

Standard Irrigation Contract



How to use this contract

The contract is drafted to give the Purchaser and Contractor (parties) confidence that what they are buying or supplying is clearly stipulated and that both parties have the same expectation in the performance of the service.

It is envisaged the contract will be amended to suit each scenario – it is a starting point for the parties to work from.

Take time to read, understand and adapt the various clauses. It is recommended you take independent legal advice in doing this.

DO NOT sign, unless you have read the checklist below and answered yes to all the questions.

The contract is set out with the standard clauses on the right and where required a more detailed explanation is provided on the left.

KEY GUIDELINES:

- Read through the contract
- Make sure each clause is addressed

CHECKLIST:

1	Is the contract price clearly stated (Clause 2 and Item 1 on the Schedule)	<input type="checkbox"/>
2	Is the deposit agreed and available immediately (Clause 3 and Item 2 on the Schedule)	<input type="checkbox"/>
3	Is all the work to be carried out covered in the contract (Clause 4 and Item 7 in the Schedule)	<input type="checkbox"/>
4	Are the commencement and completion dates clearly stated (Clause 5 and 6 and Items 5 and 6 on the Schedule)	<input type="checkbox"/>
5	Is the procedure for extensions of time understood (Clause 7)	<input type="checkbox"/>
6	Are the provisional sums clearly stated and understood (Clause 9 and Item 7 on the Schedule)	<input type="checkbox"/>
7	Are the stages for progress payments acceptable and based upon value of the work completed (Clause 10 and Item 9 on the Schedule)	<input type="checkbox"/>
8	Is the Purchaser aware of the Purchaser's obligations in relation to payments (Clauses 10 and 11)	<input type="checkbox"/>
9	Is the procedure for variations understood (Clause 13)	<input type="checkbox"/>
10	Is the contract providing for retention monies (Clause 11)	<input type="checkbox"/>
11	Is the contract providing for liquidated damages (Clause 12)	<input type="checkbox"/>
12	Is the Contractor adequately insured (Clause 16)	<input type="checkbox"/>
13	Is the independent verification scope and process understood (Clause 20 and Item 10 on the Schedule)	<input type="checkbox"/>
14	Is the procedure for rectifying defects (if any) after completion understood (Clause 21)	<input type="checkbox"/>
15	Is the procedure to resolve disputes understood (Clause 22)	<input type="checkbox"/>

It is recommended that the contract should only be undertaken by Contractors who are aware of and adopt the IrrigationNZ;

- The New Zealand Piped Irrigation Systems Design Standards (2012)
- The New Zealand Piped Irrigation Systems Design Code of practice (2012)
- The New Zealand Piped Irrigation Systems Installation Code of Practice (2012)
- Irrigation Design Accreditation programme¹

¹ Companies that are Irrigation Design Accredited have agreed to design irrigation in a manner that is consistent with the irrigation codes of practice and standards.

