



SUPPLIER AGREEMENT – GENERAL TERMS

1. SCOPE OF SUPPLIER AGREEMENT

- 1.1 This Supplier Agreement (the "Agreement") is between Independent Timber Merchants Co-operative Limited ("ITM") and the supplier (the "Supplier") identified in the Key Terms (The "Key Terms"). The Supplier Agreement is comprised of the Key Terms and the General Terms (the "General Terms"). The General Terms are accessible on the ITM website www.itm.co.nz, by using the Supplier's extranet login or otherwise by emailing info@itm.co.nz. If there is any inconsistency between the Key Terms and the General Terms, the Key Terms prevail.
- 1.2 This Agreement governs the purchase of all Goods by ITM (on behalf of ITM Purchasers) from the Supplier with effect from the Commencement Date as specified in the Key Terms.
- 1.3 The Supplier acknowledges that it has read, understood, accepted and agreed to the full terms of this Agreement comprising both the Key Terms and the General Terms (as may be amended from time to time).

2. DEFINITIONS

- 2.1 In this Agreement:

"Annualised Rebate" means a rebate due from the Supplier to ITM based on Forecast Annualised Purchases, the quantum and detail is specified in the Key Terms;

"Category Manager" means, as the context requires, any one of the ITM Support Office Category Managers including but not limited to; Timber, Building Products, Hardware and Services;

"Commencement Date" means the date on which this Agreement commences, as specified in the Key Terms;

"EDI" means electronic data interchange;

"Electronic Stock File" means a file in ITM's required format;

"Forecast Annualised Purchases" means the estimated amount of Total Annual Purchases, as specified in the Key Terms;

"Goods" means all goods and services supplied by the Supplier;

"Product-Specific Rebate" means a rebate due from the Supplier to ITM based on purchases of a particular type or types of Goods, the quantum and detail specified in the Key Terms;

"GST" means goods and services tax under the Goods and Services Tax Act 1985;

"ITM Invoice" means an invoice issued by ITM to the Supplier;

"ITM Member" means a shareholder of ITM who operates an ITM store;

"ITM Purchaser" means an ITM Member or ITM Support Office who orders Goods from the





Supplier pursuant to this Agreement;

"ITM Support Office (ITMSO)" means the headquarters of ITM's executive and administrative team, located at 38 Tarndale Grove, Rosedale, Auckland;

"Key Terms" means the other document comprising this Agreement headed *"Key Terms"* which sets out certain principal terms of this Agreement and is signed by ITM and the Supplier;

"Member Marketing Fund Amount" means, where the Supplier operates a direct to member marketing fund for ITM Members (as detailed in the Key Terms), the amount specified as such in the Key Terms, being the total annual amount the Supplier will allocate to store marketing activities for ITM Members;

"Non-EDI Administration Charge" means the charge specified as such in the Key Terms and described in clause 7.5;

"Off Statement Rebate Rate" means the amount by way of Rebate deducted or withheld by ITM from any invoice it pays to the Supplier, as determined in accordance with clause 8;

"Party" means ITM or the Supplier (and their respective successors and permitted assigns), as the context requires, and **"Parties"** means both of them;

"PPSA" means the Personal Property Securities Act 1999, as amended from time to time;

"Rebate Period" means the period commencing on the Commencement Date and ending on 31st March of the following year;

"Rebates" means any Annualised Rebate and any Goods-Specific Rebate, if and as applicable, due from the Supplier to ITM;

"Total Annual Purchases" means the GST exclusive amount of all Goods (and any freight, pallets or similar items required in connection with such Goods) and any services purchased by ITM from the Supplier on behalf of all ITM Purchasers during the Rebate Period pursuant to this Agreement after adjustment has been made for any credit or debit notes issued by the Supplier and using the actual pricing paid by ITM Purchasers for such Goods, freight, pallets (or similar) or services, regardless of whether that pricing is full pricing, discounted pricing, promotional pricing or otherwise;

"Working Day" means any day other than a Saturday or Sunday on which registered banks are open for business in Auckland.





