

**CHOICE COMMERCIAL INTERIORS LIMITED**  
**STANDARD TERMS AND CONDITIONS OF PURCHASE (GOODS AND SERVICES)**

**1 APPLICATION OF THESE TERMS**

1.1 **When Terms apply:** These terms and conditions ('Terms') apply to the supply of Goods and Services to Choice Commercial Interiors Limited (company number 657367) trading as 'Choice Construction Group' ('us', 'we', 'our'), by the person specified as the 'supplier' or 'service provider' in the Purchase Order ('you', 'your').

1.2 **Purchase Orders:** We may request that you supply Goods or Services by issuing you a Purchase Order.

1.3 **Formation of Contract:** When you acknowledge a Purchase Order by:

- a supplying the Goods or Services contemplated by the Purchase Order; or
- b otherwise indicating to us, by return email or other written or verbal acknowledgment, that you will deliver the Goods or perform the Services contemplated by the Purchase Order,

you agree to supply the Goods and/or Services contemplated by the Purchase Order under an individual and legally binding contract between us and you which comprises the Purchase Order and these Terms ('Contract').

1.4 **How we update:** We may update these Terms by:

- a posting an updated version of these Terms on our website; and/or
- b notice in writing to you in accordance with clause 14,

and such will take effect with effect from the date of the next Contract you and we enter into in accordance with clause 1.3.

1.5 **Definitions and interpretation:** Defined terms and rules of interpretation are set out in clause 16.

**2 GOODS**

2.1 **Application of this clause:** Clause 2 applies if the relevant Purchase Order contemplates the supply of Goods.

2.2 **Delivery of Goods:** We will purchase, and you must Deliver to us, the Goods, for the Goods Purchase Price, in accordance with each Contract.

2.3 **Time of Delivery:** You must Deliver the Goods to us:

- a on the Required Delivery Date; and
- b at the time specified by us in the Purchase Order, or if no time is specified, between the hours of 9:00am and 5:00pm.

2.4 **Manner of Delivery:** Delivery of the Goods occurs when:

- a the Goods have been physically delivered to the Delivery Address and their receipt has been acknowledged by our duly authorised representative; and
- b the Goods have been unloaded at the Delivery Address in accordance with our directions; and

c the Goods have been the subject of Acceptance.

2.5 **Pre-Delivery inspection:** We may inspect the Goods on or prior to their arrival at the Delivery Address (including while the Goods are being manufactured at, or otherwise held at, any premises under your control) to assess whether the Goods comply with the Delivery Warranty, and will notify you whether the Goods are or will be:

- a accepted by us ('Acceptance'); or
- b not accepted by us, in which case we will specify in our notice to you the Defects of which we are aware ('Pre-Delivery Defect Notice').

2.6 **Withholding Acceptance:** We may withhold Acceptance of the Goods unless we have no reason to believe that all of the Goods do not satisfy the Delivery Warranty.

2.7 **Acceptance without prejudice:** Acceptance by us of any Goods does not signify that the Goods comply with the Delivery Warranty, nor does it limit our rights under these Terms in respect of any Defect.

2.8 **Pre-Delivery Defect:** If, we issue a Pre-Delivery Defect Notice, you must:

- a promptly correct the Defect; and
- b resubmit the Goods for a further pre-Delivery inspection in the manner contemplated by clause 2.5.

2.9 **Remedies:** If Acceptance of the Goods does not occur following a further pre-Delivery inspection as contemplated by clause 2.5, we may:

- a extend the time for correction of the Defects upon terms acceptable to us; or
- b reject the Goods ('Rejected Goods'), in which case:
  - i you must remove the Rejected Goods from the Delivery Address, at your cost; and
  - ii we will have no obligation to pay, and you must promptly refund (to the extent already paid by us) the Goods Purchase Price for the Rejected Goods.

