, drawings and documentation concerning this proposed contract shall be kept confidential by the tenderer and shall not be disclosed to any third party except for the purpose of preparing a tender.

102.2 Any deposit charged on the Tender Documents shall be refunded as soon as practicable:

- (a) To the successful tenderer without requiring return of the documents; and
- (b) To other tenderers, provided the documents are returned in reasonable condition not later than ten Working Days after the date on which advice is notified that another tender has been accepted or that no tender is being accepted; and
- (c) To others, provided the documents are returned in reasonable condition not later than the time of closing tenders.

### **103 Sufficiency of Tender**

103.1 The Seller shall be deemed to be satisfied before tendering as to the correctness and sufficiency of the tender for the Goods and the prices stated in the tender.

102.3 The tendered price shall allow for all the Seller's obligations under the contract as set out in the Tender Documents.

## **104 Ambiguities in Tender Documents**

- 104.1 Where the Tender Documents are ambiguous or unclear to the tenderer, the tenderer may request the issue of an explanatory notice. The Purchaser may issue an explanatory notice, which shall be sent to all tenderers, and upon issue shall become part of the Tender Documents.
- 104.2 In the absence of an explanatory notice, tenders may be submitted subject to any reasonable interpretation of any ambiguity or uncertainty in the Tender Documents which shall be clearly endorsed on the tender.
- 104.3 Notices to tenderers may be issued by the Purchaser of its own accord and if so shall become part of the Tender Documents.

## **105 Submission of Tenders**

- 105.1 Tenders will close at the time and place stated in the Schedule to these conditions and shall be enclosed in a sealed envelope, identified as a tender for the particular contract and addressed to the Purchaser.
- 105.2 Tenders shall be deposited at the advertised place of close of tenders before the advertised time of closing.
- 105.3 Subject to prior arrangement, fax tenders will be considered provided they are received before the advertised time of closing of tenders and provided they are confirmed by a tender in conformity in all respects with these conditions, posted not later than the advertised time of closing of tenders.
- 105.4 Except under exceptional circumstances no extensions of time and date by which tenders must be submitted will be granted. However, the Purchaser at its sole discretion, reserves the right to extend the period allowed for submission of tenders.
- 105.5 The Purchaser would prefer all tenders to be based on the Tender Documents but reserves the right to consider any tender whether or not that tender has been submitted with endorsement.
- 105.6 The Purchaser may request any tenderer to clarify aspects of any tender submitted and reserves the right to negotiate aspects of the tender with a view to finalising contract arrangements.

105.7 The validity period for tenders shall be one Month calculated from the date of closing of tenders.

105.8 Tenderers shall submit their signed tender on the form included in the Tender Documents together with any supplementary information required by the Tender Documents as listed in the Schedule to these conditions.

105.9 No legal or other obligations shall arise between a tenderer and the Purchaser in relation to the conduct or outcome of the tender process unless and until the tenderer has been awarded a contract to supply the Goods.

## **106 Acceptance of Tender**

106.1 The Purchaser does not undertake to accept the tender with the highest overall index or any tender.

106.2 The successful tenderer shall be notified in writing by the Purchaser or their agent that their tender has been accepted.

## **107 Notification of Unsuccessful Tenderers**

107.1 Unsuccessful tenderers shall be notified in writing that their respective tenders have been rejected.