



CONDITIONS OF PURCHASE (GOODS AND SERVICES) DOMESTIC AND INTERNATIONAL

1. DEFINITIONS: In these Conditions of Purchase:

Agreement means the Order together with these Conditions of Purchase;

Affiliate means: (a) any person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another person. A person shall be deemed to control another person for the purposes of this definition if the first person possesses, directly or indirectly, the power to appoint a majority of the directors of the second person, or to otherwise direct or cause the direction of the management, policies or powers of the second person, whether through the ownership of voting securities, by appointment of directors, by contract or otherwise; and (b) any entity in which the UFF or the Seller (as applicable) holds at least 50% of the shares of that entity;

Business Day means any day (other than a Saturday, Sunday or statutory public holiday) on which registered banks are open in Auckland, New Zealand;

Commencement Date means the commencement date specified in the Order or the date of any Related Agreement;

Confidential Information means, in relation to UFF, all information or knowledge that is: (a) confidential or proprietary to UFF (or any related company or member of the UFF group of companies, or any of UFF's customers or shareholders); or (b) information which is marked by UFF as "confidential", and includes (but is not limited to) the existence, and information relating to the terms of this Agreement and the business interests, methodology or affairs of UFF, but does not include: (i) information that is known or becomes known to the Seller on a non-confidential basis by way of a third party, except where the third party providing it is subject to a confidentiality obligation to UFF; (ii) is or becomes generally available to the public other than as a result of disclosure by or the acts or omissions of the Seller; (iii) information or knowledge required to be disclosed pursuant to any law or order of any court, governmental agency, stock exchange or body having the power to compel disclosure; or (v) information or knowledge which UFF has given its prior written consent to the disclosure of by the Seller.

Delivery Point means the place specified as the delivery point in an Order which includes an agreed location where the Seller makes the Goods available for collection by UFF;

Domestic means that the Seller is located within New Zealand;

Force Majeure Event means, in relation to a party, any event or circumstance which is beyond the reasonable control of that party and which that party could not take reasonable measures to prevent including, but not limited to, acts of God or the public enemy, flood, earthquake, storm, cyclone, fire, explosion, epidemic, war, embargo, riot, civil disturbance, any sabotage, confiscation or requisitioning of facilities, order or injunction of any duly constituted court of competent jurisdiction;

Goods means the goods specified in an Order that are to be supplied by the Seller to UFF on the terms set out in this Agreement;

GST means goods and services tax payable under the GST Act or any similar tax under any replacement legislation;

GST Act means the Goods and Services Tax Act 1985 (as amended, varied or substituted);

Inland Revenue means the New Zealand Inland Revenue Department;

Intellectual Property means all rights in and to all technology, techniques (both patented and non-patented), know-how, confidential information, patents, copyright, designs, trade names, inventions, discoveries and all other rights as defined by Article 2 of the Convention of July 1967 establishing the World Intellectual Property Organisation, including all applications for any of such rights as may exist anywhere in the world;

International means that the Seller is located outside New Zealand;

ITA means the New Zealand Income Tax Act 2007;

NRCT means Non-Resident Contractors' Tax levied under the ITA;

Order means a purchase order issued by UFF to the Seller;

Personal Property Securities Register means the electronic register maintained by the New Zealand Companies Offices (on behalf of the New Zealand Ministry of Business, Innovation and Employment) and which allows security interests in personal property to be registered and searched in accordance with the New Zealand Personal Property Securities Act 1999;

UFF means Ultrafast Fibre Limited as the purchaser;

Related Agreement means any agreement, deed or arrangement that UFF or a related company may have with the Seller or a related company of the Seller.

Seller means the person or company to whom the Order is addressed, and includes its successors and

assigns or any person or entity acting on behalf of and with the authority by that person or any subcontractor, independent contractor or other class of person appointed by that person;

Services means the services referred to in an Order that are to be supplied by the Seller to UFF on the terms set out in this Agreement and any other relevant documentation or terms specified in the Order;

Tax Invoice means an invoice issued by the Seller that complies with section 24 of the GST Act;

Term has the meaning set out in clause 2; and

Termination Date means the termination date detailed in the Order or Related Agreement.

