

TERMS AND CONDITIONS OF PURCHASE (GOODS AND SERVICES)

1. Contract

- 1.1 Subject to clause 1.2, this Agreement consists of the Front Page (if any) and the Purchase Order together with these terms and conditions and comprises the entire agreement between the parties as to its subject matter and supersedes all prior contracts, obligations, representations, conduct and understandings.
- 1.2 If the parties have signed a written agreement for the provision of the Goods and/or Services, then the terms and conditions of that agreement will apply to any supply of the Goods and/or Services and not these terms and conditions.
- 1.3 Subject to clause 1.2, by signing the Front Page (if any) or supplying Goods and/or Services, the Supplier is bound by this Agreement.
- 1.4 Any Special Conditions apply in addition to these terms and conditions and prevail if there is any inconsistency.
- 1.5 If there is any inconsistency between this Agreement and any other written material relating to the subject matter of this Agreement (except for an existing signed agreement between the parties specifically relating to the Goods and/or Services), this Agreement prevails. Without limiting the foregoing, any terms and conditions asserted or provided by the Supplier in connection with the supply of the Goods and/or Services will not bind PKW, even if signed on behalf of PKW.

2. Purchase Orders

- 2.1 Purchase Orders may be placed by any member within the PKW Group. In all such cases, the member of the PKW Group who placed the Purchase Order will be the relevant member of the PKW Group for that Purchase Order, the principal contracting party for this Agreement in relation to that Purchase Order, and solely responsible for the obligations arising under the Agreement.
- 2.2 Subject to clause 2.3, the Supplier must have a valid Purchase Order from PKW before supplying Goods and/or Services.
- 2.3 In circumstances where PKW requires the Goods and/or Services to be provided urgently and PKW advises the Supplier that the Goods and/or Services may be provided prior to the Supplier receiving a valid Purchaser Order, the Supplier may do so and PKW must issue a valid Purchase Order within 24 hours of advising the Supplier that they may provide the Goods and/or Services.
- 2.4 Wherever possible, Purchase Orders should set a fixed price for the provision of the Goods and/or Services. If it is necessary for a Purchase Order to set an

estimated price, the Supplier must notify PKW if the final price will exceed the estimated price prior to incurring costs above the estimated price and must notify PKW of the exact price as soon as reasonably possible so that PKW can issue a revised Purchase Order with the exact price prior to the Supplier rendering an invoice. If the Supplier does not comply with this clause PKW will not be required to pay any amount above the estimated price.

- 2.5 The Supplier must include a valid Purchase Order Number on all invoices and delivery slips.
- 2.6 A Purchase Order Number is only valid for a period of 90 days from the date of issue.

3. Performance

- 3.1 The Supplier acknowledges that PKW relies on its skill and expertise to perform the Supplier's Obligations.
- 3.2 In the performance of the Supplier's Obligations the Supplier must: **(a)** comply with all Regulatory Requirements; **(b)** provide all things and take effective measures to protect people, property and the environment; **(c)** observe and comply with all applicable PKW policies, procedures, codes and directives notified to the Supplier; **(d)** ensure that the Locations are left secure, clean, orderly and fit for use; **(e)** prevent nuisance and unnecessary noise, and disturbance or interference with others; **(f)** not act in a manner which could reasonably be expected to damage PKW's brand, goodwill or reputation; and **(g)** observe and adhere to any reasonable directions given by PKW in connection with this Agreement.

4. Warranties

- 4.1 The Supplier warrants (as a continuing representation and warranty) that the Goods and Services: **(a)** will be free from Defects; **(b)** will be fit for the purpose specified by PKW or, if none is specified, their usual purpose; **(c)** will comply with any specifications supplied by PKW or agreed between the parties; **(d)** will comply with Good Industry Practice; **(e)** in respect of Goods, that the Goods are new and of merchantable quality; and **(f)** in respect of Services, that the Services will be carried out with reasonable care, diligence and skill and performed by persons with the requisite skill and experience.
- 4.2 The Supplier further warrants that it has all Intellectual Property Rights relating to the Goods and/or Services to be provided to PKW and neither the Goods and/or Services, nor the provision or use of the Goods and/or Services by PKW will infringe

any Intellectual Property Rights of any third party.