EXPLANATION	CLAUSE 1: PARTIES
<p><i>Parties need to be identifiable entities and legally entitled to enter into the contract.</i></p>	<p>This contract is between the Purchaser and the Contractor. The names and addresses of the Purchaser and Contractor are set out in the Schedule.</p>
EXPLANATION	CLAUSE 2: AGREEMENT
<p><i>This contract is a legally binding agreement. The following clauses set out the rights and obligations of each party.</i></p>	<p>It is agreed that:</p> <ol style="list-style-type: none"> a) The Contractor will diligently proceed and complete the work described in the documents listed in Item 4 of the Schedule in a good and workman like manner and supply all materials where necessary for the completion of the work of the kind and quality stated in the specifications or as good installation practice requires. b) The Purchaser will pay the Contractor the contract price set out in Item 1 of the Schedule, in accordance with the terms set out in this contract. <p>Contractor's Warranty: The Contractor warrants that as at the date of this contract, the contract price is based upon an inspection of the site by the Contractor and includes all matters that could reasonably be expected to be necessary for the completion of work. The contract price may be adjusted after the date of contract in accordance with the terms of this contract.</p> <p>Cooling off period: The Purchaser may, within three working days after signing this contract, give notice in writing to the Contractor that the Purchaser does not wish to proceed with this contract. Following receipt of such notice from the Purchaser, the Contractor must refund to the Purchaser, within a further five working days, the amount of any deposit paid less the amount of any expenses incurred by the Contractor up to the time of receipt of the notice, but such expenses (unless incurred by the Contractor with the agreement of the Purchaser prior to the date of the contract) must not exceed \$1000.00.</p> <p>For the purpose of this contract "working days" do not include Saturdays, Sundays or public holidays.</p>
EXPLANATION	CLAUSE 3: DEPOSIT
<p><i>Contractors usually require a deposit upon signing a contract. Standard practices require a deposit of 10% of the purchase price.</i></p>	<p>The deposit under this contract will be the amount as set out in Item 2 of the Schedule. Any deposit payable by the Purchaser under this contract must be paid on the signing of the contract by the Purchaser within five working days or at such other time as agreed between the parties.</p>
EXPLANATION	CLAUSE 4: CONTRACT DOCUMENTS
<p><i>The general conditions of contract contain the terms upon which the work is to be carried out and the payment made.</i></p> <p><i>The purpose of the specification is to describe the materials to be used and standard of workmanship to be observed. The design plan is a pictorial representation of the works. The Performance Indicator's are used as the basis of testing and commissioning to determine if the system meets the agreed objectives. The parties may also wish to include other documents as part of the contract and these must be listed in the Schedule.</i></p>	<p>The contract consists of this document titled, "Standard Irrigation Contract" which includes the terms of this contract and the Schedule. The contract also includes the documents that are referred to in the Schedule. In the event of any inconsistencies or ambiguity between any components of this contract, the Contractor must discuss the matter with the Purchaser and attempt to seek agreement on the work to be performed or the materials to be used.</p> <p>If agreement cannot be reached the provision of the documents in the order listed below will prevail.</p> <p>First: The printed conditions of contract plus any additional conditions referred to in the Schedule. Second: The Design Plan. Third: Specifications. Fourth: System performance indicators for the system (use The New Zealand Piped Irrigation Systems Design Code of Practice as a guide for System performance indicators). Fifth: Any other documents.</p> <p>Any specific additional conditions shall take precedence over printed conditions of the contract where there is inconsistency or ambiguity. All items shown in the Design Plan form part of the work, unless specifically excluded by the conditions of the contract, or any additional conditions, specifications, or other documents listed above.</p>
EXPLANATION	CLAUSE 5: COMMENCEMENT OF WORK
	<p>The Contractor must commence the work no later than the commencement date specified in Item 5 of the Schedule or within fourteen days after the Contractor has received from the Purchaser a copy of all approvals (if any) required to be given by statutory authorities (unless otherwise agreed between the parties).</p>
EXPLANATION	CLAUSE 6: PROJECT TIME FRAMES
<p><i>The completion time should be realistic. The contract time should allow for periods when it is known that work will not proceed, for example on public holidays. Instances can occur when the time for completion has to be adjusted (see Clause 7 below).</i></p>	<p>The Contractor must diligently proceed and complete the work within the time set out in Item 6 of the Schedule. The Contractor acknowledges that this period of time has taken into account days when it is known that no work will be carried out. The time of completion may be extended in accordance with Clause 7 below.</p>
EXPLANATION	CLAUSE 7: TIME EXTENSIONS
<p><i>Delays can occur during the course of the work. The Contractor is entitled to apply for a reasonable extension of time for completion. In order to qualify for an extension of time the Contractor must comply with the requirements set out in this clause.</i></p>	<p>If the work is delayed by:</p> <ul style="list-style-type: none"> • Inclement weather or conditions resulting from inclement weather; • Any order of court or tribunal that work be suspended, unless that order resulted from the fault of the Contractor; • Any act or omission of the Purchaser; • The non-availability of materials and/or equipment necessary for the continuation of the work unless due to the fault of the Contractor; • A variation in work; • Any industrial dispute affecting the progress of work; or • Any other matter, cause or thing beyond the control of the Contractor. <p><i>Continued on next page</i></p>