2. TERM OF AGREEMENT

This Agreement shall commence on the Commencement Date and, unless terminated earlier in accordance with the provisions of this Agreement, shall continue in full force and effect and shall terminate on the Termination Date ("**Term**").

3. SUPPLY AND PURCHASE OF GOODS AND/OR SERVICES

- (a) Any Goods and/or Services purchased by UFF from the Seller will be purchased on the terms set out in this Agreement and any Related Agreement or terms specified in the Order.
- (b) The Seller must supply the Goods and/or Services free from any liens, charges, security interests or any other encumbrances.
- (c) The Seller shall ensure that all Goods and/or Services supplied pursuant to this Agreement comply with any specifications that may be specified in the Order.
- (d) Each party: (i) agrees that if the Goods and/or Services are supplied by, or to, an Affiliate of that party then it shall procure its Affiliate to abide by this Agreement as if it were a party to this Agreement and that the provisions of this Agreement will also be for the benefit of, and are intended to be enforceable by such Affiliate; (ii) acknowledges that the performance of any of its obligations by its Affiliates shall not in any way limit the obligations of that party under this Agreement; and (iii) unconditionally and irrevocably guarantees to the other, without the need for demand, the due performance of its Affiliates under this Agreement.
- (e) If the Seller fails to provide all or part of the Goods and/or Services in accordance with this Agreement, UFF may obtain replacement

goods and/or services from a third party at the Seller's cost.

4. ORDERING PROCEDURE

- (a) UFF will order the Goods and/or Services by presenting the Seller with an Order. The form of the Order will be determined by UFF. Each Order will have a separate purchase order number and all correspondence from the Seller relating to an Order must refer to the relevant purchase order number.
- (b) Unless previously withdrawn by UFF, an Order is open for acceptance by the Seller for the period stated in the Order or, when no such period is stated, for a period of three (3) Business Days from the date of the Order.
- (c) The Seller will supply the quantity of the Goods and/or Services specified in an Order to UFF on the delivery date to the Delivery Point.
- (d) The Seller shall notify UFF promptly of any circumstance(s) that may have a material effect on the Seller's ability to meet the specifications set out in an Order or to supply the Goods and/or Services in accordance with the terms of this Agreement.
- (e) The Seller will supply the Goods and/or Services to UFF on a non-exclusive basis. Nothing in this Agreement shall prevent UFF from obtaining goods or services which are the same as, or similar, to the Goods and Services from any third party or performing them itself.

5. PRICE AND TAX

- (a) The purchase price of the Goods and/or Services will be the price specified in the Order or, where no price is specified, the purchase price will be the price of the Goods and/or Services at the time of the Order ("**Purchase Price**").
- (b) The Purchase Price of the Goods and/or Services will be: (i) **for Domestic Sellers**, inclusive of all taxes and duties of any kind that either party is required to pay in respect of the sale of the Goods or the provision of the Services other than GST; (ii) **for International Sellers**, in New Zealand dollars (NZD), unless specified otherwise in the Order and inclusive of all taxes and duties of any kind other than those UFF is responsible for paying under clause 5(c)(ii).
- (c) **Liability for freight and insurance as between the Seller and UFF;** (i) **for Domestic sellers**, will be as specified in the Order or, where liability is not specified, the Seller will pay for freight

and insurance; (ii) **for International sellers**, all trade shall be governed by INCOTERMS® 2010. Where no Incoterm rule is specified on the Order, CIF (Cost, Freight and Insurance) will apply.