- 4.3 These warranties are in addition to any representation, warranty, guarantee or term implied by Statute which is applicable to the Goods and/or Services.
- 4.4 The Supplier will, to the greatest extent possible, pass onto PKW the benefit of any warranty or other assurance from any third party in respect of the Goods or Services supplied to the intent that the Purchaser may have recourse against that third party through the Supplier.

5. Supply

- 5.1 The Supplier must supply the Goods and perform the Services at the Location and on the delivery date as specified in the Purchase Order or, if no delivery date is specified, within a reasonable time of the date of the Purchase Order. Time will be of the essence.
- 5.2 All Goods must be suitably packaged and transported in accordance with the Regulatory Requirements and in a manner that will prevent damage.
- 5.3 PKW accepts no responsibility for the transport of the Goods and/or Services (unless otherwise agreed in writing) or for packing materials or cases.
- 5.4 The Supplier must promptly inform PKW of any anticipated or actual delays, with complete information regarding the cause and the earliest possible delivery date. In such event, PKW may, in its absolute discretion (without prejudice to any other rights), grant an extension to the delivery date and/or do whatever is necessary to expedite the provision of the Goods and/or Services at the Supplier's expense, including terminating the Agreement (without compensation to the Supplier).

6. Price, Invoicing and Payment

- 6.1 The price of the Goods and/or Services will be as set out in the Purchase Order and is inclusive of all current and future Taxes (other than GST, unless specifically stated as GST inclusive) and, unless otherwise stated in the Purchase Order, is inclusive of all charges for packaging, packing, shipping, customs duties, carriage, insurance and delivery of the Goods to the Location. If no price is specified, then the Supplier must confirm the price with PKW before the supply of the Goods and/or Services. PKW will not be bound to pay for the Goods and/or Services unless PKW has agreed to the price in writing before the Goods and/or Services are supplied. The price set out in the Purchase Order or agreed between the Supplier and PKW for the Agreement may not be amended without the prior written agreement of PKW.

- 6.2 Within 30 days of delivery of the Goods or completion of the Services, the Supplier must send a correctly rendered invoice by email to PKW, accounts@pkw.co.nz. All invoices must: (a) if the Supplier is registered for GST in New Zealand, be in the form of a Tax Invoice, complying with the requirements of the GST Act and contain the following details: (i) the words "Tax Invoice" in a prominent place; (ii) the Supplier's name and address; (iii) Supplier's GST registration number; (iv) the name and address of the relevant legal entity within the PKW Group who placed the Purchase Order; (v) Purchase Order Number; (vi) date of issue of the tax invoice; (vii) description of the goods and/or services provided during the relevant period; (viii) quantity or volume of the goods and/or services provided; (ix) either: the dollar value of the supply with the GST amount shown separately, or the total combined dollar value of the supply and GST amount with a statement that the total is "GST Inclusive"; (x) any Taxes; (xi) if goods or services are exempt from GST, then this should be separately identified; (xii) any adjustment to an invoice will generally require either a debit/credit note to be issued which is compliant with the GST Act; or (b) if the Supplier is not registered for GST in New Zealand, the Supplier's invoice must contain the following details: (i) the Supplier's name and address; (ii) the name and address of the relevant legal entity within the PKW Group who placed the Purchase Order; (iii) Purchase Order Number; (iv) date of issue of the invoice; (v) description of the goods and/or services provided during the relevant period; (vi) quantity or volume of the goods and/or services provided; and (vii) dollar value of supply.
- 6.3 Unless PKW disputes an invoice, PKW will pay the amount of that invoice in New Zealand dollars on or before the 20th day of the month following the date of the invoice, provided that: **(a)** such invoice is received on or before the 3rd Business Day following month end (Cut-off Date); **(b)** if the 20th day of the month is not a Business Day, the payment will be processed on the prior Business Day; and **(c)** PKW (acting reasonably) approves the invoice for payment. Any invoice received after the Cut-off Date will be paid at the end of the following month.
- 6.4 Unless otherwise agreed in writing by the parties, payment will be made by way of electronic bank transfer directly to the Supplier's bank account.
- 6.5 If PKW disputes any invoice, it will notify the Supplier of the dispute and may withhold payment of the disputed amount until the dispute is resolved. The Supplier will cancel the original disputed invoice and issue a new one for the undisputed portion.
- 6.6 Upon settlement of the dispute, if it is agreed or determined that any amount

remains payable by PKW, the Supplier will issue an invoice for that remaining amount.