	<p>Clause 7: Time Extensions continued</p>
	<p>The Contractor will be entitled to a reasonable extension of time to complete the work. Both the Contractor and Purchaser must take all reasonable steps to minimise the delay to the work.</p> <p>If the Contractor wishes to claim an extension of time, the Contractor must notify the Purchaser in writing of the cause and estimated length of the delay within five working days of the occurrence of the event or, in the case of a variation, from the date of agreement to the variation.</p> <p>If the Purchaser does not, within a further five working days, notify the Contractor in writing that the extension of time sought is unreasonable, the completion date of the contract will be extended by the period notified to the Purchaser. If the Purchaser gives the Contractor written notice disputing the extension of time claimed, and no agreement can be reached on the time allowed within a further ten working days, the dispute must be dealt with in accordance with the dispute resolution procedure stated in Clause 22.</p> <p>For the purposes of this clause, the parties agree that inclement weather must be sufficiently severe to make it impractical for the Contractor to work on those days.</p>
<p>EXPLANATION</p>	<p>CLAUSE 8: COMPLETION OF WORK</p>
	<p>The work will be completed when the Contractor has finished the work in accordance with the contract documents (as contained in the Schedule) and any variations under Clause 13. The work shall be:</p> <ul style="list-style-type: none"> • Free from apparent defects; and • All rubbish and surplus materials have been removed from site. <p>When the Contractor believes the work to be complete, it must notify the Purchaser in writing. The Contractor should include a Commissioning Report including a system specification sheet as evidence of completion.</p> <p>Within ten working days of receipt of such written notice from the Contractor, the Purchaser must advise the Contractor in writing of any items of work the Purchaser considers to be incomplete or defective. If the Purchaser does not notify the Contractor, the work will be taken as complete.</p> <p>The Contractor must complete any outstanding work promptly (and at the latest start the remedial work within five working days) and again notify the Purchaser in writing. Unless the Purchaser notifies the Contractor in writing that any item is still incomplete or defective within a further five working days from receipt of the notification by the Contractor, the work will be taken as complete.</p> <p>Should there be any dispute between the parties as to whether work has been completed, it must be resolved according to the dispute resolution procedure in Clause 22.</p>
<p>EXPLANATION</p>	<p>CLAUSE 9: PROVISIONAL SUMS</p>
<p><i>Provisional sums are estimates of the cost of items of work included in the contract for which the Contractor cannot give a definite price. For example; unforeseen rock excavation. An estimated cost is provided in the contract price which is adjusted after the work has been completed. The Contractor should ensure that the estimate is realistic. Provisional sums should only be used where the Contractor cannot price work before it is undertaken. If there is any doubt the Purchaser should ask the Contractor to fully explain the reasons why a fixed price cannot be given.</i></p>	<p>The contract price includes the description of work or items set out in Item 7 of the Schedule for which the Contractor cannot give a definite price. Item 7 of the Schedule also sets out the provisional sums allowed in the contract price for the cost of each item of work or the way in which it will be calculated.</p> <p>The Contractor warrants that the provisional sums allowed have been estimated with reasonable care and skill, and in light of information available at the date of the contract.</p> <p>The Contractor must provide to the Purchaser in writing the breakdown of cost estimate in respect of any provisional sum. The Contractor must offer the Purchaser the opportunity to be present at the site during the performance of any work listed as a provisional sum in order to verify actual cost of the work.</p> <p>The Contractor does not have to delay the work if the Purchaser is unable to attend at the time the work is being performed. If the actual cost to the Contractor is greater than the provisional sum allowed, the difference, increased by the margin set out in Item 8 of the Schedule shall be added to the contract price. The increase is to cover overheads, supervision and profit. If the actual cost to the contract is less than the provisional sum allowed, the contract price will be reduced by the difference.</p> <p>Any such increase or reductions will be taken into account in the next progress payment or as agreed between the parties. If there is a dispute concerning the provisional sum, the matter must be dealt with in accordance with the dispute resolution procedure in Clause 22.</p>
<p>EXPLANATION</p>	<p>CLAUSE 10: PAYMENT STRUCTURE</p>
<p><i>Progress payments are usually made at specific stages as the work proceeds. These payments should equate to the value of the work completed, or to the value of the materials delivered to site. If the Purchaser makes a progress payment but is concerned with any aspect of the work, the Purchaser should immediately inform the Contractor in writing of these concerns. Should there be a dispute in relation to any part of the work the parties should try to agree on an appropriate amount to be deducted from the progress payment until the dispute is resolved.</i></p>	<p>The Purchaser must pay the contract price by progress payments at the satisfactory completion of stages of the work nominated in Item 9 of the Schedule. The Contractor must notify the Purchaser in writing when a stage of work has reached satisfactory completion. Any deposit paid must be deducted from the first progress payment.</p> <p>The Contractor's written claim for a progress payment must:</p> <ol style="list-style-type: none"> a) identify this contract and the relevant period to which the claim relates; b) identify the works to which the claim relates, the claimed amount and the manner in which the claimed amount has been calculated (in particular the estimated extent and value of the works or variation or other costs which is claimed and has been carried out, the estimated extent and value of materials delivered which are intended to be incorporated in the works, any advances for temporary works, plant or materials not yet on site but for which payment is provided in the additional conditions of this contract); c) indicate the due date for payment, being the time set out in Item 11 of the Schedule. <p>In the event the Contractor intends for the payment claim to be a payment claim under the Construction Contracts Act 2003, the Contractor must state that it is made under this Act.</p> <p>Payment of the progress payment is not to be regarded as acceptance by the Purchaser that the work has been completed satisfactorily, or in accordance with the contract documents, but merely as a payment on account.</p> <p>When the Contractor gives a written claim for a progress payment in accordance with the process set out above or other amount due under the contract, the Purchaser must pay the amount of the claim within the time set out in Item 11 of the Schedule, from the receipt of the claim unless the Purchaser notifies the Contractor in the manner stated below.</p> <p><i>Continued on next page</i></p>

