

Short Form Supply Agreement



Contract Agreement

Agreement for Supply of [insert Goods description] [add Contract Reference number if applicable]

The Parties

Pan Pac Forest Products Limited (Pan Pac)		[Insert legal name of Contractor] (Contractor)	
Address:	1161 State Highway 2, Wairoa Road, Napier 4182, New Zealand	Address:	1161 State Highway 2, Wairoa Road, Napier 4182, New Zealand
Address for Notices:	Private Bag 6203, Hawke's Bay Mail Centre, Napier 4142, New Zealand	Address for Notices:	Private Bag 6203, Hawke's Bay Mail Centre, Napier 4142, New Zealand
Contract Manager:	Name: [insert] Position: [insert] Contact Number: [insert] Email: [insert]	Contract Manager:	Name: [insert] Position: [insert] Contact Number: [insert] Email: [insert]

The Contract

1. The Supplier shall deliver the Goods as described in the Contract.
2. Pan Pac shall pay the Supplier the Contract Price as defined in and at the times and in the manner provided in the Contract.
3. Each party shall carry out and fulfil all other obligations imposed on that party by the Contract.

The documents forming the Contract are:

1. This Contract Agreement
2. Schedule 1 - Contract Details
3. Schedule 2 - Standard Terms and Conditions
4. *[List any other document intended to form part of the contract]*

Each item higher in the list will prevail over any item appearing lower in the list where any conflict or ambiguity between them arises.

Acceptance

In signing this Contract each Party acknowledges that it has read and agrees to be bound by it and the signatory is duly authorised to commit the Party to the Contract.

For and on behalf of the Pan Pac Forest Products Ltd		For and on behalf of the Supplier:	
_____		_____	
(signature)		(signature)	
Name:		Name:	
Position:		Position:	
Date:		Date:	

Schedule 1 – Contract Details

Type of Contract	One-off purchase of Goods OR Ongoing supply of Goods <i>[delete the one which is not appropriate]</i>	
Commencement Date (clause 1.1)	[insert Commencement Date]	
Due Date for Delivery (clause 1.1)	[insert Due Date for Delivery]	
Delivery Terms (clause 1.1)	[Incoterms or other as specified] [Insert any milestones, and set out next to each milestone the corresponding Delivery Date]	
Delivery Point (clause 1.1)	[Insert physical delivery address or addresses if more than one. If Incoterms apply, refer to relevant delivery place or port (as applicable)]	
Contract Price (clause 5)	[insert] <i>[If the currency is not NZD clearly state the agreed currency.]</i>	
Payment Terms (clause 6)	<p>The Supplier must send Pan Pac an invoice at the following times: <i>[Choose one option, insert relevant details and delete remainder.]</i></p> <p>On supply of the Goods</p> <p>OR</p> <p>At the end of the month, for Goods delivered during that month</p> <p>OR</p> <p>Upon completion of a payment milestone set out below: <i>[insert event and % of Contract Price payable]</i></p>	
Invoices (clause 6)	For the attention of:	Pan Pac Accounts Payable
	Physical address:	1161 State Highway 2, Wairoa Road, Napier 4182, New Zealand
	Postal address:	Private Bag 6203, Hawke’s Bay Mail Centre, Napier 4142, New Zealand
	Email:	panpacaccounts@panpac.co.nz
Warranty Period (clause 9)	<p>[insert months or years] from Delivery.</p> <p>[Notes: The Warranty Period refers to the length of time after the Services are performed that the Supplier must rectify any defects in the Services. Longer Warranty Periods will benefit Pan Pac. If no Warranty Period is specified here, the Warranty Period will default to six years as per the Limitation Act 2010.]</p>	
Insurance (clause 8)	<p>INSURANCE: Pan Pac does not require any insurance other than that nominated in clause 8 of Schedule 2 of this Contract. <i>[and delete the wording below]</i></p> <p>OR</p> <p>In addition to the insurances required under clause 8 of Schedule 2, the Supplier must have the following additional insurances:</p> <p>Insert type insurance to the value of \$[insert figure]</p> <p>OR WHATEVER HAS BEEN NEGOTIATED AND APPROVED BY COMPANY SECRETARY AND/OR CFO</p>	