2.10 **Delay:** Without limiting any of our other rights under these Terms (including the right to terminate the relevant Contract under clause 11.4), if the Goods are not Delivered by the Required Delivery Date ('Delay'):

- a you must immediately give us notice setting out the cause of the Delay and its expected duration;
- b you must take all reasonable steps necessary (including by allocating additional resources) to eliminate or avoid the Delay and mitigate its effects; and
- c the Goods Purchase Price payable by us for such Goods will be reduced by the applicable Delay Credit.

2.11 **Basis of Delay Credit:** The reduction in the Goods Purchase Price by way of a Delay Credit:

- a reflects the fact that, where Goods are not Delivered by the Required Delivery Date, your obligation to Deliver the Goods will not have met the standard agreed with us; and
- b secures, in a reasonable and proportionate manner, your obligations in a manner that protects our legitimate interests to ensure the Goods are delivered in a timely manner as contemplated by these Terms.
- 2.12 **Risk:** Risk in respect of each item of Goods will pass to us on Delivery.
- 2.13 **Title:** Title in respect of each item of Goods will pass to us on the earlier of:
- a Delivery; and
- b payment of the Goods Purchase Price for the relevant Goods.
- 2.14 **Delivery Warranty:** You warrant that, upon Delivery, the Goods:
- a including each part or component used in the manufacture of the Goods, are newly manufactured and have not been used;
- b comply with the Requirements;
- c meet the Specifications;
- d will meet any warranties that are required by the Head Contract;
- e are free from any other omissions in design, materials, performance and workmanship;
- f are appropriately packaged;
- g are in good condition and otherwise free from damage; and
- h are supplied free from any Security Interest.
- 2.15 **Goods Warranty:** You warrant that the Goods, during the Warranty Period:
- a will comply with the Requirements;
- b will meet the Specifications;
- c will meet any warranties that are required by the Head Contract;
- d will be fit for the purposes:
- i for which we make it known the Goods are required; and/or
- ii for which you represent that they are or will be fit;
- e will be free from any other omissions in design, materials, performance and workmanship.
- 2.16 **Third party warranties:** Where you obtain a third party or manufacturer's warranty relating to Goods:
- a you hereby assign (to the extent capable of a present assignment of future rights), or agree to assign on our request, as the case may be, the warranty to us;
- b if the warranty is not capable of assignment, you must hold the benefit of the warranty on trust for us and enforce it on our request.
- 2.17 **Notification of Defect:** We may give notice to you of any Defect that arises during the Warranty Period ('Defect Notice').
- 2.18 **Coverage of Goods Warranty:** Without limiting our rights under these Terms, if we issue a Defect Notice:
- a we may make available the relevant Goods to you for you to collect from wherever in New Zealand the Goods are in normal operational use;
- b if we do, you must repair or replace the Goods or any part of the Goods in respect of which a Defect Notice is given, promptly and in any event within 10 Business Days after the date of the Defect Notice.
- 3 PERFORMANCE OF SERVICES**
- 3.1 **Application of this clause:** Clause 3 applies if the relevant Purchase Order contemplates that you will perform Services.
- 3.2 **General requirements:** You must:
- a perform the Services in a manner that meets the Requirements
- b perform the Services in accordance with Good Industry Practice;
- c comply with Applicable Law when performing the Services;
- d comply with all reasonable instructions given by or on behalf of us in connection with the Services;
- e maintain at your cost all licences, approvals, permits and authorisations required by Applicable Law in order for you to perform the Services;
- f promptly notify us of any matter which may materially impair your ability to perform the Services;
- g ensure that your Personnel assigned to perform the Services have sufficient knowledge of the relevant aspects of our operations, business, technical and functional requirements and practices, and have adequate levels of skill and experience in their respective areas of expertise;
- h keep us informed regularly of, and promptly respond to, any of our reasonable requests relating to the Services; and
- i work and co-operate with us and with our representatives, agents, and consultants and with any other person we instruct you to work and co-operate with, including our other contractors, suppliers, and service providers.
- 3.3 **Your Personnel:** We may require you to remove from the provision of the Services any of your Personnel:
- a who we consider, in our reasonable opinion, to:
- i be incompetent;
- ii be negligent;
- iii have committed misconduct, or
- b who a CCG Customer requests that we remove from the provision of the Services.