Clause 10: Payment structure continued

If the Purchaser disagrees that the Contractor is entitled to be paid the progress payment or any other payment (or any part of the claim), the Purchaser must:

- a) notify the Contractor in writing with a payment schedule, identifying the claim to which it relates and indicate the scheduled amount it agrees to pay within ten working days of receiving the claim;
- b) in the event the scheduled amount is different from the claim amount the payment schedule must also indicate:
 - i. the manner in which the Purchaser has calculated the scheduled amount;
 - ii. the reasons for any difference between the scheduled amount and the claimed amount;
 - iii. where the difference is due to the Purchaser withholding payment on any basis, the reasons for withholding payment.

If there is a dispute arising from the claim it must be resolved in accordance with the procedures set out in Clause 22. If the dispute relates to only part of the claim or other payment, then the Purchaser must pay the undisputed part on the due date.

If the Purchaser fails to pay the full amount of the claim by the due date and fails to give notice in writing by way of a payment schedule in accordance with the process set out above disputing the claim by the Contractor, the Purchaser shall be deemed to have accepted that the full payment is payable and shall be liable to pay to the Contractor interest at the Contractors penalty overdraft interest rate.

On receipt of the final payment the Contractor must hand over to the Purchaser a copy of all installed drawings, guarantees, KPI tests, commissioning sheets instruction manuals and the like that may be required for the operation and warranty of the work.

For the purposes of the Construction Contract Act 2002 the parties agree that they have agreed on their own payment terms as set out above.

EXPLANATION

CLAUSE 11: RETENTION

A retention amount allows the Purchaser to retain money out of the amount which would otherwise be payable in respect of the works. This provides the Purchaser with a degree of protection should any of the work provided be defective.

The Purchaser may, if agreed between the parties and in accordance with the progress payments as set out in Clause 10 above, retain out of the amount which would otherwise be payable such retention monies as set out in Item 9 of the Schedule.

The amount or percentage retained shall be paid to the Contractor after three months of the date that the work is taken as complete in accordance with Clause 8 unless otherwise agreed between the parties.

EXPLANATION

CLAUSE 12: LIQUIDATED DAMAGES

Liquidated damages allows the parties to agree in advance on the damages that will be payable by the Contractor if they fail to meet the obligation to complete the works by the contractual due date.