- (d) Following acceptance of an Order, the Seller must send UFF a valid Tax Invoice that records the price of the Goods and/or Services separately from the value of any GST payable on those Goods and/or Services. Where any amendment is made to the amount payable for the Goods and/or Services after the Tax Invoice has been issued, the Seller must issue an additional Tax Invoice or credit note (as the case may be) to UFF. If required under the GST Act, any invoice or credit note issued by the Seller must comply with the GST Act.
- (e) The Seller alone shall be responsible for paying all income tax and other taxes and levies of any nature imposed upon the Seller in respect of the supply of the Goods and/or Services to UFF, whether in New Zealand or elsewhere, and for making arrangements with Inland Revenue or the equivalent taxation authorities elsewhere in respect of such payments. UFF will not make any adjustment or reimbursement in respect of any additional amounts which the Seller may pay to or on behalf of its personnel to compensate for any increases in income tax or other taxes and levies of whatsoever nature which they may incur or suffer by reason of either operating or supplying the Goods and/or Services to UFF in New Zealand.
- (f) If the Seller is a not a New Zealand resident contractor for the purposes of the ITA, the Seller acknowledges that payments made by UFF in respect of any Services provided by that Seller (and/or its employees who are in New Zealand at the time those Services are performed) to UFF are subject to NRCT and UFF is required to deduct NRCT from payments to the Seller unless: (i) the Seller provides UFF with a Certificate of Exemption issued by Inland Revenue specifying that NRCT is not to be deducted from payments to the Seller in respect of their contract activity in New Zealand; or (ii) The Seller provides UFF with the following declaration: *"The Seller and/or its employees will not be present in New Zealand for more than 92 days in any 12-month period in which the Seller performs work for Ultrafast Fibre Limited. For the avoidance of doubt such presence in New Zealand includes any work performed for entities other than for Ultrafast Fibre Limited."*
- (g) If the Seller does not meet the requirements of either (f)(i) or (ii) above, UFF will deduct any

NRCT that UFF is required to deduct from the Purchase Price paid to the Seller and UFF will not be required to increase the purchase price payable to the Seller by the amount of any such deduction of NRCT.

- (h) If the Seller provides a statement as specified at (f)(ii), and the statement becomes invalid, the Seller will immediately advise UFF and remit to UFF the total amount of any NRCT payable by UFF.
- (i) Any amount withheld or deducted by UFF from any payment due to the Seller and paid to the Inland Revenue pursuant to UFF's reasonable understanding of its duty under the ITA, or the Tax Administration Act 1994 (or related statutes or replacements) or regulations made thereunder shall for the purposes of this Agreement be deemed to have been paid by UFF to the Seller and the payment thereof to the Commissioner of Inland Revenue shall be treated as a complete discharge of UFF's liability to the Seller in respect of the amount so paid.
- (j) The parties agree that the Purchase Price of any Goods purchased by UFF from the Seller pursuant to this Agreement is the lowest price that the parties would have agreed upon on the basis of payment in full on the date of this Agreement and on that basis no income or expenditure arises in respect of the sale and purchase of the Goods under the rules relating to financial arrangements in the ITA.

6. PAYMENTS

- (a) Unless otherwise agreed in writing between the parties, UFF is to pay for the Goods and/or Services in accordance with any terms set out in the relevant Order, or, if no such terms are set out, on the 20th day of the month following the date of the Tax Invoice for the Goods and/or Services submitted by the Seller, unless there is a dispute regarding the Tax Invoice. Tax Invoices must be sent to: accountspayable@ultrafast.co.nz
- (b) Unless otherwise agreed in writing, the Tax Invoice may only be created once the Goods have been delivered to the Delivery Point or the Services have been completed to UFF's satisfaction.
- (c) If UFF dispute any amount claimed in a Tax Invoice, then UFF shall advise the Seller in writing of the nature of the dispute and pay any undisputed portion of the Tax Invoice in accordance with the terms of this Agreement. The Seller shall use all reasonable endeavours to provide UFF with all information UFF

reasonably requires to verify the amount claimed in a disputed Tax Invoice. Any disputes in relation to a Tax Invoice shall be resolved in accordance with clause 20. UFF shall, within ten Business Days of the date of resolution or determination of any disputed Tax Invoice, pay to the Seller the amount of the Tax Invoice as resolved or determined.

- (d) Unless otherwise agreed in writing between the parties, UFF will direct credit the payment for the Goods and Services into the Seller's bank account.
- (e) Payment shall not prejudice UFF's right to reject any Goods and/or Services for breach of warranty or to obtain a refund for such Goods and/or Services.
- (f) UFF will not, at any time, be liable to pay or otherwise compensate the Seller for any Goods delivered or Service performed in excess of the amount or scope stated in the relevant Order.