- 6.7 The Supplier shall ensure that where: **(a)** any payment is made for goods prior to delivery, including any deposit, advance or instalment payment; or **(b)** the Goods are being specifically imported, manufactured or assembled to PKW's specifications; or **(c)** raw materials and components have been purchased by the Supplier for the manufacture and assembly of the Goods, such goods, raw materials and/or components shall be identified as belonging to PKW and shall be set aside from (and shall not be used for or incorporated with) any other goods at the Supplier's premises.

7. Title and Risk

- 7.1 The Supplier must transfer to PKW good, marketable and unencumbered title to the Goods.
- 7.2 Subject to PKW's right to reject or return any Goods, title to a Good will pass from the Supplier to PKW on the earlier of: **(a)** the delivery of it into the possession or control of PKW; or **(b)** the payment by PKW for it.
- 7.3 Risk in a Good will remain with the Supplier and only pass to PKW upon the delivery of it into the possession or control of PKW.
- 7.4 PKW may, at any time, reject a Good or Service that is Defective or does not comply with this Agreement.
- 7.5 In respect of Defective Services, PKW may, at its election: **(a)** require the Supplier to re-perform the Services at the Supplier's cost within such time as PKW may reasonably request; or **(b)** arrange for the Services to be performed by a third party and recover the direct costs of doing so from the Supplier.
- 7.6 In respect of Defective Goods, the Supplier must, at PKW's election: **(a)** collect any rejected Good; or **(b)** pay the costs incurred by PKW to return the rejected Good to the Supplier (including any costs incurred removing a Good from a location at which it has been affixed or installed). Any moneys paid to the Supplier for the rejected Goods must be immediately refunded to PKW by the Supplier.
- 7.7 Risk in any rejected Good will, from the time it is rejected by PKW, vest in the Supplier. Title will pass when the Supplier takes possession or control of the rejected Good.
- 7.8 All PKW Property remains the property of the relevant PKW Person or its third party suppliers or customers. The Supplier must: **(a)** take reasonable care of PKW Property (including in the preservation and handling of it); **(b)** take all necessary

steps to ensure PKW Property is protected against misuse, damage, loss and unauthorised access; **(c)** comply with all requests or directions of PKW in relation to the management of the PKW Property; **(d)** use PKW Property for the sole purpose of performing its obligations under this Agreement; and **(e)** return PKW Property to PKW immediately upon demand.

8. Taxes

- 8.1 Subject to clause 8.2, the Supplier will be solely liable for payment of all applicable Taxes, which arise in connection with, or apply to, the Goods or Services or any payments made under this Agreement.
- 8.2 Where prices specified on a Purchase Order are expressed to be exclusive of GST, the supplier of a Taxable Supply will add the prevailing rate of GST onto all Taxable Supplies made in connection with this Agreement, and the Recipient agrees to pay that GST following receipt of a Valid Tax Invoice from the supplier of a Taxable Supply. The GST applicable to any Taxable Supplies made in connection with this Agreement is payable at the same time as the Consideration for those Supplies.
- 8.3 Where a party reimburses the other party for an authorised expense or other amount incurred in connection with any wholly or partly Creditable Acquisition or any wholly or partly Creditable Importation made by that other party (or the representative member of a GST Group of which that other party is a member), the amount reimbursed will be net of any Input Tax credit claimable in respect of that acquisition or importation.
- 8.4 If PKW is required, in its opinion, to withhold any amount in respect of tax from a payment to be made to the Supplier under this Agreement, it is entitled to do so, and such withholding and payment to the relevant taxing authority will be a good discharge of its obligation to pay the relevant amount to the Supplier.