<p>Goods and Deliverables (clause 1.1)</p>	<p>[Note: insert brief description of the Goods and Deliverables. If a more detailed description of the Goods is necessary, cross refer to Schedule 3 and insert additional documents under Schedule 3]</p> <p>Description of Goods</p> <ul style="list-style-type: none"> • [Provide a brief description.] <p>Deliverables</p> <ul style="list-style-type: none"> • [Insert a list of Deliverables <i>Supply of design documents, as built and O&M Manuals, Monthly reports (if required)</i>] <p>Purpose <i>[optional]</i></p> <ul style="list-style-type: none"> • [Describe the background to the purchase of the Goods.] <p>[What are the overarching goals, objectives and outcomes you want to achieve?]</p>
<p>Specifications (clause 1.1)</p>	<p>[Note: insert brief description of the Specifications. If a more detailed Specification is necessary, cross refer to Schedule 3 and insert additional documents under Schedule 3]</p> <p>Specifications</p> <ul style="list-style-type: none"> • [Insert] <p>Performance Standards</p> <ul style="list-style-type: none"> • [Insert] <p>Specific code of conduct / health & safety / legislative requirement/s <i>[optional]</i></p> <p>[Reference any specific code of conduct, health & safety or legislative requirement/s the Supplier must be aware of in supplying the Goods. Attach a copy and/or provide a web address where the document/s can be located e.g. all wiring to meet New Zealand Electrical standard AS/NZS 3000.]</p>

Schedule 2 – Terms and Conditions for Supply of Goods

1. Definitions and Interpretation

1.1

Definitions: The following definitions shall have effect throughout this Contract except where the context otherwise requires:

Business Day means any day other than a Saturday, Sunday or a public holiday on which registered banks are open for business in Hawke's Bay, New Zealand.

Commencement Date means the date on which this Contract commences, as specified in Schedule 1.

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is marked by either Party as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence';
- (c) is provided by either Party or a third party 'in confidence';
- (d) either Party knows or ought to know is confidential, or;
- (e) is of a sensitive nature or commercially sensitive to either Party.

Contract means this contract agreement between Pan Pac and the Supplier and includes all the schedules and annexures attached hereto.

Contract Price means the total amount payable by Pan Pac to the Supplier for the supply of Goods as stated in Schedule 1 and as may be adjusted from time to time in accordance with the terms of the Contract.

Deliverables means any deliverables to be provided by the Supplier in connection with this Agreement, as identified in Schedule 1.

Delivery has the meaning given in clause 7.1.

Delivery Point means the place that the Goods are to be delivered to Pan Pac, as specified in Schedule 1.

Delivery Terms means the terms upon which the Goods will be delivered by the Supplier to Pan Pac, as specified in Schedule 1, and includes the delivery schedule, milestones and Incoterms (if applicable).

Dispute means any dispute of whatever nature arising between the Parties.

Due Date for Delivery means the date specified in Schedule 1.

Force Majeure Event means any event, act or circumstance occurring after the date that the Parties execute this Contract, which is beyond the control of a Party, acting reasonably and prudently, including the following:

- (a) any act of God, the effect of any natural element including flood, lightning, fire, cyclone, tornado, earthquake, tsunami or other natural disaster;
- (b) sabotage, terrorism, war, revolution, rebellion, or any attempt, threat or civil strife arising therefrom, exercise of military or usurped power, or any attempts at usurpation of power, invasion, acts of emergency, boycott, blockade, embargo, sanction and riot;
- (c) strikes, work stoppages or other labour disputes or disturbances (including lockouts) which are wide spread and decreed or recommended for its members by a recognised contractors' association, of which a Party is a member or to which a Party is otherwise bound;
- (d) nuclear, chemical or biological contamination;
- (e) any plague or epidemic; and
- (f) any other cause whether similar or not to the generality of the foregoing.

None of the following conditions shall constitute a Force Majeure Event:

- (g) reasonably foreseeable weather conditions including high ambient temperatures and rain;
- (h) general economic conditions and exchange rate fluctuations;
- (i) the financial condition of Pan Pac or the Supplier.

Good Industry Practice means the exercise of that degree of skill, diligence, workmanship, prudence, foresight and economic management which would reasonably and ordinarily be expected from a skilled and experienced supplier engaged in the same or similar undertaking as the supply of the Goods to be provided under this Contract and under the same or similar circumstances.

Goods means goods to be manufactured and delivered by the Supplier and purchased by Pan Pac under this Contract, as more particularly described in Schedule 1 of this Contract.

GST means goods and services tax payable in accordance with the New Zealand Goods and Services Tax Act 1985.