- 3.4 **Warranties – Services:** You warrant that:
- a your performance of the Services and our receipt of the Services do not and will not infringe any contractual rights or IPR of any person;
  - b your performance of the Services will comply with Applicable Law;
  - c your performance of the Services will meet any warranties that are required by the Head Contract;
  - d there is no other agreement, arrangement, understanding, or requirement binding on you, that would prevent you from performing the Services; and
  - e the Services will meet the Requirements.
- 4 VARIATIONS**
- 4.1 **Variation Request:** We may request a variation to the scope of any Services or the terms of any Purchase Order (**'Variation'**) by sending you a request (**'Variation Request'**).
- 4.2 **Receipt:** You must acknowledge receipt of the Variation Request within two Business Days.
- 4.3 **Response:** Within five Business Days (or earlier if we request) after receiving or submitting a Variation Request, you must notify us whether the requested Variation:
- a is likely to give rise to additional costs, and provide a good faith estimate of the anticipated costs; and/or
  - b is likely to impact the timeframe for the Delivery of any Goods or the completion of any Services.
- 4.4 **Action by us:** On receipt of your response, we may:
- a take no further action (in which case, the Variation Request will be deemed withdrawn);
  - b proceed with the implementation of the Variation; or
  - c require you to provide further information in relation to the scope and pricing of the Variation.
- 4.5 **Variation Order:** Where clause 4.4b applies, you must prepare a draft variation order (**'Variation Order'**) for our review.
- 4.6 **Carry out Variation Order:** Once the Variation Order has been agreed and signed by both you and us, you must carry out the Variation Order.
- 4.7 **Obligations:** You must consider any Variation Request expeditiously and in good faith in accordance with the process set out in this clause 4, and must not unreasonably withhold your consent to any Variation Request we propose.
- 5 HEAD CONTRACT**
- You must perform your obligations under each Contract so that no act or omission of yours constitutes, causes, or contributes to any breach by us of any of our obligations under any Head Contract of which you are aware (including any Head Contract Terms).
- 6 SUBCONTRACTING**
- 6.1 **Consent required:** You must not subcontract any of your obligations under a Contract without our prior consent.
- 6.2 **Obligations when subcontracting:** Without limiting clause 6.1:
- a you will remain principally liable for the performance of all of your obligations in respect of which you appoint a Subcontractor, and will be responsible for acts, omissions, defaults and/or negligence of your Subcontractors; and
  - b you must act in accordance with Good Industry Practice when appointing any Subcontractor.
- 7 HEALTH AND SAFETY**
- 7.1 **Compliance:** You must, and must ensure that your Personnel will, comply with Health and Safety Law.
- 7.2 **Co-operation:** You must, and must ensure that your Personnel will:
- a co-operate with us with respect to all requests made by us for you to provide us with information in relation to a CCG Site or any work to be carried out at a CCG Site;
  - b consult, cooperate and coordinate activities with us and any other relevant person in the performance of your obligations under each Contract to ensure that you, your Personnel, and we understand:
    - i the nature of those obligations and how they will be carried out at an operational level;
    - ii the risks arising from the Delivery of the Goods or the performance of any Services; and
    - iii the controls to be implemented to mitigate those risks;
  - c participate in, or facilitate any health and safety audits, inspections or investigations conducted by us or by any regulatory authority; and
  - d promptly follow all reasonable directions that we provide to you in relation to each CCG Site, including any directions to remove or secure any property located at or near the CCG Site which is under your control.
- 7.3 **Security and health and safety policies:** You must comply and must ensure that your Personnel comply with any security and health and safety policies relating to a CCG Site upon notification of those policies by us or the relevant CCG Customer.
- 7.4 **Suspension of Services:** If we are not satisfied that the Services will be or are being performed safely at any CCG Site, we may:
- a take such action and do such further things as we consider necessary or desirable to ensure the safety of any person, and charge you the costs of doing so; and/or
  - b immediately suspend the Services by notice (written or verbal) to you.