9. Insurance

- 9.1 The Supplier must maintain the following insurances with a major New Zealand insurance company of good repute: **(a)** public liability insurance covering liability to any third party for death or bodily injury (including illness) and loss of or damage to property arising out of anything done or omitted to be done by the Supplier for an amount of not less than \$5,000,000, per claim; **(b)** insurance against all insurable risks for loss, damage or destruction to the Goods for their full reinstatement or replacement value, including cover while the Goods are in transit; **(c)** insurance covering the Supplier's own property, equipment, materials owned, hired, leased or used by the Supplier for the purpose of this Agreement; **(d)** professional

indemnity insurance for an amount of not less than \$2,000,000 per claim; and **(e)** any other insurance required by any applicable law.

9.2 The Supplier must, from time to time, provide PKW with certificates of currency for the insurances described in clause 9.1 if so requested by PKW.

10. Indemnity

10.1 The Supplier indemnifies each PKW Person against any loss, claim, damage, liability, cost or expense (including loss of profit, legal costs and third party claims against an PKW Person) arising directly or indirectly in connection with: **(a)** death and injury to any Personnel and any loss of or damage to any of the Supplier's, the Personnel's or any subcontractor's property; **(b)** death or injury to any PKW Person or loss of or damage to any PKW Person's property caused, or contributed to, by the Supplier, the Personnel or any subcontractor; **(c)** the Supplier's breach of this Agreement, negligence or act of fraud or willful misconduct; **(d)** any Taxes, arising out of the Supplier's non-payment of any amount, breach of this Agreement or failure to comply with any Regulatory Requirement; and **(e)** loss of or damage to the Goods until risk in the Goods has passed to PKW in accordance with clause 7.3.

10.2 PKW holds the benefit of these indemnities for itself and on trust for the benefit of each PKW Person.

11. Personnel & Supplier Equipment

11.1 The Supplier and the Personnel must be suitably qualified, experienced, competent and, where applicable, hold all Approvals required for the work they perform.

11.2 PKW may require the Supplier to immediately remove a member of the Personnel from performing Supplier's Obligations if PKW is dissatisfied with the performance of that person.

11.3 PKW, may (acting reasonably): **(a)** require the Supplier to, immediately remove any of Supplier's equipment or Personnel from any PKW site; and **(b)** may refuse any Supplier equipment or Personnel entry to any PKW site.

12. Supplier's Responsibility

12.1 The Supplier will provide the Goods and Services to PKW as an independent Supplier.

12.2 No contract or other arrangement with any Personnel or other person relieves the Supplier of any obligation under this Agreement.

12.3 The Supplier is responsible for all the acts and omissions of the Personnel and must ensure that the Personnel are aware of, and comply with, this Agreement.

12.4 The Supplier is solely responsible for the payment of remuneration and all other benefits due to the Personnel and all Taxes in respect of such remuneration and benefits.

13. Health and Safety

13.1 The Supplier must: **(a)** comply with, and ensure that any and all of the Supplier's Personnel comply with all health and safety Regulatory Requirements or Approvals that relate to the Supplier or the performance of the Supplier's Obligations including all obligations under work, health and safety legislation, regulations, codes of practice and industry standards relevant to the Goods and/or Services, this Agreement or at the Locations; **(b)** ensure that the Supplier's Personnel are competent in health and safety matters and that they at all times identify and exercise all necessary precautions for the health and safety of all persons; **(c)** provide to PKW all of the Supplier's health and safety policies and procedures prior to commencing the provision of any Goods and/or Services and notify PKW's health and safety manager immediately of any changes to the Supplier's health and safety policies or procedures; **(d)** comply with, and ensure that any and all of the Supplier's Personnel comply with all health and safety policies and procedures and any standard operating procedures that apply to the Supplier, the Supplier's Personnel, and the provision of the Goods and/or Services; **(e)** perform appropriate health and safety risk assessments and implement any necessary preventative controls prior to providing the Goods and/or Services and advise PKW of any such hazards and methods of control; and **(f)** ensure that the Locations and PKW's premises and worksites are left secure, clean, orderly and fit for use and that PKW's property including all security swipe cards, keys, books, records and papers, is returned to PKW once the Supplier has provided the Goods and/or Services; and **(g)** permit PKW, or any other person(s) authorised by PKW, to visit and inspect the Goods and Services, or any part of the Goods and Services, at any time for the purposes of carrying out health and safety inspections, reviews, audits and the like, and the Supplier shall provide safe and proper access and amenities for such inspections.