Incoterms means the international trade terms called "Incoterms 2010" published by the International Chamber of Commerce.

Insolvency Event means, in respect of an entity, that entity:

- (a) being placed into bankruptcy, liquidation, administration, receivership or statutory management or having an official assignee, liquidator, receiver, trustee, manager, administrator, statutory manager or similar appointed in respect of it or all or any of its business or property;
- (b) being unable, or presumed by law unable, to pay its debts as they fall due;
- (c) entering into an assignment for the benefit of or entering into or making any arrangement or composition with, its creditors;
- (d) being subject to a resolution or any proceeding for the winding up or liquidation of that entity (whether on a voluntary or involuntary basis) other than for a bona fide solvent reconstruction and other than where such resolution or proceeding is formally discharged or dismissed in full within 10 Business Days of the initiation thereof; or
- (e) being subject to any event which is analogous to any of the events listed in paragraphs (a) to (d).

Intellectual Property Rights means all patents, utility models, registered designs and models, trademarks, service marks, applications for any of the foregoing and the rights to apply for any of the foregoing, ownership of inventions, copyrights, proprietary information and/or technical know-how and any other similar rights recognised or protected by law.

Losses means any liabilities, losses, compensation, penalties, outgoings, costs and expenses (including reasonable legal costs on a solicitor-client basis) of whatever description incurred in relation to a Triangular Employment Claim.

Party or Parties means one or both of Pan Pac and the Supplier (as context requires), together with their permitted successors and assigns.

Specifications means the specifications, drawings, data and performance criteria for the Goods as detailed in Schedule 1.

Triangular Employment Claim means a claim that is brought, or is intended to be brought, or any situation that may give rise to a claim, against Pan Pac pursuant to section 103(3) and 103B of the Employment Relations Act 2000, whether Pan Pac has been formally notified of the claim pursuant to section 115A of the Employment Relations Act 2000, or whether the Supplier has informally notified Pan Pac that such a claim is intended to be brought against Pan Pac.

Variation means any change to this Contract, including a change to the Specifications, an increase or decrease in the number of Goods to be supplied, or a change the time for performance of this Contract, as instructed or approved by Pan Pac under clause 10.

Warranty Period means the period for notifying of defects, damage or deficiencies in the Goods (or part thereof), as stated in Schedule 1 (and as may be extended under this Contract), beginning on the date the final notice is issued under clause 3.6.

1.2

Interpretation: In this Contract:

- (a) headings are for convenience only and do not affect the interpretation of this Contract;
- (b) words importing the singular includes the plural and vice versa;
- (c) a reference to:
 - (i) a person includes its legal personal representatives, successors and assigns;
 - (ii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (iii) a "clause", or "schedule" is a reference to a clause or schedule of or to (as the case may be) this Contract;
 - (iv) time is to local time in New Zealand;

- (d) the term "including", "includes" or "include" shall be deemed to also include a reference to "without limitation".

2. General Obligations

- 2.1 The Supplier agrees to supply the Goods to Pan Pac in accordance with the terms and conditions set out in this Contract.
- 2.2 Pan Pac agrees to purchase the Goods from the Supplier for the Contract Price in accordance with the terms and conditions set out in this Contract.
- 2.3 Each Party shall comply with, and ensure that its respective employees, agents and sub-contractors comply with all laws, regulations, ordinances, statutes, export permits including all conditions, and other rules applicable to the use and supply of the Goods in connection with this Contract.