7. DELIVERY OF GOODS

- (a) All Goods must be delivered by the Seller to the Delivery Point.
- (b) Where a delivery date is specified in the Order, time is of the essence. The Seller indemnifies UFF against any loss or damage suffered if the Seller does not deliver the Goods to the Delivery Point by the specified delivery date and, without prejudice to any rights or remedies available to UFF, UFF may cancel the Order and/or all further deliveries of Goods.
- (c) Delivery of the Goods will be deemed to have occurred when: (i) the Goods have been unloaded at the Delivery Point; and (ii) UFF has inspected the Goods; and (iii) UFF or its agent has acknowledged receipt of the Goods.
- (d) Without prejudice to any rights or remedies available to UFF, if the Seller delivers a different quantity of Goods to that specified in the Order, UFF may accept all of the Goods or accept any lesser quantity and reject the rest of the Goods.
- (e) The Seller will be liable for all costs and losses that UFF incurs as a result of the delivery of the wrong quantity of the Goods or the wrong goods.
- (f) The Seller must provide detailed delivery documents with every delivery of Goods, which must contain, as a minimum, UFF's purchase order number and order item number, the date, the Seller's details, the

quantity of Goods dispatched and an item description.

8. OWNERSHIP AND RISK

- (a) Except as otherwise provided in this Agreement, ownership of and risk in the Goods will pass to UFF once the Goods are delivered (or collected as the case may be) to the Delivery Point, inspected by (in accordance with clause 10 below), and accepted by UFF. Acceptance as to ownership of the Goods does not defeat the Seller's warranties contained in clause 13, or UFF's rights of return under clause 11, or act as a waiver of any of UFF's other rights.
- (b) Until such time as title in the Goods passes from the Seller to UFF, the Seller holds the Goods only as bailee and bears the risk of loss or damage to Goods until ownership of those Goods passes to UFF in accordance with clause 8(a) or the terms of the Order.

9. AMENDMENTS TO DRAWINGS, SPECIFICATIONS OR INSTRUCTIONS

UFF may amend any of the drawings, specifications or instructions for Goods and/or Services ("**Amendment**") and the Seller must comply with any notification of an Amendment. If an Amendment results in a decrease or increase in the Seller's costs, or in the time for providing the Goods and/or Services, the parties may agree, in writing, to adjust the Purchase Price and/or the time for providing the Goods and/or Services, provided that the Seller notifies UFF of the request for such an adjustment within seven (7) days after receipt of the Amendment notification.

10. INSPECTION

UFF or its representative has the right at all reasonable times to inspect the Goods (whether in the course of manufacture or not) and/or Services, whether at the Seller's place of business or otherwise. Notwithstanding such inspection or UFF's acceptance of delivery, all Goods and, where applicable, Services are subject to UFF's inspection and acceptance at its own premises following delivery or completion. If the Goods are to be installed or incorporated into any plant, machinery or any other part of UFF's premises, such inspection and acceptance may be carried out after installation or incorporation under operating conditions.

11. RETURN OF GOODS

If UFF cancels the Order or rejects any Goods in accordance with this Agreement, UFF may, at the risk and expense of the Seller, return the whole or any part of the Goods to the Seller and, at UFF's discretion, require the Seller:

- (a) to replace or repair the defective Goods at no additional cost; or
- (b) refund in full any money paid to the Seller for Goods that have been returned.

12. PACKING

All Goods must be marked, packed and otherwise protected, at the Seller's expense, for transit to the Delivery Point, in such manner as will prevent any damage to or deterioration of the Goods under normal transport and storage conditions having regard to the nature of the Goods.

13. WARRANTIES

- (a) The Seller warrants that the Goods: (i) will, on delivery to UFF, be free from any liens, charges, encumbrances and security interests and no financing statement is or will be registered or maintained in respect of the Goods in the Personal Property Securities Register; (ii) are and will remain fit for the purpose(s) made known by UFF (expressly or by implication) or, if purposes are not made known, will be fit for all the purposes for which goods of the type in question are commonly supplied or for which the Seller represents that they are or will be fit; (iii) are of merchantable quality and are free from defects in design, material and workmanship **provided that** where the Goods have been manufactured in accordance with any drawings, specifications or instructions provided by UFF, the Seller warrants only that the Goods conform to such drawings, specifications or instructions, are of sound material and workmanship, and are free from any defects; (iv) where the Goods have been manufactured by a third party, UFF will receive the full benefit of all warranties given by that third-party manufacturer in respect of those Goods. Any such warranty will survive the expiration of the Term or the termination of this Agreement; (v) correspond with the sample, demonstration model or description where the sale is by sample, demonstration model or description, as the case may be; and (vi) will not be supplied to UFF on terms that would allow the Seller or any third party to have access to any of UFF's premises to recover the possession of the Goods. To the extent permitted by law, the above warranties are in lieu of, and to the exclusion of any express or implied conditions or warranties, statutory or otherwise, relating to the quality and description of the Goods.
- (b) The Seller warrants that the Services: will be provided in a timely manner in compliance with this Agreement; (ii) will be performed