The sum stated as liquidated damages in Item 3 of the Schedule shall be paid by the Contractor to the Purchaser for the period between the time for completion of the works in accordance with Clause 8 and Item 6 and the time which the work is practically completed.

The Purchaser may without prejudice to any other method of recovery deduct the amount of liquidated damages from any monies payable to the Contractor. Payment or deduction of liquidated damages shall not relieve the Contractor from any of its other liabilities or obligations under this contract.

EXPLANATION

CLAUSE 13: VARIATIONS

If after the installation has commenced the Purchaser decides to delete, alter or add work to be carried out, a variation to the contract may be required. The work may also be varied at the request of the Contractor or due to the request of a statutory authority. Copies of letters and notices relating to variations should be kept by both parties.

The work to be carried out under this contract may be varied:

- a) At the request of the Purchaser;
- b) At the request of the Contractor (provided that if the need for such a variation is due to the fault of the Contractor then the Purchaser shall not be liable for any increase in the cost of the Contractor because of the variation); or
- c) Due to an unforeseen ground or physical condition on the site in accordance with Clause 19;
- d) Due to a requirement of a Council, or any other statutory authority relating to the work and if the need for such variation could reasonably have been anticipated by the Contractor, the Purchaser shall not be liable for any increase in the cost to the Contractor because of that variation.

Before commencing work on a variation the Contractor must provide notice in writing to the Purchaser containing a description of the work and the price to the Purchaser. The notice must be signed and dated by both parties to be a valid variation.

The Contractor shall be entitled to be paid such sum as is reasonable to compensate the Contractor for any additional cost or such sum as may be agreed between the parties for the variation work.

For the avoidance of doubt, in the event the Purchaser does not consider a variation requested by the Contractor necessary (in the Purchaser's sole discretion) the Purchaser is not required to accept such variation.

If the time for completion will be delayed by the variation, the Contractor must include in the notice an estimate of the additional time required. Any extension must be dealt with in accordance with Clause 7. Any variation shall be subject to the overall conditions of the contract. If the work must be varied due to the requirements of a statutory authority which were not known to the Purchaser at the date of this contract, and the Purchaser notifies the Contractor in writing that the Purchaser is unable to meet the cost of the variation, then the Purchaser will be entitled to end the contract by notice in writing to the Contractor.

If the contract is so ended the Contractor is entitled to payment in accordance with Clause 10 in respect of completed stages and also for actual cost of work done since the completion of the last stage and of any materials on the site, together with a margin set out in Item 7 of the Schedule for the profit and overhead on the cost of the work carried out since the completion of the last stage.