13.2 The Supplier and all of the Supplier's Personnel who may be in a PKW workplace (as defined in the Health and Safety at Work Act 2015) as part of the provision of the Goods and/or Services must complete an induction on health and safety and other matters (as determined necessary by PKW) with PKW prior to commencing the provision of the Goods and/or Services. The Supplier must make available all of the

Supplier's Personnel required to complete the induction. PKW may waive the requirement for any individual to complete the induction where PKW in its sole discretion considers it is not necessary.

- 13.3 The Supplier will, upon request immediately provide PKW with such information in respect of its compliance with health and safety requirements as is requested by PKW.
- 13.4 If the Supplier is providing the Goods and/or carrying out the Services on a site(s) owned or controlled by PKW then the Supplier must: **(a)** in so far as is reasonably practicable, consult, co-operate and co-ordinate its activities with PKW in relation to any health and safety duties that overlap; and **(b)** participate in PKW health and safety procedures, workplace assessments, training or orientation and any other relevant health and safety activities requested by PKW.
- 13.5 The Supplier must immediately notify PKW of any: **(a)** "notifiable event" (as defined in the Health and Safety at Work Act 2015); **(b)** near miss or exposure the Supplier becomes aware of in the course of manufacturing or delivering the Goods and/or undertaking the Services; and **(c)** any WorkSafe inspection, investigation or information request in connection with the Supplier's provision of the Goods or performance of the Services.
- 13.6 The Supplier must immediately make available to PKW, all records relating to a "notifiable event" or near miss which occurred while the Goods were being manufactured and/or delivered and/or the Services were being performed.

14. Environment

- 14.1 The Supplier warrants that it and its Personnel will comply with all relevant district and regional plans, standards, by-laws, regulations, and legislation, including but not limited to the RMA and the Building Act 2004.
- 14.2 The Supplier warrants that it and its Personnel shall not do or omit to do anything, or use any materials, substances or processes which: **(a)** would or is likely to discharge a contaminant into the environment that is not in compliance with any applicable consent, permit or licence; or that would or is likely to cause the emission of noise at an unlawful or unreasonable level; or that would or is likely to cause any adverse effect on the environment that is not otherwise permitted by law, including any applicable district or regional plan; **(b)** is a breach of any duty or obligation of the Supplier, PKW, or any PKW Person under the RMA; or **(c)** does or is likely to give rise to the issue of an abatement notice, enforcement proceedings, or an excessive noise direction under the RMA against PKW, any

PKW Person, the Supplier, or any Personnel.

- 14.3 The Supplier must: **(a)** comply with, and ensure that any and all Personnel comply with all policies and procedures that apply to the Supplier, the Personnel, and the provision of the Goods and/or Services; **(b)** ensure that Personnel are competent in environmental matters and that they at all times identify environmental risks and exercise all necessary precautions and preventative controls for the protection of the environment and advise PKW of any such risks and precautions and controls implemented; **(c)** provide to PKW all of the Supplier's environment policies and procedures prior to commencing the provision of any Goods and/or Services and notify PKW immediately of any changes; and **(d)** permit PKW, or any other persons authorised by PKW, to visit and inspect the Goods and Services, or any part of the Goods and Services, and any property used for the provision of the Goods and Services at any time for the purposes of carrying out environmental inspections, reviews, audits and the like, and the Supplier shall provide safe and proper access and amenities for such inspections.
- 14.4 The Supplier warrants that before any assignment, transfer, or subcontracting of any part of this Agreement the Supplier shall obtain similar undertakings as those states in **14.1** and **14.2** from the assignee, transferee, or sub-contractor as the case may be.
- 14.5 The Supplier shall indemnify and keep indemnified PKW and any PKW Person from all costs, damages, fines, penalties, loss and expense incurred or suffered by PKW or any PKW Person in respect of any breach of the RMA, directly or indirectly related to a breach by the Supplier or Personnel of any of the warranties set out in **14.1** or **14.2**, except that the Supplier's liability shall be reduced proportionality to the extent that PKW or any PKW Person caused or contributed to that liability.
- 14.6 If the Supplier becomes aware that it or any Personnel is or may be in breach, or is likely to be in breach of any of its obligations under, **14.1** or **14.2** then the Supplier shall immediately notify PKW of such breach or anticipated breach.
- 14.7 The Supplier will, upon request, immediately provide PKW with such information in respect of its compliance with environment requirements as is requested by PKW.