3. SUPPLY AND PURCHASE OF GOODS

- 3.1 The Supplier will supply Goods to the relevant ITM Purchaser and ITM (on behalf of the relevant ITM Purchaser) will purchase Goods from the Supplier, on the terms set out in this Agreement.
- 3.2 All risk of loss or damage to the Goods will pass from the Supplier to the relevant ITM Purchaser at the point the Goods are delivered by the Supplier to the relevant ITM Purchaser. Delivery will occur when the Supplier has physically delivered the Goods to the relevant ITM Purchaser's premises or designated delivery address noted on the purchase order.
- 3.3 Goods will not be deemed to have been delivered unless a suitably authorised person has formally agreed to acknowledge receipt. However, such signatures shall not amount to acceptance that the relevant items have been delivered in accordance with the relevant order.
- 3.4 Title to the Goods will pass from the Supplier to the relevant ITM Purchaser when payment for the Goods is received by the Supplier from ITM.
- 3.5 This Agreement does not constitute a "*security agreement*" for the purposes of the PPSA and the Supplier expressly agrees that any financing statement registered by the Supplier over ITM or any ITM Member in contravention of this clause will be invalid and must be promptly removed at the Supplier's cost.

Settlement of your account (subject to request for credits and any rights of offset under this agreement) is guaranteed and will be made on the last working day of the month following the month of transaction. Remittance will be by direct credit to your designated bank account.

4. ORDERING GOODS

- 4.1 Any orders for Goods from the Supplier shall be by way of written order. If there is any inconsistency or conflict between the terms of a purchase order and the terms of these General Terms, these General Terms will prevail. In the event of a delay in the delivery of Goods, ITM or the ITM Purchaser may terminate the order with immediate effect or grant an extension of time.
- 4.2 The Supplier will supply the quantity of Goods specified in the relevant ITM Purchaser's order to the relevant ITM Purchaser on the delivery date specified in that order.
- 4.3 ITM or the ITM Purchaser may suspend or cancel delivery of any Goods due to any cause beyond its reasonable control if it is prevented from taking delivery or reselling or using such Goods and will have no liability to the Supplier for any losses suffered or incurred as a result of such suspension or cancellation.





5. NON-EXCLUSIVITY OF SUPPLY

- 5.1 ITM does not represent, warrant or undertake to the Supplier that any or all ITM Members will order Goods (or a particular minimum quantity of Goods) from the Supplier. The Supplier further acknowledges and agrees that this Agreement does not constitute an exclusive supply agreement and that ITM and/or some or all ITM Members may order goods of a similar nature to the Goods from other suppliers or enter into agreements with other suppliers for the purchase of goods of a similar nature to the Goods.

6. PRICING OF GOODS

- 6.1 Unless otherwise stated in this Agreement, the price payable by ITM to the Supplier for Goods:
- a. is as set out in the Supplier's Electronic Stock File provided by the Supplier to ITM and all ITM Members in accordance with clause 6.2;
 - b. subject to the Supplier's minimum order quantities set out in the Key Terms, all Goods are supplied at a "*free into store*" ("**FIS**") price;
 - c. is exclusive of GST (if any); and
 - d. is inclusive of all taxes (except GST) and duties.
- 6.2 On the Commencement Date, the Supplier must deliver to ITMSO an Electronic Stock File and hard copy of the price book, and to each ITM Member a hard copy of the price book.
- 6.3 Subject to clause 6.4, the Supplier may, from time to time, increase or decrease the price stipulated for Goods, provided however that any such change to pricing must be negotiated by the Supplier direct with the relevant Category Manager. Any price increases agreed to by the Category Manager will be effective from the 1st of the month following a minimum **THREE** months from the date of agreement and receipt and successful processing of full and accurate supplier electronic pricing information into the ITM pricing database. Please note:
- a. No price increases are to be notified or to take effect during **DECEMBER** or **JANUARY**.
 - b. Any price decreases will become effective by mutual agreement.
- 6.4 Not less than **THREE** months prior to the effective date of a price change for Goods, the Supplier must deliver one accurate, complete and finalised Electronic Stock File and hard copy of the price book to ITM Support Office and to each ITM Member a hard copy of the price book.
- 6.5 If the Supplier fails to comply with clause 6.4, then any proposed price increase for Goods (even if already agreed to by ITM pursuant to clause 6.3) will be deferred until the first Working Day of the first month commencing not less than **THREE** months after the date on which accurate, complete and finalised Electronic Stock File and hard copy of the price book has been received by ITMSO and to each ITM Member a hard copy of the price book.
- 6.6 The criteria for customer specific pricing or contract specific quotes based on volumes of Goods are to be advised by the Supplier to the relevant Category Manager.