3. Supply of the Goods

- 3.1 By the Due Date for Delivery, the Supplier shall have:
- (a) manufactured, procured or otherwise obtained all of the Goods, together with any documents referred to in this Contract (including any installation, operation and maintenance manuals);
- (b) delivered all of the Goods, and any documents referred to in this Contract, to Pan Pac at the Delivery Point in accordance with the Delivery Terms set out in Schedule 1 and otherwise in accordance with this Contract; and
- (c) performed any other services necessarily or reasonably required for the supply of Goods under this Contract.
- 3.2 The Due Date for Delivery shall be without prejudice to any interim milestones to be achieved by the Supplier pursuant to the Delivery Terms.
- 3.3 If an Incoterm rule is specified in Schedule 1, then that Incoterm rule shall apply to this Contract. If any specific provision of this Contract conflicts with the terms contained in Incoterms, then the specific provisions of this Contract shall prevail.
- 3.4 The Supplier shall provide the Goods in accordance with the Delivery Terms and the documents specified herein and the Specifications. Pan Pac may, at its sole discretion, return to the Supplier any Goods that do not comply with such descriptions, documents and Specifications, at the Supplier's sole cost, risk and expense. Pan Pac shall have no obligation to pay for any Goods so returned and shall be entitled to a refund for any amounts paid to the Supplier in respect of such Goods.
- 3.5 Where any items are delivered in error (including items in excess of the quantity ordered by Pan Pac), Pan Pac may return such items at the Supplier's sole cost, risk and expense. Pan Pac shall have no obligation to pay for any items so returned and shall be entitled to a refund for any amounts paid to the Supplier in respect of such items.
- 3.6 When Pan Pac (acting reasonably, and following any applicable inspections or testing) is satisfied that the requirements of the Contract have been met and the Goods are not otherwise damaged or defective in any way, Pan Pac shall promptly issue to the Supplier a notice confirming that the Goods have met the requirements of this Contract.
- 3.7 No certificate given, inspection or test performed, authorisation or comments provided or payment made by Pan Pac shall be construed as: (i) evidence of satisfaction of the Supplier's obligations under this Contract; (ii) approval or acceptance of defective Goods; or (iii) otherwise relieving the Supplier from any of its obligations under this Contract, and shall be without prejudice to any rights and remedies of Pan Pac pursuant to the terms of this Contract or at law.

4. Packaging

- 4.1 The Supplier shall ensure that all cases, crates and packages to be used in packaging the Goods shall be protected against corrosion, weather damage, condensation, distortion, damage and the ingress of foreign matter.
- 4.2 The Supplier shall take all necessary steps to ensure that the packing materials comply with all New Zealand's legal requirements including but not limited to the requirements of the Ministry for Primary Industries (see www.biosecurity.govt.nz/regs/cont-carg for information).
- 4.3 The Supplier shall indemnify Pan Pac against all losses, claims or expenses suffered or incurred by Pan Pac as a result of packing material not so complying.

5. Contract Price

- 5.1 Subject to clause 10 only, the Contract Price shall cover all of the Supplier's obligations under this Contract and all things necessary for the proper execution and completion of this Contract and the remedying of any defects or errors in the Goods.
- 5.2 The Supplier is deemed to have satisfied itself as to the sufficiency of the Contract Price as set forth in Schedule 1 of this Contract and the correctness of the documents, specifications and descriptions, quantity, unit price.
- 5.3 Unless otherwise stated in Schedule 1, the Contract Price is exclusive of GST, but is inclusive of all materials, labour, licenses, packaging, other rates, costs and taxes and includes (if applicable) shipping and delivery costs to the Delivery Point as well as (if applicable) New Zealand import taxes and tariffs. The Supplier declares that it has taken into account in establishing the Contract Price all taxes, duties, etc. for which it is liable with no exception whatsoever.

6. Payment and Invoicing

- 6.1 Pan Pac will pay the Contract Price to the Supplier in accordance with the payment terms set out in Schedule 1.
- 6.2 The Supplier shall provide valid invoices to Pan Pac at the times set out in Schedule 1 being either commercial invoices or valid tax invoices for Suppliers registered for GST in New Zealand.
- 6.3 Pan Pac shall have no obligation to make any payment to the Supplier unless and until invoices (and supporting documentation, as applicable) are received in accordance with the requirements of this Contract.
- 6.4 Invoices shall be sent to the address set forth in Schedule 1.
- 6.5 Unless otherwise stated in Schedule 1, undisputed invoices will be paid thirty (30) Business Days from receipt by Pan Pac of the original invoice, together with the bill of lading documents and other supporting documents as may be required to evidence the Supplier's performance under the Contract.
- 6.6 The currency of all payments pursuant to this Contract shall be in New Zealand dollars, unless otherwise stated in Schedule 1.
- 6.7 Pan Pac shall be entitled to offset and deduct any amounts owing by the Supplier to Pan Pac hereunder from and against amounts owing by Pan Pac to the Supplier hereunder.

7. Delivery, Title and Risk

- 7.1 Subject to the terms of this Agreement, Delivery is deemed to occur when the Goods are delivered to the Delivery Point in accordance with the Delivery Terms.
- 7.2 Title to the Goods shall pass to Pan Pac upon the earlier of: (i) payment for the Goods; and (ii) delivery of the Goods to the Delivery Point in accordance with the terms of this Contract.
- 7.3 Risk of loss, damage or deterioration of or to the Goods shall be borne by the Supplier and shall not pass to Pan Pac until the Goods are delivered to the Delivery Point.