15. Intellectual Property

- 15.1 All Background IP will remain the exclusive property of the Supplier. All Intellectual Property Rights PKW held prior to entry into this Agreement or developed independently of this Agreement will remain the exclusive property of PKW.
- 15.2 The Supplier grants (and must procure any relevant third party grant) PKW a non-

exclusive, perpetual, irrevocable, transferable and royalty-free license (including the right to sub-license) to use (including modify and develop) such Background IP as is required to install, enjoy, exploit, dispose of or utilise any Good or Service.

15.3 All New IP vests in PKW.

15.4 The Supplier must not infringe the Intellectual Property Rights, misappropriate any trade secret or breach the confidence of any person or entity in connection with this Agreement.

16. Confidentiality

16.1 The Supplier must keep confidential the provisions of this Agreement and any information provided to it by PKW unless such information was already known to the Supplier before the time of disclosure to it or the information becomes generally available to the public (other than through breach of any confidentiality obligation on the Supplier).

16.2 On the termination or expiry of this Agreement the Supplier must either return to PKW or destroy any information provided to it by PKW that is in the possession or control of the Supplier or Personnel.

17. Investigations, Audits and Information

17.1 PKW may investigate, or participate in any investigation the Supplier undertakes, relating to this Agreement, the Goods or Services, the Supplier's health, safety and environmental performance, or any accident, injury, incident or complaint related to this Agreement.

17.2 The Supplier grants to PKW a right to access (and to take copies of) all its records, the Personnel and premises relating to this Agreement (excluding build up of lump-sum pricing and confidential information of other customers) at reasonable hours and on reasonable notice to audit such records and all transactions relating to this Agreement.

17.3 The Supplier must promptly notify PKW if it becomes aware of a Defect or any non-compliance with this Agreement provide all information as is reasonably requested by PKW.

18. Excluded Loss

No PKW Person is liable under or in connection with this Agreement (including for negligence) to the Supplier or any Personnel, howsoever arising, for any: **(a)** loss of contract, profit or revenue; **(b)** loss of, or damage to, reputation, credit rating or goodwill; **(c)** overheads or wasted expenditure; **(d)** financing costs; **(e)**

special, incidental or punitive damages; or **(f)** any loss or damage arising from special circumstances that are outside the ordinary course of things.

19. Termination

19.1 PKW may, at any time, terminate a Purchase Order, or the Agreement, in whole or in part, without cause by written notice to the Supplier. Following upon any such termination, the Supplier must, to the extent specified by PKW, stop all work on the Purchase Order. Any costs for any such termination of the Purchase Order or Agreement will be limited to actual non-recoverable costs incurred by the Supplier which the Supplier can demonstrate were properly incurred prior to the date of termination. In no event shall such reimbursement include anticipated profits for undelivered Goods or Services. Without limiting the foregoing, PKW may terminate the Agreement or a Purchase Order, in whole or in part, if the Supplier: **(a)** fails to make delivery of the Goods or Services within the time specified in the Purchase Order; **(b)** fails to replace or remedy Defective Goods or Services in accordance with these terms and conditions; **(c)** fails to comply with any other terms specified in the Agreement; **(d)** becomes insolvent, files or has filed against it a petition in bankruptcy, or makes an assignment for the benefit of creditors; or **(e)** stops or threatens to stop carrying on business.