with due care, skill and diligence by competent and qualified persons; and (iii) will be fit for the purposes made known by UFF to the Seller (expressly or by implication) or, if no purposes are made known, for all the purposes for which Services of the type in question are commonly acquired or for which the Seller represents they are or will be fit.

- (c) The Seller warrants that it has obtained all licences, authorisations and other formalities necessary for the manufacture (and for International Sellers the export) of the Goods and/or the provision of the Services.
- (d) Without prejudice to any rights or remedies available to UFF, if the Seller breaches any of the warranties in this clause 13 and/or the warranty in clause 17, UFF may: (i) in the case of Goods, reject all of the Goods or any of them and obtain from the Seller, at UFF's option, a refund of the Purchase Price paid in respect of the rejected Goods or replacement Goods; or (ii) in the case of Goods, accept the Goods or any of them and obtain from the Seller damages in compensation for any reduction in value of the Goods below the Purchase Price paid or payable for the Goods; or (iii) in the case of Services, require the Seller to stop providing the Services and obtain replacement services from a third party at the Seller's cost.
- (e) Ownership of any Goods rejected under clause 13(e)(i) shall remain with the Seller and those Goods will continue to be at the Seller's sole risk.
- (f) The Seller will notify UFF immediately in the event the Seller receives notice of regulatory non-compliance or is the object of any governmental or regulatory action which affects or may affect the Goods and/or Services, the manufacture or supply of the Goods or the provision of the Services.

14. INDEMNITY

- (a) The Seller indemnifies, and will keep indemnified, UFF, its employees, agents, contractors (each an "**Indemnified Party**") from and against all claims, costs, demands, damages, losses, liabilities and expenses (including legal expenses on a solicitor client basis) of any nature ("**Liabilities**") (including all Liabilities arising as a result of damage to a third party's property or injury to or death of any person) sustained or incurred by any such Indemnified Party arising directly or indirectly out of, or in connection with: (i) any breach of the terms of this Agreement by the Seller; (ii) any negligent or wrongful act or omission of the Seller or any of its employees, agents, or

contractors in the course of or related to the performance of, or failure to perform, any obligations of the Seller under this Agreement; (iii) any fraud, dishonesty, misrepresentation or wilful default of the Seller; and (iv) for the avoidance of doubt, clause 14(a)(ii) applies to any claims against any Indemnified Party arising as a result of damage to a third party's property or injury to or death of any person as a result of the Seller's negligence in the course of or related to the performance of (including any failure to perform) any of its obligations under this Agreement.

- (b) Notwithstanding, and without limitation to, any other provision of this Agreement, UFF can claim for the invoiced Purchased Price of the Goods and/or Services provided by the Seller to UFF, any costs or penalties imposed by any third party (including but not limited to any governmental or regulatory authority) associated with any recall, return or rejection of the Goods and in each case, in connection with a claim arising as a result of any of the events set out in clause 13(a).
- (c) The Seller's liability under clause 14(a) and (b) shall be limited to NZD \$10 million (plus GST, if any) for any one event or for any series of related events that occur over a 12-month period.
- (d) Without prejudice to any other remedies available to UFF, if the Seller provides any Services or constructs, inspects or delivers any Goods to UFF at the Delivery Point, the Seller will, at its own expense, indemnify, hold harmless and defend UFF and its officers, agents, contractors and employees for any loss, liability or demand, or the payment of any sum of money by reason of any damage to any property, that may occur in connection with the construction, inspection or delivery of the Goods and/or the provision of the Services.