8. Insurance

- 8.1 The Supplier shall, at its own expense keep all of the Goods insured to the full insurable value against all normal and usual insurable risks until such time as risk passes to Pan Pac. The Supplier shall ensure that Pan Pac is named as joint loss payee in respect of any insurance policies of the kind referred to in this clause 8 to the extent of its interest therein.
- 8.2 Pan Pac shall be entitled from time to time upon demand to inspect the Supplier's policies of insurance and have produced to it satisfactory evidence that the Supplier's policies of insurance are in full force and effect and also to require the Supplier to deliver to it copies of the policies of insurance and of any related insurance certificates.

9. Warranties

- 9.1 The Supplier represents and warrants that:
- (a) it possesses the necessary skill, competence, materials and qualified staff to either manufacture, procure or otherwise obtain the Goods required by Pan Pac;
- (b) the Goods will:
- (i) be free from defects in title, design, materials or workmanship;
- (ii) be fit for the purposes specified by Pan Pac and otherwise comply with all relevant Specifications;
- (iii) be in strict accordance with the Contract documents, drawings and Specifications and otherwise conform in all respects to the terms and conditions of this Contract;

- (iv) comply with applicable laws and all applicable codes and standards;
- (v) be new and of recent manufacture, and of good quality.
- 9.2 The warranties contained in this clause 9 shall remain in full force and effect notwithstanding any inspection, testing or the giving of any final certificate by Pan Pac of the Goods and such warranties shall be in addition to any other warranties given by the Supplier to Pan Pac.
- 9.3 The Supplier agrees that if, at any time prior to the expiry of the Warranty Period, any of the Goods provided by the Supplier hereunder, are found to be not in compliance with this Contract (including the warranties set out in herein), the Supplier shall, at its sole cost and expense (including all relevant transportation, dismantling and re-installation costs), re-perform, remedy, replace and/or re-procure (at the election of Pan Pac) such defective Goods. Any Goods remedied, replaced and/or re-procured in accordance with this clause shall be re-warranted until the later of:
- the end of the Warranty Period; or
 - a further twelve (12) months from the date of completion of such repair, replacement, re-performance and/or re-procurement.
- 9.4 If the Supplier fails to comply with clause 9.3 within a reasonable time, Pan Pac may carry out, or engage other contractors to carry out, the relevant repair, replacement, re-performance and/or re-procurement of the Goods and the Supplier shall reimburse Pan Pac for the cost of so doing.
- 10. Late Delivery**
- 10.1 The Goods shall be deemed to have been delivered to Pan Pac at the time when the Goods have been delivered to the Delivery Point in accordance with the Delivery Terms.
- 10.2 The Supplier shall promptly advise Pan Pac if there is likely to be any delay in the manufacture or delivery of the Goods which may delay the dates specified in the Delivery Terms.
- 10.3 The Supplier shall be entitled to an extension of time to the Delivery Terms to the extent the Supplier's critical path for the performance of its obligations hereunder is delayed as a result of:
- a Party suspending this Contract under clause 16 due to a Force Majeure Event;
 - any material change to the Contract by Pan Pac as a result of a Variation under clause 10;
 - suspension of this Contract by Pan Pac, where such suspension is not the result of an act or omission of the Supplier; or
 - any act of prevention or delay by Pan Pac.
- 10.4 To be entitled to an extension of time, the Supplier must notify Pan Pac in writing within ten (10) Business Days of the commencement of the event or circumstance causing the delay and use its reasonable endeavours to mitigate the effects of such event or circumstance on its performance. If the Supplier fails to notify Pan Pac or to mitigate as required by this clause 10.4, then it shall cease to be entitled to an extension of time of the Delivery Terms. The Supplier shall be required to perform a critical path analysis to justify any modification to the Delivery Terms. For the avoidance of doubt, the Supplier shall not be entitled to any extension of time or amendment to the Delivery Terms to the extent the delay was caused by any act, omission or negligence by the Supplier or anyone for whom the Supplier is responsible.
- 11. Variations**
- 11.1 Pan Pac may, in its absolute discretion and for any reason, instruct a Variation to this Contract, including where Pan Pac opts to procure items the same as or similar to the Goods from an alternative supplier, increase or decrease the number of Goods to be supplied by the Supplier or the time for performance (including Delivery Terms) of this Contract.