EXPLANATION	CLAUSE 14: DESIGN
	<p>The Contractor shall have responsibility for design, all necessary investigation, design calculation, drawings, specifications of materials and workmanship, testing and monitoring of the design (on or off the site) unless otherwise agreed between the parties.</p> <p>The Contractor shall be responsible for carrying out such design as set out above and providing the works with reasonable skill, care and diligence normally expected from a competent professional.</p> <p>The Purchaser warrants that it has made available to the Contractor all information which it is aware of on the nature of the physical conditions of the works. However, the Purchaser makes no warranty as to the sufficiency or accuracy of such information and the Contractor shall be responsible for the interpretation of all such information for the purposes of the works.</p>
EXPLANATION	CLAUSE 15: SUB CONTRACTING
<p><i>It is common practice in the irrigation industry for some of the works to be performed by sub-Contractors, and the Contractor is allowed to employ sub-Contractors under this contract after obtaining the Purchaser's consent.</i></p> <p><i>Assignment is the transfer of a party's rights and obligations under the contract to a third party. This contract prohibits assignment without the written consent of both Purchaser and Contractor.</i></p>	<p>Neither the Purchaser nor Contractor may assign his rights or obligations under this contract without the prior written consent of the other party.</p> <p>The Contractor may subcontract any part of the work with the Purchaser's consent (which will not be unreasonably withheld) but is not relieved from responsibility under this contract for that work.</p>
EXPLANATION	CLAUSE 16: INSURANCE AND INDEMNITY
<p><i>This clause is not concerned with insurance against defective work or breach of contract.</i></p> <p><i>Under the contract it is the Contractor's responsibility to arrange insurance against injury to the public and workers and also property damage and to insure the work up to completion.</i></p>	<p>It is the Contractors responsibility to ensure that its risks of doing business are adequately covered, whether by insurance or otherwise.</p> <p>The Contractor must effect and maintain the following insurances until the practical completion of the work in accordance with Clause 8 (unless otherwise agreed between the parties):</p> <ol style="list-style-type: none"> a) Insurance of the works and the materials which are in the care or possession of the Contractor (or in transit); b) Insurance to cover loss or damage to the property insured; c) Insurance for items of construction machinery as agreed to between the parties; d) Public liability insurance to cover insurance for damage, loss, omission or injury caused by the Contractor and motor vehicle third party insurance to both cover liabilities to third parties for an amount not less than that stated in Item 13 of the Schedule; e) Professional indemnity insurance for the Contractors design for an amount not less than that in Item 13 stated in the Schedule <p>Unless otherwise agreed in writing between the parties, the Contractor's insurer for all insurances as set out above must be held with the same insurance company</p> <p>Prior to commencement of the work, and on request by the Purchaser at any time afterwards, the Contractor must provide to the Purchaser evidence in writing of the insurances in place by the Contractor or specifically required by this contract have been obtained and are current.</p> <p>If the Contractor fails to provide such evidence, or if any of the insurances required have not been taken out by the Contractor, the Purchaser may arrange the insurance and deduct the cost from payments due to the Contractor.</p> <p>The Contractor shall indemnify the Purchaser against:</p> <ol style="list-style-type: none"> a) any loss suffered by the Purchaser which arises out of the construction of or remedying of defects in the works; b) liability incurred by the Purchaser in respect of injuries to person or damage to property which arises out of the construction or remedying the defects in the works; c) any costs the Purchaser may incur in respect of that loss or liability. <p>Provided always that such loss excludes any consequential, special or indirect loss and is limited to the value of the contract.</p> <p>The Contractor's liability to indemnify the Purchaser shall be reduced proportionately to the extent that the Purchaser or its servants or agents may have contributed to the loss, liability or cost.</p>
EXPLANATION	CLAUSE 17: POSSESSION OF SITE
	<p>The Purchaser shall obtain authority for the Contractor to have the reasonable right of entry and do any act upon any adjoining property as may be necessary for carrying out the works (with any costs involved in obtaining such rights to be borne by the Purchaser).</p> <p>The Contractor shall:</p> <ol style="list-style-type: none"> a) Respect the rights of adjoining property owners/occupiers and ensure any inconvenience is kept to a minimum as far as is reasonably practicable; b) Not carry out the works so as to interfere unreasonably with the convenience of the public; and c) Make good as soon as practicable damage to any adjoining property arising out of carrying out of the works (at the expense of the Contractor).