## 8 INVOICING AND PAYMENT

8.1 **Invoicing:** You must issue valid GST invoices (for the purposes of the Goods and Services Tax Act 1985) to us for:

- a the Goods Purchase Price, no earlier than Delivery;
- b the Service Fees:
  - i on the basis set out in the relevant Purchase Order; or
  - ii if the Purchase Order does not specify the basis on which you may invoice for the Service Fees, monthly in arrears.

8.2 **Payment terms:** We will pay all invoices issued in accordance with clause 8.1 by the date that is 30 days after the end of the month in which we receive the invoice.

8.3 **No additional amounts payable:** The Service Fees and the Goods Purchase Price (as applicable) are the sum of all amounts payable by us for the Delivery of the Goods and/or the performance of the Services, and unless we enter into an Variation Order in accordance with clause 4, we will not be required to pay you any additional amount in connection with the Delivery of the Goods and/or the performance of the Services, including:

- a freight, insurance, and other charges in connection with the Delivery of the Goods;
- b any expenses you incur in performing any Services;
- c any increases in the cost to you to Deliver the Goods and/or perform the Services, such as those arising from exchange rate fluctuations.

8.4 **Estimates:** If the Service Fees are expressed in the Purchase Order as being an 'estimate' or otherwise expressed as being indicative only, you must obtain our prior consent before performing any Services if the total amount of the Service Fees payable by us would exceed 110% of the estimate or indicative amount.

8.5 **Taxes:** All amounts stated in the relevant Purchase Order, unless the context otherwise requires, are stated inclusive of any taxes, duties, fees or other charges, but excluding GST, which if payable, will be paid by us at the rate applicable at the time of supply subject to our receipt of an invoice issued in accordance with clause 8.1.

8.6 **Invoice disputes:** If we dispute the amount of an invoice:

- a we may (to the extent not already paid) withhold the disputed sum and give notice to you that we dispute the amount of the invoice;
- b you or we may submit the matter to be resolved as a Dispute in accordance with clause 12; and
- c we will pay the undisputed portion of any disputed invoice in accordance with clause 8.2,

and you will not be excused from performing any of your obligations under the Contract while an invoice is disputed by us.

8.7 **Withholdings:** If we are required by Applicable Law to make any deduction or withholding from any payment payable by us under or in connection with a Contract, we may deduct or withhold any such amounts from the amount of any invoice payable and payment of the amount of the invoice less any such deductions or withholdings will satisfy our obligation to pay the invoice in full.

8.8 **We may set off:** If you incur any liability to us, whether under a Contract or otherwise and whether or not the liability is liquidated or unliquidated, we may set off the amount of such liability against any sum or sums that would otherwise be due to us under that or any other Contract.

## 9 INDEMNITIES

You must indemnify us against all Losses we suffer or incur in respect of:

- a any proceeding, demand, action or other claim made against us by any person (other than you) that:
  - i any Goods and/or Services provided by you; and/or
  - ii use of any Goods or receipt of any Services by us or a CCG Customer,
 infringe any contractual rights or IPR of any other person;
- b your breach of these Terms;
- c a breach of Applicable Law by you, your Personnel or a Subcontractor; or
- d negligence of you, your Personnel or a Subcontractor.

## 10 INSURANCE REQUIREMENTS

10.1 **Minimum requirements:** You must effect and maintain, with insurers acceptable to us:

- a at all times during your engagement to perform Services, and for a period of six years following the Delivery of Goods or the completion of Services, public liability insurance for an amount not less than NZD2,000,000 or such other amount as we specify in the relevant Purchase Order or that is required by the Head Contract, in respect of any single occurrence, and in the annual aggregate; and
- b with respect to Goods, until Delivery of the Goods, transit insurance or carrier's risk insurance for an amount not less than the full replacement value of the Goods (including freight costs).

10.2 **Evidence:** You must provide us evidence of the insurance that you are required to effect and maintain in accordance with clause 10.1, to our satisfaction, upon our request.