- 6.7 In conjunction with the relevant Category Manager, the ITMSO National Account Manager may from time to time negotiate alternative prices for ITM key account customers and/or volume builders.
- 6.8 From time to time, ITM (via its applicable Category Manager) may agree with the Supplier to temporarily vary prices for certain Goods (the "**Promotional Goods**") as part of a promotion of those Goods. Once ITM and the Supplier have agreed such varied pricing (the "**Promotional Pricing**"), and the period for which the Promotional Goods will be promoted by ITM Purchasers (the "**Promotional Period**"), such Promotional Pricing will apply to the relevant Promotional Goods for the period starting two weeks prior to the commencement of the Promotional Period. If, during the Promotional Period, any ITM Purchaser sells out of the relevant Promotional Goods and requires additional Promotional Goods to fulfil customer orders received during the Promotional Period, the Supplier will make available sufficient additional Promotional Goods to the ITM Purchaser at the Promotional Pricing.
- 6.9 In addition to any other rebates due to ITM under this Agreement, Goods purchased (including promotions or discounted items) for new or refurbished ITM Member stores will attract an additional "*one off*" special discount or rebate (refer Key Terms) off the total invoice value on the opening stock purchases. The discount or rebate will be calculated by ITM Support Office and shall be automatically deducted from the Supplier's relevant monthly invoices.

7. INVOICING BY SUPPLIER AND PAYMENT BY ITM

- 7.1 The Supplier must issue to ITM electronically (via EDI using industry approved standards) valid GST invoices that meet the requirements imposed by the Goods and Services Tax Act 1985 and details advised by the ITM Support Office prior to payment being required to be made by ITM to the Supplier. Each invoice will be made out to ITMSO for Goods ordered and actually received by a relevant ITM Purchaser from the Supplier during the immediately preceding month and must clearly identify the relevant ITM Purchaser to whom the invoice relates. Provided each invoice is received by ITM from the Supplier no later than midday on the second Working Day of the month immediately following the month in which the Goods the subject of the invoice were received by ITM Purchasers (the "**Invoice Deadline**") and subject always to clause 7.2, ITM will pay each such invoice less any Off Statement Rebate Rate deducted in accordance with clause 8 and less any ITM Invoice amount deducted in accordance with clause 9.2, on the last Working Day of the month in which ITM receives the invoice, by direct credit to the Supplier's bank account. Any invoice received by ITM from the Supplier after the Invoice Deadline in any month will remain unpaid until the last Working Day of the month immediately following the month in which ITM receives such invoice.
- 7.2 If ITM disputes any amount claimed in an invoice or considers that any amount due and owing from the Supplier should be set off against the invoiced amount, then ITM will:
- advise the Supplier in writing of the nature of the dispute or the amount to be set off and the grounds for such set-off. The Supplier will promptly provide all information that ITM requires to assist resolution of this issue; and
 - pay any undisputed portion of the invoice less any Off Statement Rebate Rate and less any ITM Invoice amount deducted in accordance with clause 9.2.
- 7.3 The Supplier will not invoice any ITM Purchaser direct for purchases of Goods.