EXPLANATION	CLAUSE 18: CARE OF WORKS AND SITE AND PROTECTION OF PERSONS AND PROPERTY
	<p>The Contractor shall be responsible for the care of the site, the works and all plant and materials from the time it obtains possession of the site until completion of the works.</p> <p>In the event loss or damage occurs to the site, the works, plant or materials the Contractor shall repair the loss or damage to the extent needed for completion of the works and the Contractor's obligations under Clause 21.</p> <p>The Contractor shall take all reasonable steps to keep the site and works in an orderly state and in such a condition to avoid danger to persons and property. The Contractor shall take all practicable steps to provide and maintain a safe working environment, identify any significant hazards, ensure persons are not unnecessarily exposed to hazards and have proper procedures for dealing with emergencies when they arise.</p> <p>The Contractor shall further maintain a register of accidents and serious harm. Investigate accidents and identify their cause and ensure all persons under the Contractor's control are adequately supervised.</p> <p>The Purchaser shall notify the Contractor of any safety hazards associated with the site or works or special safety measures required of which the Purchaser is aware and which an experienced contractor may not reasonably be expected to be familiar.</p> <p>The Purchaser is responsible for advising the Contractor of the location of any underground cables, sewage and water mains or any other such underground infrastructure.</p> <p>In the event of any damage to any underground cables, sewage and water mains or any other such underground infrastructure as a result of the Purchaser not advising the Contractor of the location, the Purchaser shall be responsible for the cost of any damage and/or necessary repairs (provided always that the Contractor is undertaking the works with reasonable skill care and diligence in accordance with Clause 14).</p> <p>In the event of any damage is caused by the Contractor, notwithstanding the Purchaser advising the Contractor of the location of any underground cables, sewage and water mains or any other such underground infrastructure, the Contractor will be responsible for the cost of any damage and/or necessary repairs.</p>
EXPLANATION	CLAUSE 19: GROUND CONDITIONS
	<p>If during the contract the Contractor encounters on the site physical conditions which it considers could not reasonably have been foreseen by an experienced contractor and which in its opinion will substantially increase its costs the Contractor shall as soon as practicable notify the Purchaser in writing.</p> <p>On receipt of such notice the Purchaser may either accept the Contractor's opinion or make its own investigation and determine whether or not the conditions are such as the Contractor has notified (in the Purchaser's sole discretion).</p> <p>In the event the Purchaser agrees the conditions notified could not reasonably have been foreseen by an experienced Contractor the effect of the conditions notified shall be treated as if it was a variation in accordance with Clause 13.</p> <p>In the event the Purchaser does not consider the conditions are such as the Contractor has notified the dispute must be dealt with in accordance with the disputes resolution procedure in Clause 22.</p>
EXPLANATION	CLAUSE 20: INDEPENDENT VERIFICATION
<p><i>This review/verification is recommended to ensure quality of work and to allow for the correction of mistakes/defects before a dispute develops. The terms of reference for the independent verification should be set out in the schedule, with the scope and responsibilities of the parties and independent verifier clearly agreed.</i></p>	<p>The parties agree that the Purchaser can appoint a certified independent person/organisation/company to verify/review the quality of the system and the work. The terms of reference for the verification/review are contained in the schedule.</p> <p>It is suggested that this person/organisation/company is appointed as soon as possible to ensure they are available to verify the work in the required time frames. The person/organisation/company can be indicated in the Schedule in Item 10.</p>
EXPLANATION	CLAUSE 21: DEFECTS AND RECTIFICATION
<p><i>After the work is completed omissions and defects may become apparent. The defects rectification period is intended to allow the Purchaser to bring these matters to the attention of the Contractor in order that the Contractor may attend to them. It is not intended that the defects rectification period starts until after the work is complete.</i></p>	<p>The Contractor must rectify omissions and defects in the work which became apparent within the time set out in Item 12 of the Schedule from the date the work has been completed. The Purchaser must notify the Contractor in writing of any omissions or defects, which need to be made good within ten working days of the omission or defect being identified.</p> <p>The Contractor must rectify the omissions and defects at the Contractor's expense within fourteen working days from receipt of such notification. If there is a dispute between the parties as to whether any item of work is either defective or has not been satisfactorily rectified, the dispute must be dealt with in accordance with the dispute resolution procedure in Clause 22.</p>
EXPLANATION	CLAUSE 22: DISPUTES
<p><i>If you have a dispute you should firstly discuss the matter with the other party. Serious disputes can be avoided by good communication between the Purchaser and Contractor. It is suggested that in the event of a dispute the parties meet as soon as possible and by discussion attempt to resolve the matter. Make sure you understand your rights and obligations under this contract and, if necessary seek independent legal advice. The dispute resolution procedure is aimed at avoiding costly litigation to both parties.</i></p>	<p>If there is a dispute between the Parties in relation to this contract, or any matter arising from it, the Parties will in good faith in the first instance use their best endeavours to resolve the dispute themselves.</p> <p>If the dispute cannot be resolved by the Parties themselves within a reasonable time, then they must explore whether the dispute can be resolved by use of mediation or other alternative resolution technique.</p> <p>If the dispute is not settled within a reasonable time, then either Party may refer the dispute to arbitration by a sole arbitrator under the provisions of the Arbitration Act 1996 and the substantive law of New Zealand. The arbitrator will be appointed by agreement between the Parties within 15 working days of written notice of referral by the referring party to the other or, failing agreement, by the President of the New Zealand Law Society or its successor body, or any nominee of the President. In either case, the arbitrator must not be a person who has participated in any informal dispute resolution procedure in respect of the dispute. No dispute arising gives either Party the right to suspend their obligations under the terms of this contract.</p> <p>The Purchaser and the Contractor may at any stage agree to suspend any dispute resolution under this Clause 22 due to any adjudication proceedings in accordance with the Construction Contracts Act 2002, but in the absence of any such agreement the provisions of this Clause 22 will continue to apply and neither party shall be entitled to suspend or delay any dispute resolution under this Clause 22 due to any adjudication proceedings.</p>