- 11.2 In the event that Pan Pac makes a Variation to the Contract, Pan Pac shall issue to the Supplier a Variation order prior to the enactment of such modified Contract describing the changes to this Contract. The Parties shall discuss and negotiate in good faith any adjustments to the Contract Price (based, to the extent applicable, upon the prices set forth in Schedule 1) or the Delivery Terms (based upon a critical path analysis) arising from such Variation order.
- 11.3 In the event that the Parties cannot agree to time and cost adjustments to this Contract, Pan Pac may nevertheless at any time instruct the Supplier to immediately comply with the Variation order including Pan Pac's reasonable determination of the time and cost adjustments. The Supplier shall comply with such Variation order and any disputed adjustments arising out of such Variation order shall be addressed in accordance with clause 17 hereof.
- 11.4 Notwithstanding any disagreement or Dispute between the Parties as to any of the provisions set out in this clause, there shall be no interruption of the performance of this Contract pending settlement or resolution of such Dispute or disagreement.
- 12. Termination**
- 12.1 If the Supplier fails to fulfil its obligations under this Contract, Pan Pac is entitled to notify the defaulting Party in writing of the default giving the Supplier ten (10) Business Days to remedy the default. If after ten (10) Business Days the default has not been remedied, then Pan Pac may give written notice to the Supplier terminating this Contract with immediate effect.
- 12.2 Notwithstanding the provisions of clause 12.1, Pan Pac may notify the Supplier in writing that this Contract is terminated immediately if:
- an Insolvency Event occurs in relation to the Supplier;
 - the Supplier commits a material breach or non-observance of the Contract, and the Supplier fails to remedy the material breach or non-observance within ten (10) Business Days, or the material breach or non-observance is not capable of being remedied.
- 12.3 If Pan Pac terminates this Contract under clauses 12.1 or 12.2, Pan Pac may procure, upon such terms and in such manner as Pan Pac may deem appropriate to reasonably meet the requirements of Pan Pac under the circumstances, goods similar to the Goods and the Supplier shall pay Pan Pac the difference between the price paid for all such similar works and the Contract Price, and all other reasonable costs incurred by Pan Pac as a result of remedying any Supplier default, including the remedy of any defect.
- 12.4 The Supplier shall assist Pan Pac if re-procurement action is necessary as a result of its default.
- 12.5 The Supplier shall be entitled to payment for Goods delivered and accepted by Pan Pac prior to the effective date of such termination and shall pay Pan Pac any amounts paid in advance to the Supplier for work not done by the Supplier.
- 12.6 Upon termination, the Supplier must:
- immediately cease carrying out the manufacture or delivery of Goods;
 - immediately remit to Pan Pac all monies owing under this Contract without deduction or set-off;
 - comply with any conditions contained in the termination notice;
 - do everything reasonably possible to reduce its losses, costs and expenses arising from the termination of this Contract;
 - immediately return or securely destroy all Confidential Information and other material or property belonging to Pan Pac; and
 - promptly deliver to Pan Pac any Goods and related documents and items for which the Supplier has been paid in accordance with this Contract.
- 12.7 The termination of this Contract does not affect those rights of each Party which accrued prior to the time of termination or affect any breach or failure to perform an obligation under this Contract that arose prior to the time of termination.
- 13. Liability**
- 13.1 Pan Pac's maximum aggregate liability to the Supplier arising out of or in connection with this Contract, whether in contract, tort (including negligence), under statute, at law or in equity, shall be limited to the Contract Price.
- 13.2 At no time, including upon any termination, shall Pan Pac have any liability to the Supplier for any indirect or consequential losses, or for any loss of profit, loss of revenue, loss of contract, loss of opportunity, loss of goodwill, loss of production or down time costs or other economic or related losses whatsoever or howsoever arising.
- 14. Confidentiality**
- 14.1 The Supplier shall not without the prior written consent of Pan Pac:
- disclose or make available to any person, or use, directly or indirectly, except for the performance and implementation of this Contract or to the extent required by applicable law, the terms of this Contract or any Confidential Information

acquired from Pan Pac in connection with the performance of this Contract whether acquired before or after the date of this Contract; or

- (b) announce, declare, communicate, publish or issue any statement mentioning Pan Pac or information relating to this Contract.