- 7.4 Any credit notes or debit notes issued by the Supplier to ITM must clearly identify the relevant ITM Purchaser to whom they relate.
- 7.5 If at the Commencement Date (or on any anniversary thereof during the term of this Agreement) the Supplier is not actively using EDI to issue invoices or is not, in ITM's opinion, actively engaged in implementing invoicing by means of EDI, ITM reserves the right to charge the Supplier the annual Non-EDI Administration Charge.

8. REBATES DUE FROM SUPPLIER TO ITM

- 8.1 The Parties agree that the provision by the Supplier of Rebates to ITM is an essential term of this Agreement.
- 8.2 On and from the Commencement Date and subject to the rest of this clause 8, any Rebate due from the Supplier to ITM will be deducted by ITM from each invoice ITM pays to the Supplier. Where the Rebate is an Annualised Rebate based on stepped volume increments, the amount deducted by ITM from any invoice due to the Supplier will be calculated based on the presumption that ITM will achieve Forecast Annualised Purchases for the relevant Rebate Period. Where the Rebate is a Goods-Specific Rebate, the Supplier will notify ITM in writing of relevant purchase information for any given month no later than the fourth Working Day of the immediately following month to enable ITM to withhold from the next remittance due from ITM to the Supplier the appropriate amount by way of Goods-Specific Rebate.
- 8.3 All Rebates, once calculated, must have GST added to them, such that the Supplier is required to pay to ITM (and ITM may withhold from Supplier Invoices) each Rebate plus GST.
- 8.4 The Supplier and ITM acknowledge that, for any Rebate Period, variances are likely to arise between the actual amount of any Rebate properly due from the Supplier to ITM and the amount of Off Statement Rebate Rate withheld by ITM from invoices it has paid to the Supplier. The Parties accordingly agree that in October of each year during the term of the Agreement, a reconciliation calculation will occur covering the period from 1 April to 30 September (the "**Interim Wash-Up**") to determine whether, as at the date of the Interim Wash-Up, ITM owes any amount to the Supplier as a result of withholding excess amounts by way of Off Statement Rebate Rate from invoices paid by ITM to the Supplier or whether an additional amount is payable by the Supplier to ITM as a result of any shortfall between the actual Rebate amount then due to ITM and the aggregate Off Statement Rebate Rate withheld by ITM from Supplier invoices up to the date of the Interim Wash-Up. Depending on the quantum of the reconciliation required in connection with the Interim Wash-Up, ITM and the Supplier may agree in writing to, promptly following the Interim Wash-Up, vary Forecasted Annualised Purchases and the then current monthly Off Statement Rebate Rate being applied to Supplier invoices by ITM. A further reconciliation process will be carried out once annually covering the period from 1 April to 31 March (the "**Year End Wash-Up**") or on the termination of the Agreement. Depending on the variance between the aggregate of all Off Statement Rebate Rate deducted by ITM from Supplier invoices during the Rebate Period and the actual final amount of all Rebates due from the Supplier to ITM for the Rebate Period, either ITM or the Supplier, as applicable, will make an appropriate reconciliation payment to the other.
- 8.5 For the avoidance of any doubt, ITM does not represent, warrant or undertake to the Supplier that it (on behalf of the ITM Purchasers) will purchase the amount of Forecast Annualised Purchases from the Supplier. ITM has no liability to the Supplier in connection with Rebates other than in relation to payments due to the Supplier on or following either the Interim Wash-Up or the Year End Wash-Up where actual Total Annual Purchases as at





those wash-up dates are less than Forecast Annualised Purchases.

9. INVOICING BY ITM AND PAYMENT BY SUPPLIER

- 9.1 From time to time, ITM may deliver ITM Invoices to the Supplier (for items including, but not limited to, sponsorship of conferences, trade shows or other events or for hospitality costs paid by ITM in connection with Supplier funded training for ITM Members). The due date for payment by the Supplier of any ITM Invoice is the last Working Day of the month following the date of the ITM Invoice.
- 9.2 If the Supplier fails to pay any undisputed ITM Invoice by the due date, the Supplier agrees that ITM may deduct the amount of that overdue ITM Invoice in full from the next invoice due from ITM to the Supplier.