15. INSURANCE

- (a) Unless UFF provides the Seller with written consent to the contrary, the Seller must hold a minimum of NZD \$10 million public liability insurance during the Term of this Agreement and if UFF requires, the Seller must hold a minimum of NZD \$10 million professional indemnity insurance during the Term of this Agreement ("Insurance").
- (b) The Seller shall take out and maintain the Insurance in respect of any potential liability, loss or damage that may arise relating to the performance of the Seller's obligations under this Agreement with an insurer who is satisfactory to UFF (acting reasonably). The

Seller agrees to provide evidence of such insurance to UFF upon demand. The Seller further agrees that the Seller shall, if requested (at any time) by UFF, procure UFF's interest or interests to be noted directly on such policy or policies. The Seller acknowledges that the taking out of the Insurance by it shall not in any way limit or exclude its obligations to indemnify the Indemnified Party pursuant to clause 14(a).

16. HEALTH, SAFETY AND ENVIRONMENT

When providing Goods and/or Services at UFF's premises, or at any UFF nominated site, the Seller must ensure that:

- (a) its employees, contractors and agents are competent in health, safety and environmental matters and that they at all times identify and exercise all necessary precautions for the health and safety of all persons and the protection of the environment;
- (b) it complies with all applicable New Zealand legislation including (without limitation) the Health and Safety at Work Act 2015;
- (c) it complies with all of UFF's safety requirements and procedures;
- (d) it performs appropriate health, safety and environment risk assessments and implements any necessary preventative controls prior to providing the Goods and/or Services;
- (e) it immediately reports to UFF all incidents involving injury or potential injury to any person or the environment or damage to property;
- (f) UFF's premises are left secure, clean, orderly and fit for use;
- (g) all UFF's property, including (without limitation) all security swipe cards, keys, books, records and papers, is returned to UFF once the Seller has provided those Goods and/or Services;
- (h) where goods are provided to UFF the Seller is to provide a signed declaration that there are no Asbestos Containing Materials ("ACMs") in any component of the Goods, regardless of whether the Goods have been manufactured by a third party or not; and
- (i) any Goods or components thereof that contain hazardous substances must be identified and labelled by the Seller.

17. INTELLECTUAL PROPERTY RIGHTS

- (a) The Seller warrants that the sale or use of the Goods and/or the supply of the Services will not infringe any patent, design, trade mark, copyright or other Intellectual Property right of a third party or result in UFF becoming liable for the payment of any royalties or other fees.
- (b) Any Intellectual Property created by the Seller in the course of providing the Goods or the Services will be owned by UFF.
- (c) The Seller will, at its own expense, indemnify, hold harmless and defend UFF and its officers, agents, contractors and employees for any loss, damage, expense, liability, claim or demand for actual or alleged infringement of any patent, design, trade mark, copyright or other intellectual property right of a third party, arising from the purchase, use or sale of the Goods, supply of the Services, or any other dealings arising under this Agreement.
- (d) All plans, drawings, specifications and other technical or engineering data relating to the Goods and/or Services supplied by or on behalf of UFF to the Seller, and any copies or patterns made from those documents, remain UFF's exclusive property and the Seller will only use them for the purposes of the Order and will return them to UFF on demand.
- (e) Clauses 17(a) and (b) do not apply where the Goods are manufactured to UFF's detailed design.

18. CONFIDENTIALITY

- (a) The Seller acknowledges that, while this Agreement is in force, UFF may (from time to time) disclose certain Confidential Information to the Seller. Where the Seller comes into possession of such Confidential Information, the Seller and its officers, employees, agents and contractors: (i) will only be permitted to use the Confidential Information to the extent necessary to enable the Seller to perform its obligations under this Agreement; and (ii) will not disclose the Confidential Information to any third party without the prior written consent of UFF, unless the Seller is required by law to do so or such disclosure is required in connection with legal proceedings relating to this Agreement.
- (b) The Seller will not use UFF as a reference, use UFF's name or brand, make any public statement or comment, issue any publication, declaration, notice or broadcast (in any form), seek out or respond to any media enquiries or requests, or make any other form of disclosure

or communication of any kind relating to the terms or any transactions contemplated by or completed under this Agreement without UFF's prior written consent (which consent may be withheld in UFF's absolute discretion).