15. Intellectual Property

15.1 The Supplier warrants and represents that it has, have or shall acquire, all Intellectual Property Rights that may subsist in the Goods or documents necessary to allow Pan Pac to use the Goods or documents for their intended use.

15.2 The Supplier hereby grants Pan Pac a non-exclusive, irrevocable, perpetual, royalty-free licence to any and all such Intellectual Property Rights that may subsist in the Goods and documents supplied by the Supplier, to allow Pan Pac to use the Goods and documents for their intended use. If and to the extent that the Supplier does not own the Intellectual Property Rights that may subsist in the Goods and documents supplied by the Supplier, the Supplier shall do all things necessary to procure a licence to that Intellectual Property from the proprietor, and the Supplier hereby agrees to sub-licence such Intellectual Property Rights to Pan Pac to allow Pan Pac to use the Goods and documents for their intended use.

15.3 The Supplier shall indemnify Pan Pac against any action, suit, claim or proceeding which is based upon a claim, whether rightful or otherwise, that any of the Goods or other documents provided hereunder, constitutes an infringement of any Intellectual Property Rights of any third party. In case any of the Goods and/or documents provided hereunder, are in such suit or action held to constitute infringement and/or their use is enjoined, the Supplier shall, at its own expense, either procure for Pan Pac an irrevocable, royalty-free licence to continue using such Goods and/or documents or with Pan Pac's prior written approval, replace the same with substantially equal but non-infringing Goods and/or documents, provided that no such replacement shall in any way relieve the Supplier of its warranty obligations hereunder.

16. Force Majeure

16.1 Neither Party will be liable to the other for any failure to perform its obligations under this Contract where the failure is due to a Force Majeure Event.

16.2 A Party who wishes to claim suspension of its obligations due to a Force Majeure Event must notify the other Party as soon as reasonably possible. The notice must state:

- (a) the nature of the circumstances giving rise to the Force Majeure Event;
- (b) the extent of that Party's inability to perform under this Contract;
- (c) the likely duration of that non-performance; and
- (d) what steps are being taken to minimise the impact of the Force Majeure Event.

16.3 If Pan Pac, acting reasonably, requires the Goods to be supplied during the period affected by a Force Majeure Event, then despite clause 16.4, Pan Pac may terminate this Contract immediately by giving notice without having any liability towards the Supplier.

16.4 If a Party is unable to perform any obligations under this Contract for twenty (20) Business Days or more due to a Force Majeure Event, the other Party may terminate this Contract immediately by giving notice. In the event of such termination, to the extent any advance payment was made by Pan Pac to the Supplier for the Goods, the Supplier shall refund such sums to Pan Pac.

17. Disputes and Triangular Employment Claims

17.1 If either Party notifies the other in writing of any Dispute arising out of or in relation to the Contract, the Parties must endeavour to resolve the Dispute in good faith. The Parties may agree to use a mediator.

17.2 In the event that Pan Pac is required to respond to, joined to, or incurs any Losses in connection with a Triangular Employment Claim Pan Pac may by written notice to the Supplier, require the Supplier to indemnify Pan Pac against all Losses actually suffered or incurred by Pan Pac in connection with the Triangular Employment Claim and the Supplier agrees to indemnify Pan Pac in respect of any such Losses notified to it.

17.3 Pursuant to clause 17.2 the Supplier agrees to reimburse Pan Pac for such Losses within [30] days of notification of such Losses. Pan Pac

will promptly provide all such documentation that the Supplier requires in order to make payment.

17.4 In the event that Pan Pac is joined to a Triangular Employment Claim, Pan Pac shall be entitled to take all necessary steps to respond to, dispute, or otherwise engage in respect of the Triangular Employment Claim, including but not limited to instructing independent legal counsel (of Pan Pac's choosing) and participating in any informal or formal dispute resolution process (including mediation directed by the Employment Relations Authority), Employment Relations Authority proceeding, or court proceeding.

17.5 Save as agreed under this Agreement, Pan Pac will not be responsible for the management of any employment relationship or other relationship as between the Supplier and its employees or contractors.

17.6 Pan Pac will use reasonable endeavours to comply with its obligations at law in its conduct with any of the Supplier's employees or contractors who undertake work for Pan Pac under this Agreement.

17.7 Pan Pac will notify the Supplier as soon as reasonably practicable of any concerns with any of the Supplier's employees or contractors that arise while the employees or contractors are undertaking services pursuant to this Agreement.