10. WARRANTIES AND QUALITY CONTROL

- 10.1 The Supplier represents, warrants and undertakes to ITM that:
- a. all Goods will be of merchantable quality and fit for the purpose for which they are intended;
 - b. all Goods will be delivered to ITM Purchasers in full and on time;
 - c. all Goods will be free of any and all security interests or encumbrances;
 - d. it will (as applicable) manufacture, pack, store, supply and deliver the Goods in accordance with all applicable industry standards;
 - e. it will comply with all applicable laws or regulations which relate (as applicable) to the manufacture, quality, storage, packing, transportation or sale of the Goods and the carrying out of this Agreement and any transaction contemplated by it, including, without limitation, compliance with the requirements of the Resource Management Act 1991, the Health and Safety at Work Act 2015 and the Hazardous Substances and New Organisms Act 1996. For these purposes, the Supplier will, at its own cost, hold and maintain in good standing all necessary licences, registrations, permits, authorisations, consents and approvals required by or from any governmental, provincial or local department or agency;
 - f. in respect of any services provided, the Supplier warrants that the services will be performed with due skill and care, to the best industry standards and practices and will be fit for the purpose made known by the ITM Purchaser and any purposes that the Supplier represents;
 - g. it will notify ITM immediately in the event the Supplier receives a notice of regulatory non-compliance or is the object of any governmental or regulatory action which pertains to the Goods or the manufacture or supply of the Goods;
 - h. the Supplier will notify ITM immediately in writing if any Goods supplied pursuant to this Agreement are required to be recalled, detailing clearly the precise Goods which are to be recalled and the reasons for their recall. The Supplier will meet all costs associated with a recall initiated by the Supplier or compelled by any regulatory authority;
 - i. where practical all Goods will be identified and bar-coded to meet international barcode standards as approved by GS1 New Zealand;





- j. the performance by it of its obligations under this Agreement will not breach any other agreement to which it is a party or any other obligation by which it is bound;
- k. all the Supplier's employees, representatives, agents or other parties under its control entering onto the premises of any relevant ITM Purchaser for purposes connected with or contemplated by this Agreement will:
 - i. not interfere with the day to day operation of the relevant ITM Purchaser's business; and
 - ii. comply with all reasonable directions of the relevant ITM Purchaser and its staff in relation to all health and safety, environmental or other requirements of entry (whether arising under statute or otherwise) including, without limitation, ensuring that all such persons comply with all site rules applicable to the relevant ITM Purchaser's premises.

10.2 Without prejudice to any other remedies available to ITM where ITM has an issue or raises a claim against the Supplier for any Goods or services delivered by the Supplier to an ITM Purchaser (any such claim, a "**Request for Credit**" or an "**RFC**"), the Supplier will accept or decline the RFC no later than the 7th Working Day after the date on which ITM notifies the Supplier of such RFC (the "**RFC Response Date**"). If ITM has received no response from the Supplier on or before the RFC Response Date, the Supplier is deemed to have accepted the RFC and must immediately issue ITM a credit note for the amount specified in the RFC. If the Supplier fails to issue such a credit note promptly, ITM may deduct or withhold payment of an amount corresponding to the amount claimed by it in the RFC from any subsequent invoice due and payable by ITM to the Supplier.

10.3 If the Supplier accepts an RFC on or before the RFC Response Date, at the ITM Purchasers discretion, the Supplier will either provide ITM a refund by way of credit note for the relevant Goods or services or resupplying replacement Goods or services to the relevant ITM Purchaser, at the Supplier's sole cost (including in relation to the cost of any freight for the return by the ITM Purchaser to the Supplier of returned Goods and the delivery by the Supplier to the relevant ITM Purchaser of new replacement goods).