## 11 TERMINATION OF A CONTRACT

11.1 **Breach:** We may terminate a Contract if you commit a material breach of your obligations under these Terms:

- a in the case of a breach which is capable of remedy, if you fail to remedy the breach after

- being given five Business Days' notice specifying the breach and requiring it to be remedied; or
- b in the case of a breach which is incapable of remedy, immediately by notice to you.
- 11.2 **Convenience:** We may terminate a Contract:
- a in respect of Goods, at any time prior to the Delivery of the Goods;
- b in respect of Services, at any time on no fewer than two Business Days' notice.
- 11.3 **Insolvency Event:** We may terminate a Contract immediately by notice to you if you become the subject of an Insolvency Event.
- 11.4 **Termination for failure to Deliver:** We may terminate a Contract immediately by notice to you if the Goods which are the subject of that Contract have not been Delivered by the Required Delivery Date.
- 11.5 **Termination by you:** You may only terminate a Contract if:
- a we fail to pay any amount that is payable under the Contract (excluding any amount which is the subject of a Dispute) within 20 Business Days after the due date for payment;
- b you give notice to us stating that the amount payable has not been paid by the due date, specifying the amount, the basis on which such amount is payable, and the due date for payment ('**Final Payment Notice**'); and
- c we fail to pay the amount payable under the Final Payment Notice within a further 20 Business Days after the date we receive the Final Payment Notice.
- 11.6 **Exit obligations – Services:** Upon or in anticipation of the termination of the provision of any Services under a Contract you must, at our request, do such things and take such actions so as to facilitate an orderly handover of the Services to us or any other person nominated by us.
- 11.7 **Rights and liabilities survive:** Termination of a Contract will not affect:
- a any rights and remedies which have accrued up to and including the effective date of termination;
- b without limiting our rights under clause 8.8, our obligation to pay you for any amount which has become due and payable to you under these Terms prior to termination;
- c your obligations in respect of the Goods Warranty for the duration of the Warranty Period; and
- d any other provisions of these Terms which expressly or by their nature survive termination.
- 12 CONFIDENTIALITY**
- 12.1 **Obligations of confidentiality:** You must:
- a only use the Confidential Information for the purpose of carrying out your obligations under a Contract;
- b not disclose the Confidential Information, other than:
- i for the purpose of carrying out your obligations under a Contract, on terms which require the recipient to treat the Confidential Information as confidential; or
- ii to your legal or professional advisors, for the purpose of obtaining advice; and
- c apply security precautions to preserve the confidentiality of the Confidential Information which are consistent with Good Industry Practice.
- 12.2 **Exclusions:** Clause 12.1 does not apply to Confidential Information that:
- a is in the public domain, other than as a result of your breach of clause 12.1; or
- b subject to clause 12.3, you are required by law to disclose.
- 12.3 **Disclosures required by law:** If you are required by law to disclose Confidential Information, you may only do so:
- a to the extent necessary;
- b to the proper recipient; and
- c if you first used reasonable endeavours to give us prior notice of the requirement and nature of the information to be disclosed, unless you are prevented from doing so by Applicable Law.
- 13 RESOLVING DISPUTES**
- 13.1 **Negotiations:** If a Dispute arises, either you or we may by notice to the other ('**Dispute Notice**') refer the Dispute to the other, with a view to resolving the Dispute by way of good faith negotiations.
- 13.2 **Arbitration:** If the Dispute is not settled within 20 Business Days after the date of the Dispute Notice, either you or we may by notice to the other ('**Arbitration Notice**') refer the Dispute to arbitration, conducted in accordance with the Arbitration Act 1996 by a single arbitrator appointed by agreement or, failing agreement within five Business Days after the date of the Arbitration Notice, appointed by the Chair for the time being of the Arbitrators' and Mediators' Institute of New Zealand.
- 13.3 **Conduct of Arbitration:** Unless the parties otherwise agree:
- a the seat of arbitration will be Wellington, New Zealand;
- b the law applicable to the arbitral proceedings and the matters that are the subject of the Dispute will be the laws of New Zealand; and
- c the arbitration will otherwise be conducted in accordance with the Arbitration Act 1996.
- 13.4 **Application of this clause:** Nothing in this clause 13 will prevent:
- a either you or us commencing court proceedings to:
- i enforce an arbitration award; or
- ii seek urgent injunctive relief or any other equitable remedy; or

- b either you or us referring the Dispute to adjudication under the Construction Contracts Act 2002.