- (c) Any breach of this clause 18 will constitute a material breach of this Agreement and UFF shall have the right to terminate this Agreement or seek any other remedy against the Seller which UFF (in its sole discretion) considers appropriate.
- (d) The agreements, obligations, warranties and undertakings in this clause 18 will continue in full force until the earlier of: (i) the date two (2) years from the date of disclosure of the relevant Confidential Information; or (ii) until such time as the relevant Confidential Information enters the public domain (other than directly or indirectly through the default of the Seller under this Agreement).
- (e) On termination of this Agreement, the Seller will immediately on demand return to UFF or (if requested by UFF writing) destroy any Confidential Information in the Seller's possession.

19. ASSIGNMENT AND SUBCONTRACTING

- (a) The Seller must not assign or attempt to assign or otherwise transfer or subcontract any right or obligation arising out of this Agreement without obtaining UFF's prior written consent (such consent not to be unreasonably withheld or delayed by UFF).
- (b) Any of the following will be deemed to be an assignment requiring the consent of UFF under clause 19(a): (i) a change in the direct or indirect beneficial ownership or control of the Seller, where the Seller or its ultimate parent is not listed on a recognised stock exchange; (ii) where a Seller or its ultimate parent is listed on a recognised stock exchange, any change in the direct or indirect beneficial ownership or control of any shares in that Seller or its ultimate parent that results in a person holding 10% or more of the shares in the Seller or its ultimate parent (where less than 10% were held prior to the change) or increasing the percentage of shares it holds in the Seller or its ultimate parent (where it held 10% or more prior to the change); or (iii) the disposal by the Seller of the whole or part of its assets, operations or business (where the partially disposed assets, operations or business are required to enable the Seller to perform its obligations under this Agreement) other than in the ordinary course of business.

20. DISPUTE RESOLUTION

- (a) The parties agree that any dispute of whatever nature arising between UFF and the Seller is to be notified in writing by the disputing party to the other ("**Dispute Notice**"). On receipt of a Dispute Notice, each party is to use its best endeavours to resolve the dispute by discussion, meeting and/or other informal means.
- (b) If the dispute is not resolved by discussion, meeting and/or other informal means within 20 Business Days of the date of the Dispute Notice, then the parties may agree to submit the dispute to arbitration pursuant to the Arbitration Act 1996 (excluding Clauses 4 and 5 of the Second Schedule), or, failing agreement, either party may pursue resolution of the dispute through legal proceedings before the New Zealand courts.
- (c) This clause 20 does not affect either party's right to seek urgent interlocutory relief.

21. TERMINATION

- (a) UFF may terminate this Agreement (and therefore an Order), with immediate effect, by giving written notice to the Seller: (i) if the Seller fails to perform any of its obligations under this Agreement and the failure has not been remedied within three (3) Business Days of receipt of a notice by the Seller requiring the failure to be remedied; (ii) if the Seller breaches a provision of this Agreement where that breach is not capable of remedy; (iii) any step is taken to appoint a receiver, a trustee and manager, liquidator, statutory manager, an administrator or other like person of the whole or part of the Seller's assets, operations or business; (iv) the Seller passes a resolution for winding up, or assigns its estate or any substantial part of it for the benefit of its creditors; or (v) is unable to pay its debts in the ordinary course of business or is insolvent.
- (b) UFF may at any time, by notice in writing to the Seller, cancel a specific Order(s) and this Agreement in respect of any undelivered Goods or uncompleted Services. If the Order covers: (i) standard stock goods or standard services, UFF's only obligation to the Seller is to pay for Goods delivered, or Services provided, prior to the date of cancellation; and (ii) Goods or Services manufactured or provided, or to be manufactured or provided, to UFF's specifications or specifications prepared by the Seller for UFF, then, on receipt of the cancellation notice, the Seller must immediately stop all performance under the Order except as UFF otherwise directs.