11. OTHER OBLIGATIONS OF SUPPLIER

11.1 The Supplier undertakes:

- a. to deliver to all ITM Members safety data sheets in respect of all Goods of a hazardous nature;
- b. to deliver (at the Supplier's sole cost) to all ITM Members at their respective premises appropriate training, satisfactory in all respects to ITM, in relation to any Goods which constitute hazardous products and/or in respect of which safety data sheets are required;
- c. if ITMSO requests, a report detailing all Goods purchased by ITM Purchasers from the Supplier in a particular month pursuant to this Agreement, including detailing the identity of the relevant ITM Purchaser and the value of Goods purchased by each ITM Purchaser in that month;





- d. if ITMSO requests, to provide relevant training to some or all ITM Members in relation to the Goods or any particular type of Goods supplied by the Supplier pursuant to this Agreement;
- e. if ITMSO requests, to provide internet content, detailing information about particular Goods supplied by the Supplier pursuant to this Agreement;
- f. if the Supplier agrees with ITMSO to sponsor a conference, trade show or other event to:
 - i. pay ITM on receipt of invoice the amount agreed for such sponsorship regardless of whether or not the Supplier ultimately attends the sponsored event itself; and
 - ii. pay ITM on receipt of invoice an agreed amount for any additional Supplier representatives attending the relevant conference, trade show or other event over and above those Supplier representatives for whom the cost of attendance is included in the sponsorship amount paid by the Supplier to ITM;
- g. if the Supplier operates a member loyalty programme for ITM Members (as detailed in the Key Terms):
 - i. to provide a report not less than once per quarter to ITMSO (addressed to the relevant Category Manager) showing the points balance and dollar value under that programme for each ITM Member;
 - ii. without limiting clause 15.3 or any other term of this Agreement, to agree that ITM may set-off any amounts due and owing by ITM to the Supplier against the amount owed by the Supplier to the ITM Member;
- h. if the Supplier operates a Member Marketing Fund for ITM Members (as detailed in the Key Terms):
 - i. to provide a report not less than once per quarter to ITMSO (addressed to the relevant Category Manager) showing the proposed allocation of the Member Marketing Fund amount and year to date spend by the Supplier of that amount in relation to each ITM Member;
 - ii. as at 31st March of each year during the term of this Agreement, to pay any unapplied balance of the Member Marketing Fund Amount to ITM for distribution by ITM, in its discretion to ITM Members; and
 - iii. without limiting clause 15.3 or any other term of this Agreement, to agree that ITM may set-off any amounts due and owing by ITM to the Supplier against the amount owed by the Supplier to the ITM member pursuant to clause 11.1h.ii;
- i. keep the Supplier's contact details up to date on the ITM Supplier extranet site (available for access via www.itm.co.nz using the Supplier's extranet log in details set out in the Key Terms or otherwise by emailing info@itm.co.nz).





12. INDEMNITY BY SUPPLIER AND INSURANCE

- 12.1 The Supplier will on demand indemnify and keep indemnified ITM and each ITM Purchaser (each, an "**Indemnified Party**") against all liability, claims, damages, loss of profits, expenses, costs or any other losses sustained or incurred by the Indemnified Party as a direct or indirect result of any defects, failures or non-performance of the Goods or services supplied by the Supplier under this Agreement or any other default by the Supplier under this Agreement.
- 12.2 The Supplier will on demand indemnify and keep indemnified the Indemnified Party from any claim or action arising from the alleged infringement of any persons intellectual property rights as a result of the use or sale of the Goods.
- 12.3 The indemnities in clauses 12.1 and 12.2 are continuing obligations separate and independent from the Supplier's other obligations under this Agreement and survive delivery of the Goods, completion of services provided or termination of the Agreement.
- 12.4 The provisions of the General Terms are for the benefit of each ITM Purchaser and are intended to be enforceable against the Supplier by an ITM Purchaser in accordance with the provisions of the Contracts (Privity) Act 1982.
- 12.5 The Supplier will take out and maintain public liability insurance in a minimum sum of \$1,000,000. The Supplier agrees to provide evidence of such insurance to ITM upon demand.