19.2 Any right of termination under this clause 18 is additional to any rights available to PKW under the law of any relevant jurisdiction.

20. Survival

20.1 All rights a party accrued before expiry or termination continue.

20.2 The terms of clause 9, 10, 15, 16, 17, 18, and this clause 20 survive expiry or termination of this Agreement.

21. Governing Law

21.1 Each party irrevocably submits to the exclusive jurisdiction of the courts of New Zealand and the courts competent to determine appeals from those courts with respect to any proceedings that may be brought at any time relating to this Agreement; and waives any objection it may now or in the future have to the venue of any proceedings and any Claim it may now or in the future have that any proceedings have been brought in an inconvenient forum.

21.2 The United Nations Convention on contracts for the International Sale of Goods shall not apply to the supply of Goods from the Supplier.

22. Assignment and Subcontracting

- 22.1 The Supplier is not permitted to assign, transfer or subcontract all or any part of its obligations under this Agreement without the prior written consent of PKW. A change in the management or control of the Supplier or the sale of a major part of the Supplier's business or assets will be deemed to be an assignment for the purposes of this clause.
- 22.2 Any subcontractor engaged by the Supplier shall be obliged by the Supplier to comply with the terms of this Agreement as if the subcontractor was a party to it. The Supplier shall be liable to PKW for the acts, defaults, and negligence of such subcontractor in providing the Goods and/or Services as fully as if they were the acts, defaults or negligence of the Supplier.
- 22.3 If the Supplier engages any subcontractor the Supplier shall arrange for PKW, the Supplier and the subcontractor to consult, cooperate and coordinate activities in the provision of Services by the subcontractor to ensure that the Supplier, the subcontractor, and PKW understand the nature of the Services, the risks arising from the Services, and to provide ongoing verification that the risks are being controlled and the Services are being performed in accordance with this Agreement.
- 23. Non-exclusivity**
Nothing in these terms and conditions or the Purchase Order confers on the Supplier any right to be a sole or exclusive supplier of the Goods and/or Services to PKW.
- 24. Notices**
- 24.1 Any notice to be given under the Agreement must be in writing and must be delivered or sent by post or e-mail, if to: **(a)** PKW, to the address on the Purchase Order; or **(b)** the Supplier, to its registered office, or if the Supplier has no registered office, its usual address.
- 24.2 A notice will be deemed to have been received: **(a)** if delivered, when it is left at the relevant address; **(b)** if sent by post, 3 Business Days after it has been posted; **(c)** if sent by email, at the time the email enters the information system of the recipient party.
- 25. Amendment**
No amendment to this Agreement is effective unless it is in writing signed by both parties.

- 26. Waiver**
No failure or delay on the part of PKW in exercising any of its rights under this Agreement shall be construed as constituting a waiver of any such rights.
- 27. Severability**
If all or any part of a provision of this Agreement is invalid or unenforceable, that part or provision will be severed and will not affect the validity or enforceability of the remaining provisions of this Agreement.
- 28. Definitions and Interpretation**
- 28.1 In this Agreement:
- Agreement** means the Front Page (if any), the Purchase Order and these terms and conditions.
- Approval** means any license, permit, consent, authorisation, registration or other requirement (and any conditions attached to any of them) that is required or must be satisfied to supply, perform, receive or use the Goods and/or Services, or perform the Supplier's Obligations.
- Background IP** means any Intellectual Property Rights the Supplier held prior to entry into this Agreement or developed independently of this Agreement.
- Business Day** means any day other than a Saturday, Sunday or a statutory public holiday in Taranaki;
- Supplier** means the supplier supplying Goods and/or performing the Services as specified on the Purchase Order.
- Supplier's Obligations** mean all of the Supplier's obligations under this Agreement, including the supply of the Goods and/or Services.
- Defect** means any error, defect, omission, deficiency, non-conformity, fault, failure, malfunction or discrepancy in the Goods and/or Services of any type and howsoever arising.
- Defective** has a corresponding meaning.
- Front Page** means the front page, if any, attached to this Agreement which sets out the contract details and any Special Conditions to this Agreement.
- GST** means goods and services tax in respect of the Goods and Services Tax Act 1985.
- Good Industry Practice** means the standard of skill, care, diligence and workmanship that would be exercised by a skilled person who is experienced in providing goods and/or services of a similar nature as the Goods and Services.