EXPLANATION	CLAUSE 23: GST
	<p>a) Where there is a reference to any payment under this contract, GST (or any similar tax) is to be added to the amount of that payment.</p>
EXPLANATION	CLAUSE 24: TERMINATION
	<p>The Contractor may terminate this contract in the event the Purchaser:</p> <ul style="list-style-type: none"> a) Becomes bankrupt, goes into liquidation, has a receiver or statutory manager appointment and the assignee, liquidator, receiver or statutory manager fails within ten working days to make arrangements satisfactory to the Contractor for the execution of the continued payment of amounts due under the contract; or b) Fails to pay the Contractor the amount due in accordance with Clause 10, abandons the contract or persistently, flagrantly or wilfully neglects to carry out its obligations under the contract or otherwise breaches the terms of the contract and such default is not remedied within ten working days after giving notice in writing to the Purchaser. <p>The Purchaser may terminate this contract or resume possession of the site in the event the Contractor:</p> <ul style="list-style-type: none"> a) Becomes bankrupt, goes into liquidation, has a receiver or statutory manager appointment and the assignee, liquidator, receiver or statutory manager fails within ten working days to make arrangements satisfactory to the Purchaser for the performance of the works under the contract; b) Requires a variation and the Purchaser is unable to meet the costs of the variation pursuant to the requirements of a statutory authority in accordance with Clause 13; c) Commits a breach of the contract, abandons the contract or persistently, flagrantly or wilfully neglects to carry out its obligations under the contract or otherwise breaches the terms of the contract and such default is not remedied within ten working days after giving notice in writing to the Contractor.
EXPLANATION	CLAUSE 25: NOTICE
	<p>Each notice, demand consent or other communication expressly contemplated under this contract (each a notice) will be in writing and delivered personally or sent by post, facsimile or email.</p> <p>Each notice will be sent to the address of the relevant party set out in Schedule or to any other address from time to time designated for that purpose by at least five working days prior notice to the other party.</p> <p>A notice under this contract is deemed to be received if:</p> <ul style="list-style-type: none"> a) delivered personally, when delivered; b) posted, three working days after the date of posting; c) sent by facsimile, upon production of a transmission report by the machine from which the facsimile was sent which indicates the facsimile was sent in its entirety to the facsimile number of the recipient designated for the purposes of this contract; d) sent by email, when acknowledged by recipient designated for the purposes of this contract by return email or otherwise in writing. <p>Provided that any notice deemed received after 5pm or on a non-working day will be deemed to have been received on the next working day.</p>
EXPLANATION	CLAUSE 26: MISCELLANEOUS
	<ul style="list-style-type: none"> a) Each clause in this contract is severable and if any clause is held to be illegal or unenforceable then the remaining clauses will remain in full force and effect. b) Waiver or variation of this contract will only be effective if given in writing by an authorised person. If either party waive any clause in this contract then the waiver shall apply to and operate only in the particular transaction, dealing or matter in respect of which it was given, and will not affect either parties rights under this contract at any future time. c) The parties acknowledge that this contract may be executed by an exchange of facsimile and/or scanned and emailed PDF copies and execution of this contract by that means is valid and sufficient execution. d) This contract constitute the entire agreement of the parties and supersedes all prior agreements, arrangements, understandings and representations (whether oral or written) given by or made between the parties, relating to the matters dealt with in this contract. e) This contract is to be governed by and construed in accordance with the laws of New Zealand. Each party irrevocably and unconditionally agrees that the Courts of New Zealand has non-exclusive jurisdiction to hear and determine any matter, which may arise out of or in connection with this contract.