13. TERM AND TERMINATION

- 13.1 Subject to the rest of this clause 13, this Agreement commences on the Commencement Date, and is subject to automatic renewal on the same terms on 1st April unless varied in writing by both Parties prior to 31st March.
- 13.2 Either Party may terminate this Agreement at any time by giving 90 days' notice in writing to the other Party.
- 13.3 ITM may terminate this Agreement immediately by notice in writing to the Supplier if:
- a. the Supplier commits a breach of any of the provisions of this Agreement and fails to remedy the breach within seven days of ITM notifying the Supplier of the breach; or
 - b. the Supplier is or becomes insolvent, ceases to carry on business, or goes into receivership or liquidation or is placed in administration.
- 13.4 Clauses 8, 12, 13, 14 and 15 will continue to apply to the Parties after termination of this Agreement.
- 13.5 Termination of this Agreement will not affect any rights or remedies each Party may have accrued before the date of termination.





14. CONFIDENTIALITY

- 14.1 The Supplier acknowledges that the content of this Agreement and all information acquired by the Supplier under or in connection with this Agreement in relation to ITM and ITM Members is the confidential information of ITM and/or ITM Members, as applicable (such information, the "**Confidential Information**").
- 14.2 Except as required by law, the Supplier will not, and will not permit any of its directors, officers, employees, contractors or agents, without the prior written consent of ITM, in whole or in part, to:
- a. disclose the Confidential Information to any other person for any reason or purpose whatever; or
 - b. make use of any Confidential Information for its, his, her or their own purposes or for the benefit of any other person.
- 14.3 Upon termination of this Agreement, all Confidential Information shall be returned to ITM.
- 14.4 The Supplier will not, except with the prior written consent of ITM use the name of ITM for or in connection with any advertising or promotional purposes of the Supplier.

15. GENERAL

- 15.1 **Notices:** Any notice, document, request, demand or other communication ("**Notice**") to be given for the purposes of this Agreement must be in writing and may be served personally or sent by pre-paid post, facsimile or email to the address or number of the relevant Party as specified in the Key Terms (or such other address, fax number or email address as a Party may notify the other Party in writing from time to time).
- 15.2 **Waiver:** No delay, failure or forbearance by a Party to exercise (in whole or in part) any right, power or remedy under or in connection with this Agreement will operate as a waiver of such right, power or remedy.
- 15.3 **Set-off:** ITM may deduct from or set-off any amount which it owes to the Supplier against any amount which the Supplier owes or will owe ITM. This right of set-off does not affect any other rights that ITM has in law or equity.
- 15.4 **Costs:** The Supplier will pay the costs and expenses, including legal fees, on a solicitor and own client basis, incurred by ITM in exercising any of its rights or remedies under the Agreement.
- 15.5 **Amendments:** No amendment to the Key Terms shall be effective unless it is in writing and signed by both Parties. The Parties expressly agree, however, that the General Terms may be amended from time to time by ITM and that any such changes shall take effect immediately from the date on which such changes are notified by ITM to the Supplier in writing (including by ITM notifying the Supplier in writing that an amended version of the General Terms has been uploaded to ITM's Supplier extranet (which is accessible via www.itm.co.nz using the Supplier's extranet login details set out in the Key Terms or otherwise by emailing info@itm.co.nz). Acceptance by the Supplier will be deemed by the initial or continued supply of Goods following such notification and any supply of Goods occurring after such notification will be deemed to be made on the General Terms as amended.





- 15.6 **Assignment:** Neither Party may assign or attempt to assign or otherwise transfer or subcontract any right or obligation arising out of this Agreement without obtaining the prior written consent of the other Party.
- 15.7 **Entire agreement:** This Agreement (comprising the General Terms and the Key Terms) supersedes all previous agreements in respect of its subject matter. This Agreement prevails over any standard terms of the Supplier customarily used by the Supplier in its dealings with customers and this Agreement sets out the entire agreement between the Parties.
- 15.8 **Governing law:** This Agreement will be governed by and construed in accordance with the laws of New Zealand.