## 14 NOTICES

14.1 **How given:** Any notice that you or we must or may give to the other under these Terms must be in writing and will be only be validly given if personally delivered, posted, or sent by email:

- a in the case of notices to you, to your contact details as specified in the Purchase Order, or as you later notify us;

- b in the case of notices to us, to:

Choice Commercial Interiors Limited  
Level 6  
94 Dixon Street  
Te Aro  
Wellington 6011

Attention: Shaun Workman  
Email: shaun@choiceconstruction.co.nz

14.2 **Time of service:** Notices will be deemed received:

- a if personally delivered, at the time of delivery;
- b if sent by post, on the fifth Business Day after the date posted; and
- c if sent by email, at the time of transmission, unless the sender was put on notice that the transmission was unsuccessful,

but if the time and day on which a notice would be deemed received on the above basis is not between 9:00am and 5:00pm on a Business Day, the notice will be deemed received at 9:00am the next Business Day.

## 15 GENERAL PROVISIONS

15.1 **Entire agreement:** The Contract (including the Purchase Order) and all documents incorporated by reference:

- a contain the entire agreement between you and us with respect to the Delivery of the Goods and/or performance of the Services;
- b set out the only conduct relied on by you when entering into the Contract; and
- c supersede all prior representations and understandings between you and us in connection with the Delivery of the Goods and/or performance of the Services.

15.2 **Status of our relationship:** Nothing in a Contract or arising out of the relationship established by a Contract or these Terms:

- a makes you our agent or grants you any authority to make any commitments on our behalf; or
- b creates any trust, joint venture or commercial partnership between you and us.

15.3 **How a Contract is amended:** No amendment to a Contract will be effective unless in writing and signed by us.

15.4 **No assignment, etc.:** You must not assign, charge, encumber, or otherwise deal with any rights and/or

obligations under a Contract, or attempt or purport to do so, without our prior consent.

15.5 **Transfer by us:** We may at any time by notice to you assign any or all of our rights and transfer any or all of our obligations under a Contract to any person who acquires all or substantially all of our assets and undertaking, and we will be released from our obligations under that Contract with effect from the date of such notice.

15.6 **No third parties to benefit:** No person who is not a party to the Contract benefits from these Terms, whether under Part 2 of the Contract and Commercial Law Act 2017 or otherwise.

15.7 **No waiver of rights:** No exercise or failure to exercise or delay in exercising any right or remedy by either you or us is a waiver of that or any other right or remedy.

15.8 **Partial invalidity:** If any provision of these Terms or its application is or becomes invalid or unenforceable to any extent, the remainder of these Terms and their application will not be affected and will remain enforceable to the maximum extent permitted by law.

15.9 **Rights not exclusive:** Our rights under a Contract are cumulative and not exclusive of other rights and remedies available to us under the Contract or at law.

15.10 **Which law governs:** Each Contract is a contract made in New Zealand and governed by New Zealand law.

15.11 **New Zealand courts have jurisdiction:** Subject to clause 12, you and we submit to the exclusive jurisdiction of the Courts of New Zealand.

## 16 DEFINITIONS AND INTERPRETATION

16.1 **Definitions:** In these Terms, unless the context otherwise requires:

'Acceptance' has the meaning given to it in clause 2.5.

'Applicable Law' means:

- a any legislation or regulation;
- b any other standard of law; and
- c any licence, standard or principle of behaviour, rule, regulation or code of practice or guidance laid down or required by any regulatory authority with jurisdiction over the parties or in respect of the Goods and/or Services.

'Arbitration Notice' has the meaning given to that term in clause 13.2.