- (c) Notwithstanding clause 21(b)(ii), where the Seller is not in default of its obligations under this Agreement, UFF must, on cancellation under clause 21(b)(ii), pay to the Seller: (i) all reasonable costs directly incurred by the Seller in connection with the Order up to and including the date of cancellation; and (ii) such other reasonable costs, including cancellation charges under any subcontract, as the Seller may establish to the satisfaction of UFF, provided however that the total cancellation payment plus any previous payment made by UFF to the Seller for the Goods and/or Services, as the case may be, must not exceed the total Purchase Price stated in the Order. On such payment, the ownership of all Goods and uncompleted work shall pass to UFF.
- (d) Termination of this Agreement is without prejudice to any rights and obligations of the parties accrued up to and including the date of expiry or termination. For the purposes of this clause accrued includes matters arising prior to termination but not discovered until after termination.

22. FORCE MAJEURE

Notwithstanding any other provision of this Agreement, non-performance by either of the parties of any of its obligations under this Agreement shall be excused, without liability for non-performance, during the time and to the extent that such performance is prevented, wholly or substantially, by a Force Majeure Event.

- (a) The party claiming the benefit of a Force Majeure Event must promptly give written notice to the other party specifying the cause and extent of its inability to perform any of its obligations under this Agreement and the likely duration of such non-performance. In the meantime, such party shall take all reasonable steps to remedy or abate the Force Majeure Event.
- (b) Performance of any obligation affected by a Force Majeure Event shall be resumed as soon as reasonably possible after the completion, cessation, end, termination or abatement of that Force Majeure Event. If by reason of a Force Majeure Event a party is unable to perform any obligation under this Agreement for a consecutive period of 30 Business Days or such other period as the parties may agree in writing, the other party may on expiry of that period give written notice to the other party terminating this Agreement with immediate effect.

- (c) Nothing in clause 22(a) shall excuse a party from an obligation to make payment when due under this Agreement.
- (d) Termination of this Agreement under clause 22(c) shall not prejudice the rights of either party against the other in respect of any matter or thing occurring under this Agreement before termination.

23. RELATIONSHIP OF THE PARTIES

Nothing in this Agreement shall create, constitute or evidence any partnership, joint venture, agency, trust or employer/employee relationship between the parties, and a party may not make, or allow to be made, any representation that any such relationship exists between the parties. A party shall not have the authority to act for, or to incur any obligation on behalf of, any other party, except as expressly provided for in this Agreement.

24. LEGAL COMPLIANCE

The Seller must comply with all applicable laws, rules, regulations, bylaws, standards, codes of practice, and UFF's current policies and procedures in providing the Goods and Services.

25. WAIVER

- (a) No waiver by a party of its rights under this Agreement is effective unless it is in writing signed by that party.
- (b) A waiver by UFF pursuant to this clause 25 will not prejudice its rights and any remedies available in respect of any subsequent breach of the Agreement by the Seller.
- (c) No failure by UFF to exercise, and no delay in exercising, a right under this Agreement will operate as a waiver of that right, nor will a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right.

26. SEVERABILITY

If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, this Agreement remains otherwise in full force apart from such provision that will be deemed deleted

27. AMENDMENT

No amendment to this Agreement is effective unless it is in writing signed by both parties.

28. INCONSISTENCY

To the extent of any inconsistency between these Conditions of Purchase and the Order, the terms of the Order will prevail.

29. RIGHTS AND RESPONSIBILITIES THAT CONTINUE

The provisions of clauses 13 and 18 will continue to bind the parties notwithstanding the expiry or termination of this Agreement or that either party may have ceased to be a party to this Agreement.

30. APPLICABLE LAW

- (a) This Agreement is governed by and is to be construed in accordance with New Zealand law. The parties submit to the exclusive jurisdiction of the Courts of New Zealand.
- (b) The parties agree that in cases where the United Nations Convention on Contracts for the International Sale of Goods ("Convention") would otherwise apply to this Agreement, the application of the Convention is excluded in accordance with Article 6 of the Convention.

31. REFERENCES

In this Agreement, a reference to any legislation or to any statutory provision includes: (i) any statutory amendment, modification or re-enactment of; (ii) any statutory provision substituted for; and (iii) all ordinances, by-laws, regulations, rules, by-laws, codes and statutory instruments (however described) issued under, that legislation or statutory provision (as the case may be).

32. ENTIRE AGREEMENT

Subject to any Related Agreement that both parties agree forms part of this Agreement, this Agreement together with the relevant Order constitutes the entire agreement of the parties in respect of the matters covered by it and supersedes all previous agreements in respect of those matters, including the Seller's terms (if any).