Goods means the goods to be supplied by the Supplier, as described on the Purchase Order and all other goods and materials necessary to receive the benefit of the use of the Goods or Services.

Intellectual Property Rights means: **(a)** all intellectual property rights, including all registered and unregistered rights in respect of copyright, designs, trade marks (including service marks), know how, confidential or other proprietary information (including trade secrets), patents, inventions, computer software programs (in both source and object code form) and all other rights relating to inventions or discoveries or resulting from intellectual activity, whether in New Zealand or elsewhere; **(b)** any application for, or right to apply for, registration of any matter described in paragraph (a); **(c)** any right to take action in relation to infringement or other misuse of any matter described in paragraph (a); **(d)** any moral rights.

Intellectual Property has a corresponding meaning.

Location means the place or places specified as the location in the Purchase Order or, if none is specified, then at such location nominated by PKW.

New IP means any Intellectual Property created by or on behalf of the Supplier through the performance of the Supplier's Obligations but excluding Background IP.

PKW means the member of the PKW Group named on the Purchase Order and its permitted successors and assigns.

PKW Group means Parininihi ki Waitotara Incorporation, Parininihi ki Waitotara Trust (PKW Trust), and PKW Farms LP.

PKW Person means PKW and, in each case, each of their Related Companies and each of their respective officers, directors, employees, representatives and agents.

PKW Property means any asset, property, data or information provided by an PKW Person (including any vehicles, materials, goods, plant or equipment, know how, intellectual property rights or personal information).

Personnel means those persons who the Supplier uses to perform its obligations under this Agreement, whether an employee, officer, agent or subcontractor.

Purchase Order means a document issued by PKW, which is numbered, dated and details the work to be undertaken by the Supplier and the total dollar value of work approved under such purchase order.

Purchase Order Number means the number set out on the Purchase Order as relating to that particular purchase.

Regulatory Authority means any government or judicial entity, or other body that has powers or jurisdiction under any Regulatory Requirement over a party or any act relating to this Agreement.

Regulatory Requirement means any act, regulation, or statutory instrument, proclamation or any applicable jurisdiction in which any act or obligation in connection with this Agreement is or is to be carried out or regulated, any applicable law (whether legislative, equitable or common law in nature), New Zealand Standards or codes or any other judgement, decree or other instrument that has binding effect on the parties and/or this Agreement.

Related Company has the meaning given to that term in section 2(3) Companies Act 1993, provided that each reference in that section to a "company" shall be deemed to be a reference to any body corporate, wherever registered or incorporated.

Related Companies has a corresponding meaning.

RMA means the Resource Management Act 1991 and any legislation that replaces it.

Services means the services to be performed by the Supplier as described on the Purchase Order and all other services necessary to receive the benefit of the use of the Goods or Services.

Special Conditions means any conditions specified on the Front Page to be special conditions to this Agreement.

Supplier's Obligations means all of the Supplier's obligations under this Agreement, including to undertake any activities and produce any results or things to comply with both this Agreement and any Approval and the performance of Services and supply of Goods.

Taxes means a tax, (including GST, corporate tax, income tax, fringe benefits tax, payroll tax, PAYE and subcontractor's taxes), duty and excise (as those terms are defined within the Customs and Excise Act 2018), charge, royalty (whether based on value, profit or otherwise), fee, surcharge, contribution, deduction or withholding, however it is described, whether direct or indirect, by whatever method collected or recovered.

28.2 Capitalised terms in clause 6.2, 8.2 and 8.3 and in relation to "Tax Invoices", throughout this Agreement, have the same meaning as defined under the Goods and Services Tax Act 1985.

28.3 The word "including" and similar words do not imply any limitation.