17.8 The Supplier agrees and acknowledges that it is solely responsible for the employment or independent contractor relationship between the Supplier and its employees and/or contractors, and that the Supplier will abide by its obligations at law in respect of such relationships and/or agreements.

17.9 The Supplier will promptly notify Pan Pac of any Triangular Employment Claim. In any case such notification will be no later than five Business Days after the Supplier is notified of any such Triangular Employment Claim.

18. Miscellaneous

18.1 **Entire Agreement:** This Contract is the entire agreement between Pan Pac and the Supplier with respect to the supply of Goods. To the extent permitted by applicable laws, the Parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth in this Contract.

18.2 **Changes to this Contract:** No changes, amendments, waivers or modifications of the terms or conditions of this Contract shall be valid unless reduced to writing and signed by both Parties.

18.3 **No Waiver:** No term, condition, right, obligation or breach of this Contract shall be waived or be deemed to have been waived unless such waiver is in writing and addressed to the other Party. No such waiver shall be a waiver of any past or future default, breach or modification of any of the terms or condition of this Contract unless expressly stipulated in such waiver.

18.4 **Assignment:** The Supplier shall not assign, novate, subcontract or otherwise transfer this Agreement or any part of it without the prior written consent of Pan Pac. Pan Pac may at any time without the consent of the Supplier, assign, transfer, novate and/or charge the benefit of this Agreement and/or any of Pan Pac's present or future rights, interests and/or benefits hereunder to any person.

18.5 **Subcontracting:** The Supplier shall not subcontract any elements of this Contract or replace any sub-contractor previously approved by Pan Pac without the prior written consent of Pan Pac. Such consent shall not relieve the Supplier of any of its obligations hereunder or create any contractual relationship between Pan Pac and such sub-suppliers.

18.6 **Independent Contractor:** Nothing in this Contract constitutes a legal relationship between the Parties of partnership, joint venture, agency, or employment. Neither Party has authority to bind or represent the other Party in any way or for any purpose.

18.7 **Counterparts:** This Contract may be executed by the Parties in one or more counterparts. Such counterparts may be exchanged by email or facsimile.

18.8 **Cumulative Rights and Remedies:** No single or partial exercise of, or any delay in the exercise of any right or remedy under this Contract by Pan Pac shall preclude any other or further exercise of that right or remedy or the exercise of any other right or remedy by Pan Pac under this Contract and the rights and remedies of Pan Pac under this Contract shall be cumulative and not exclusive of any rights, remedies, powers and privileges provided by or available under common law or in equity, including the right to specific performance, injunctive relief and/or direct monetary damages.

- 18.9 **Governing Law:** This Contract will be governed and interpreted in accordance with the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the courts of New Zealand.
- 18.10 **Notices:** Any notice provided for by the terms and conditions of this Contract shall be:
- (a) in writing, in English and signed by a person duly authorised by the sender; and
 - (b) hand delivered or sent by prepaid post or email to the recipient's address for notices specified in the Contract Agreement, as may be varied by any notice given by one Party to the other.
- A notice given under this clause 18.12 takes effect when the notice is received. A notice is taken to be received:
- (c) if delivered by hand, when such notice is delivered;
 - (d) if sent by post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside of New Zealand); or
 - (e) if sent by email, at the time and date at which the sender's email system records that the email was successfully delivered to the recipient (provided that an automated 'out of office', deliver failure or similar message is not received),
- but if delivery, receipt or transmission is not on a Business Day or is after 5:00pm on a Business Day, the Notice is taken to be received at 9:00am on the next Business Day.
- 18.11 **Survival:** The following clauses shall remain in force upon expiry or termination of this Contract: 1 (*Definitions and Interpretations*), 9 (*Warranties*), 14 (*Confidentiality*), 15 (*Intellectual Property*), 17 (*Disputes*), 18 (*Miscellaneous*), and any other clause which by its nature survives termination.
- 18.12 **Severance:** If any term, condition or provision of this Contract is held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Contract.
- 18.13 **Enforceability:** If any term, condition or provision of this Agreement is held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Agreement.
- 18.14 **Joint and Several Liability:** If the Supplier is comprised of more than one person in joint venture, consortium or other unincorporated or incorporated grouping of two or more persons: (a) these persons shall be jointly and severally liable to Pan Pac for all obligations and liabilities of the Supplier as set out in this Agreement; and (b) these persons shall notify Pan Pac of such natural person or persons who shall have authority to bind the Supplier and each of these persons.