'Business Day' means any day other than:

- a a Saturday or a Sunday; and
- b a day that is considered a public holiday in Wellington for the purposes of subpart 3 of Part 2 of Holidays Act 2003.

'CCG Customer' means any person with whom CCG has entered into a Head Contract.

'CCG Site' means any location at which the Services are to be performed which location is, for the purposes of Health and Safety Law, under our management or control.

**'Confidential Information'** means:

- a all commercial, financial and/or technical information, trade secrets, products, operations, processes and unpublished information relating to our operations or those of a CCG Customer; and
- b any other information which is imparted to you by us or on our behalf or which you otherwise obtain under or in connection with a Contract and which is of a confidential nature (whether or not expressly designated as imparted in confidence).

**'Contract'** has the meaning given to it in clause 1.3.

**'Defect'** means a defect which renders Goods unable to comply with the Delivery Warranty or the Goods Warranty.

**'Defect Notice'** has the meaning given to it by clause 2.17.

**'Delay'** has the meaning given to it in clause 2.10.

**'Delay Credit'** means the percentage reduction in the Goods Purchase Price payable in the circumstances contemplated by clause 2.10c as specified in the relevant Purchase Order, or if none is specified, means 5% of the Goods Purchase Price.

**'Delivery'** has the meaning given to it in clause 2.4 and **'Deliver'** and **'Delivered'** have a corresponding meaning.

**'Delivery Address'** means the address for Delivery of Goods specified in a Purchase Order or such other address as we subsequently advise you.

**'Delivery Warranty'** means the warranty contemplated by clause 2.14

**'Dispute'** means a claim or controversy relating to or arising out of a Contract (including any question regarding its existence, validity or termination) and/or the Delivery of any Goods or performance of any Services.

**'Dispute Notice'** has the meaning given to that term in clause 13.1.

**'Final Payment Notice'** has the meaning given to that term in clause 11.5b.

**'Good Industry Practice'** means, in relation to any undertaking and any circumstances, the exercise of the degree of skill, care, prudence, diligence and foresight that would be exercised by a good practitioner, experienced in the relevant industry practice, and supplying goods and/or performing services of a similar type to the Goods and/or Services.

**'Goods'** means the goods specified in the relevant Purchase Order.

**'Goods Purchase Price'** means the purchase price for the Goods as set out, described, or referred to in the relevant Purchase Order.

**'Goods Warranty'** means the warranty contemplated by clause 2.15.

**'GST'** means goods and services tax, as that term is defined in the Goods and Services Tax Act 1985.

**'Head Contract'** means any agreement between us and a CCG Customer.

**'Head Contract Terms'** means any terms specified as 'Head Contract Terms' in the relevant Purchase Order.

**'Health and Safety Law'** means the Health and Safety at Work Act 2015 and any other Applicable Law in relation to the safety of workers.

**'Insolvency Event'** means that:

- a you cease or take steps to cease to conduct your business in the normal manner;
- b you enter receivership or have a receiver, trustee or manager (including a statutory manager) appointed in respect of you and/or all or any of your property;
- c you enter into voluntary administration;
- d you are unable to pay your debts when they are due or are presumed to be unable to pay your debts as they fall due;
- e you make an assignment for the benefit of, or enter into or make any arrangement or composition with, your creditors;
- f any resolution is passed or any proceeding is commenced to wind you up or liquidate you (whether on a voluntary or involuntary basis); or
- g any analogous demand, appointment or procedure occurs.

**'IPR'** means:

- a all intellectual property rights throughout the world, including rights in respect of copyright, patents, trade marks, designs, trade secrets, know-how, and circuit layouts (in each case, whether registered or unregistered); and
- b any application or right to apply for registration of any of the rights referred to in paragraph a above.

**'Losses'** means:

- a any and all costs, expenses, damages, losses, liabilities, judgments, fines, penalties (whether civil, criminal or otherwise);
- b all legal costs and expenses incurred (including solicitor-client costs); and
- c amounts paid or payable in settlement or in connection with a judgment, including all interest, assessments and other charges paid or payable in connection with any of the foregoing,

except to the extent to which you indemnifying us or agreeing to indemnify us is prohibited by Applicable Law.

**'Personnel'** means any person who carries out work in any capacity, including work as an employee, independent contractor or Subcontractor (or an employee of or independent contractor to a Subcontractor), an employee of a labour hire company, an apprentice or trainee, or a volunteer, and any other person who may be directed or influenced in the exercise of their work.

**'Subcontractor'** means any person to whom you subcontract any of your obligations under the Contract.

**'Pre-Delivery Defect Notice'** has the meaning given to it in clause 2.5.

**'Purchase Order'** means a purchase order for Goods or Services issued by us in such form as we determine.

**'Rejected Goods'** has the meaning given to it in clause 2.9.

**'Required Delivery Date'** means the date specified for Delivery of Goods, as contemplated by the relevant Purchase Order.

**'Requirements'** means the requirements, specifications and objectives in respect of the Goods or Services as set out, described or referred to in:

- a the relevant Purchase Order;
- a any request for proposals, request for quotes, request for information, tender or other document issued by CCG soliciting the provision of the Goods or Services; and
- b any Specifications,

and provided that if there is any inconsistency between the documents or representations that form the Requirements, a descending order of precedence applies (in that provisions, documents or representations listed in this definition will prevail over provisions, documents or representations listed or referred to below them to the extent of any inconsistency).

**'Security Interest'** means a 'security interest' as that term is defined in the Personal Property Securities Act 1999).

**'Service Fees'** means the fee payable by us to you for the performance of the Services as stated in, or determined in accordance with, the relevant Purchase Order.

**'Specifications'** means the specifications in respect of the Goods or Services referred to in the relevant Purchase Order, or published or otherwise made available by you or the manufacturer of any Goods.

**'Warranty Period'** means, in respect of any Goods, the period commencing on the date of Delivery of those Goods (or in the case of any Goods which, following a Defect, are replaced, Delivery of the replacement Goods), and ending on the later of:

- a the date that is 12 months after that date; and
- b the expiry of the 'Warranty Period' (if any) set out in the relevant Purchase Order or the Specifications for those Goods.

**'Variation'** has the meaning given to it in clause 4.1.

**'Variation Order'** has the meaning given to it in clause 4.5.

**'Variation Request'** has the meaning given to it in clause 4.1.

- a **Headings:** Clause and other headings are for reference only and are not an aid in interpretation.
- b **Statutes:** References to statutory provisions include references to all regulations, orders, rules or notices made under that statute, and references to a statute or regulation are references to those statutes or regulations as amended or re-enacted or as their application is modified by other provisions.
- c **Clauses:** References to clauses are to the clauses of these Terms.
- d **Periods of time:** All periods of time include the day on which the period commences and the day on which the period ends.
- e **Number:** The plural includes the singular and the vice versa.
- f **Includes:** The word 'includes' in any form is not a word of limitation.
- g **Interpretation:** Nothing in these Terms is to be interpreted against us solely on the basis that we proposed the Terms.
- h **Currency:** References to \$ or to dollars are references to New Zealand dollars (currency code: NZD).

16.3 **Inconsistency:** If there is any inconsistency between the documents that form part of a Contract, the following descending order of precedence applies (in that provisions or documents will prevail over provisions or documents listed below them to the extent of any inconsistency):

- a the relevant Purchase Order;
- b any amendment to these Terms agreed by the parties in accordance with clause 15.3;
- c clauses 1 to 16 of these Terms; and
- d any other documents incorporated by reference into these Terms.

16.4 **Prior consent:** Where these Terms contemplate that we are to give our prior consent, such consent:

- a will only be valid if given in writing;
- b may be given, withheld, or made subject to conditions in our absolute discretion.

16.5 **Relevant Purchase Order:** References in these Terms to the relevant Purchase Order are references to the Purchase Order under or in connection with the relevant Goods are being Delivered and/or Services are being performed.

16.2 **Rules of interpretation:** Unless the context otherwise requires: