



NEW ZEALAND ALUMINIUM SMELTERS LIMITED
2004 BASE CONTRACT FOR PRODUCTS
(WITH OR WITHOUT PURCHASE ORDER)



New Zealand Aluminium Smelters
Limited

NZAS Contract for Products
Contract No [insert number]

SCHEDULE

Supplier	[insert company name] Company No: [insert] Address: [insert] Phone: [insert] Fax: [insert]
Company	New Zealand Aluminium Smelters Limited Private Bag 90110, Invercargill New Zealand Phone: + 64 3 218 5999 Fax: + 64 3 218 5800 E-mail: [insert name]@comalco.riotinto.com.au
Site	Tiwai Road, Southland via Invercargill, New Zealand OR As specified in Purchase Order
Products	[insert a full description of the Products to be supplied] OR As specified in Appendix 3
Prices	As specified in Appendix 2
Currency	[insert currency in which Products will be purchased] OR As specified in Appendix 2
Delivery Point	[insert Delivery Point] OR As specified in Appendix 2
Term	[insert the term of the Contract] OR As specified in Appendix 2
Extension of Term	[insert the duration of the extension of the Term which the Company may require]
Effective Date	[insert date on which this Contract is to commence – it may not, and does not have to, be the Date of signing the Contract]

Special Conditions	As specified in Appendix 1
Site Conditions	As specified in Appendix 4
Specifications and Standards	As specified in Appendix 5
Defects Liability Period	<i>[insert period]</i>
Company Representative	<i>[insert name]</i> Title: <i>[insert]</i> Address: <i>[insert]</i> Phone: <i>[insert]</i> Fax: <i>[insert]</i> Email: <i>[insert]</i>
Supplier Representative	<i>[insert name]</i> Title: <i>[insert]</i> Address: <i>[insert]</i> Phone: <i>[insert]</i> Fax: <i>[insert]</i> Email: <i>[insert]</i>
Request for Proposal	Means the document of that name prepared by the Company and dated <i>[insert date]</i>
Date of signing the Contract	/ /

The Parties agree to the supply and receipt of the Products on the terms and conditions set out in this Contract.

SIGNED by **Shane Sullivan** as authorised signatory for **NEW ZEALAND ALUMINIUM SMELTERS LIMITED** in the presence of:
.....
Signature of witness
.....
Name of witness (block letters)
.....
Address of witness
.....
.....
Occupation of witness

.....
By executing this agreement the signatory warrants that the signatory is duly authorised to execute this agreement on behalf of **NEW ZEALAND ALUMINIUM SMELTERS LIMITED**

SIGNED by *[insert name]* as authorised representative for *[insert company name]* (Company No *[insert number]*) in the presence of:
.....
Signature of witness
.....
Name of witness (block letters)
.....
Address of witness
.....
.....
Occupation of witness

.....
By executing this agreement the signatory warrants that the signatory is duly authorised to execute this agreement on behalf of *[insert company name]* Company No *[insert number]*

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NZAS Contract for Products General Terms and Conditions

Background

- A. The Supplier wishes to supply, and the Company wishes to acquire the Products.
- B. The Supplier and the Company have agreed that the Supplier will supply the Products to the Company on the terms and conditions as set out in this Contract.

Operative Provisions

1 Appointment of Supplier

The Company appoints the Supplier as a supplier of the Products to the Company.

2 Term

- 2.1 The Contract commences on the Effective Date and, unless terminated earlier pursuant to this Contract, operates for the Term.
- 2.2 The Company may extend the Term for the period stated in the Schedule provided the Company gives the Supplier written notice of its intention to do so at least 30 days before the end of the applicable Term.
- 2.3 If the Term of this Contract is extended in accordance with this Clause 2, this Contract continues in force for the duration of the extended Term.

3 Supply arrangements

- 3.1 The Supplier will supply to the Company the Products, and if relevant, within the Specified Lead Time.
- 3.2 When supplying the Products, the Supplier must at all times comply with and ensure that the Supplier's Personnel comply in all respects with:
 - (a) all applicable Laws and industrial awards and agreements, including, without limitation, any such relating to drugs and alcohol, health, safety and environment; and
 - (b) all alcohol and other drug, safety, health and environment guidelines, policies, standards and procedures provided to the Supplier by the Company as amended or replaced from time to time including, but not limited to, the Company's Supplier Health, Safety and Environment Standards.

The Supplier must make this a condition of any subcontracted work.
- 3.3 If the Supplier enters the Site, the Supplier must ensure that the Supplier and the Supplier's Personnel:
 - (a) comply in all respects with all applicable Laws and Company standards;
 - (b) comply in all respects with all of the Site Conditions;
 - (c) comply in all respects with all directions and orders given by the Company Representative;
 - (d) do not interfere with any of the activities conducted by the Company or the activities of any other Person at the Site;
 - (e) ensure that the Site is left secure, clean, orderly and fit for use;
 - (f) ensure that all applicable requirements imposed on the Supplier and its Personnel under the Company's Supplier Health, Safety and Environment Standards that have to be completed before access to the Site is approved or before work can commence, are complied with before entering or commencing work at the Site; and
 - (g) ensure that any tools, equipment, material or other products brought onto the Site are kept secure from theft or damage and comply with any relevant Law, manufacturer or owner specifications or standards and any Company standards or policies, including, without limitation, any standards or policies relating to health, safety and environment.
- 3.4 The Supplier agrees that the Company or its designated agent will have the right of inspection and expediting of all work on Products while in any stage of engineering, manufacture or installation, including attending at the Supplier's premises. The Supplier must make this a condition of any subcontracted work.
- 3.5 The Company or its designated agent may reject any work performed or being performed that does not conform to this Contract, whereupon the work rejected must be redone at no additional cost to the Company.
- 3.6 Any inspection and expediting done by the Company or its designated agent will not relieve the Supplier of any obligations contained in this Contract.
- 3.7 The Supplier or the Supplier's Personnel must, at the Supplier's or their cost, obtain all Government Authorisations required to perform this Contract.
- 3.8 The Supplier will be responsible for identifying any Government Authorisations that must be obtained by the Company and will:
 - (a) prepare and submit to the Company Representative the draft applications for such authorisations (as well as all other relevant material required to be provided in support of the application) for approval and execution by the Company;
 - (b) after receipt of the signed application from the Company, attend to lodgement of the application with the relevant Government Instrumentality; and
 - (c) do all other things necessary to obtain such authorisations.

4 Delivery

- 4.1 Subject to Clause 4.2 and Clause 4.3, the Supplier will deliver the Products to the Company at the Delivery Point.

- 4.2 If required from time to time by the Company, the Supplier will maintain sufficient stocks of the Products at the Site so as to meet the day-to-day requirements of the Company.
- 4.3 If the Company nominates different locations for delivery other than the Delivery Point, then the Company will pay the amount of any additional cost of delivery to such nominated point(s), as agreed in advance with the Supplier.
- 4.4 The Products delivered to each Delivery Point must be delivered in good condition and without damage caused by delivery. The Supplier will replace any damaged Products at no additional cost to the Company.
- 4.5 The Products remain at the Supplier's risk and title will not pass to the Company:
- (a) until the Products are delivered to, inspected by, and accepted by, the Company at the relevant Delivery Point; or
 - (b) where stock is held by the Supplier at the Site, until the Products are issued to the Company by the Supplier from the relevant store.
- 4.6 The Supplier will provide detailed delivery dockets with every shipment, in duplicate. One delivery docket is to be packed with the Products, the other is to be enclosed and attached to the outside of the consignment. Each delivery docket must contain as a minimum, the following information – the Company's order number and order item number; details (including the name and telephone number of the packer); quantity of Products dispatched; item description and part number; details of any items on back order. All Products must be packed, marked and transported as specified in this Contract or relevant Purchase Order, but if not specified then in a proper and suitable manner and in all cases in accordance with the proper requirements of the carriers.
- 4.7 The Supplier will be liable for any difference in freight charges arising from a failure to follow any transport instructions as set out in Clause 4.6 or to properly describe the Products transported.
- 4.8 The Parties will assist each other in obtaining documents and other information desirable for the prosecution of claims against carriers.
- 4.9 The Company may request the Supplier remove any person engaged in the supply of the Products who, in the reasonable opinion of the Company Representative, is either incompetent or negligent in the performance of their duty or engaged in activities which are contrary or detrimental to the interests of the Company or is not complying with the policies of the Company or persists in any conduct likely to be prejudicial to safety, health or the environment. The Supplier must consider removing such a person immediately from the Site, taking into account the requirements of the Employment Relations Act. The Supplier must, at its own cost, provide a suitable replacement for any such person who is removed within 24 hours or such longer time as may be agreed by the Company.

5 Defects liability

5.1 Warranty

The Supplier warrants each Product against any defect that arises during the Defects Liability Period.

5.2 Commencement of Defects Liability Period

In respect of each Product, the Defects Liability Period will commence on and from the later of:

- (a) the date that Product is received by the Company and, where there is an Agreed Testing Period, receipt will be deemed to have occurred at the end of that period; or
- (b) where stock is held by the Supplier at the Site, the date that Product is issued to the Company by the Supplier from the relevant store.

5.3 Rectification of defects

- (a) Upon receipt of a notice from the Company of any defect in a Product during the relevant Defects Liability Period due to defective design, materials, workmanship, un-merchantable quality or unfitness for intended purpose, the affected Product must be redesigned, repaired or replaced as appropriate by the Supplier at no cost to the Company prior to the expiration of the time specified in the notice.
- (b) If the Supplier fails to make the necessary redesign, repair or replacement within the period specified, the Company may perform or cause to be performed such redesign, repair or replacement at the Supplier's risk and cost and any costs and expenses incurred by the Company will be recoverable from the Supplier as a debt due and payable.
- (c) Any redesign, repair or replacement will have an additional Defects Liability Period.

6 No exclusivity

The Supplier acknowledges that:

- (a) the Company is not obliged to acquire any or any minimum quantity of the Products from the Supplier; and
- (b) nothing in this Contract will be construed as limiting the Company's right to purchase Products or products similar to the Products from a third party at any time in any circumstances.

7 Existing supply arrangements

- 7.1 The Supplier acknowledges that the Company has no obligation to the Supplier to seek to alter, modify or terminate any supply arrangements between the Company and third party suppliers of the Products or products similar to the Products.
- 7.2 Any existing supply arrangements between the Supplier and the Company by which the Supplier provides products the same as or similar to the Products are automatically terminated with effect on the day prior to the Effective Date.
- 7.3 Termination of any supply agreement in accordance with Clause 7.2 will be without prejudice to any rights of either Party against the other which accrued prior to the time of termination or which otherwise relate to or may arise at any future time from any breach or non-observance of obligations under those agreements which arose prior to the time of termination.

8 Alternative supply

- 8.1 If the Supplier is unable to supply the Products in accordance with this Contract, then the Company may at its option (and without limiting any other remedy available to the Company) obtain the Products from a third party, including from the Supplier's competitors ("Alternative Purchases").
- 8.2 The Supplier will be responsible for and must pay the Company all incremental costs associated with sourcing Alternative Purchases from an alternate supplier, including Supply Chain cost differentials.

9 Price

- 9.1 The Products will be supplied by the Supplier to the Company for the Prices.
- 9.2 The Prices will:
- (a) if a Price Adjustment Mechanism is specified under this Contract, be adjusted in accordance with the Price Adjustment Mechanism; or
 - (b) if a Price Adjustment Mechanism is not specified in this Contract, be fixed for the Term.
- 9.3 Subject to Clause 10, Prices are inclusive of all Taxes (excluding GST).
- 9.4 All expenses incurred by the Supplier in relation to the provision of the Products, including, without limitation, travel expenses and subsistence expenses, will be deemed to be included in the Prices.
- 9.5 The Company is not liable for any cost, liability or expense incurred by the Supplier in performing its obligations under this Contract, except as provided in this Contract.
- 9.6 Unless otherwise provided for in this Contract, the Prices will be the Supplier's sole remuneration for the supply of the Products and the performance of the Supplier's obligations under this Contract.

10 GST

- 10.1 Subject to clause 10.2, amounts in this Contract are inclusive of all Taxes (excluding GST).
- 10.2 All amounts payable under this Contract shall be taken as being expressed exclusive of GST (if any). The Company shall pay an amount (the "GST amount") equal to any GST for which the Supplier is liable in respect of payments made under this Contract. The Supplier's invoices shall specify the GST amount and shall comply with the GST Act.

11 Payment

- 11.1 The Supplier will invoice the Company for payment on the basis and in the form determined by the Company. However, all invoices must be in the form of, or accompanied by, a valid Tax Invoice and must, unless inconsistent with the GST Act, specify:
- (a) the Supplier's Company Number;
 - (b) the amount due to the Supplier and the basis of its calculation;
 - (c) the amount of any GST paid or payable by the Supplier;
 - (d) a description of the Products provided; and
 - (e) the Supplier's address for payment.
- 11.2 All invoices, Prices and payments must be stated and made in the Currency.
- 11.3 Unless specified elsewhere in this Contract, the Company will make payment at the end of the month following the month in which the invoice is received by the Company or the Products are received, whichever is later.
- 11.4 In the event that any invoice or any part of any invoice is disputed, the Company must pay that part of the invoice (if any) that is undisputed, and the Parties must settle the disputed invoice or part in accordance with Clause 23.
- 11.5 Subject to Clause 11.4, the Company may set off against any amount owing to the Supplier any amount owing, or claimed by the Company to be owing, by the Supplier to the Company, whether under this Contract or otherwise.

12 Representations and Warranties

- 12.1 The Supplier represents and warrants, for a period of 12 months from the date of receipt of the Products, that:
- (a) the execution and delivery of this Contract by the Supplier and the performance of the obligations under this Contract do not and will not result in the breach of:
 - (i) the terms and conditions of, or constitute a breach under, any agreement or undertaking (oral or written) or any indenture or instrument to which the Supplier is a party or by which the Supplier may be affected or bound;
 - (ii) any order, writ, rule, regulation, injunction or decree of any court, administration agency or Government Instrumentality or any Law applicable to the Supplier or by which the Supplier may be bound; or
 - (iii) any obligation of confidence applicable to the Supplier or by which the Supplier may be bound;
 - (b) the Supplier has good title to, and is the sole beneficial owner of, the Products supplied to the Company under this Contract, and such Products will be sold and delivered to the Company free of any charge or encumbrance;
 - (c) as at the Date of signing the Contract, the Supplier:
 - (i) is not aware of any actual or threatened claim for infringement of Intellectual Property Rights, or for the breach of any obligation of confidence, arising out of the manufacture, sale, supply or use of the Products; and

- (ii) has taken all reasonable measures to ensure that no conflict of interest presently exists or is likely to arise in the performance of its obligations under this Contract;
 - (d) in relation to the supply of the Products:
 - (i) the Supplier and its Personnel will exercise the standards of diligence, skill and care normally exercised by similarly qualified and competent persons in the performance of comparable work; and
 - (ii) any tools and equipment used on Site by the Supplier or its Personnel will be in safe working condition, will comply with all Laws applicable to such tools and equipment and will be operated by suitably qualified and competent persons, to the Company standards or policies, including any standards or policies relating to health, safety and environment;
 - (e) the Products (whether or not manufactured by the Supplier):
 - (i) will be of merchantable quality;
 - (ii) will be free from defects in design, materials and workmanship;
 - (iii) will be fit-for-purpose;
 - (iv) will meet the relevant Specifications and Standards, and all applicable Laws and Government Authorisations;
 - (v) where not manufactured by the Supplier, will meet the current specifications of the manufacturer of the relevant Product;
 - (vi) are new unless otherwise agreed; and
 - (vii) if packaged or labelled, have packaging and labelling which is in compliance with the requirements of this Contract and any Purchase Order, and all applicable Laws;
 - (f) the Relevant Software and Equipment will be free from defects in design, material and workmanship, including, without limitation, any defect in functionality;
 - (g) the Supplier and the Supplier's Personnel are in possession of, or will be able to obtain, all requisite Government Authorisations;
 - (h) it has examined and considered all information made available by the Company to the Supplier for the purpose of supplying the Products;
 - (i) it has represented that it can comply with all of its obligations under this Contract and acknowledges and agrees that the Company has relied upon such representation in entering into this Contract;
 - (j) it has made proper allowance in the Prices for:
 - (i) all matters which might impact upon the Supplier's ability to deliver the Products within the particular time, cost or quality constraints; and
 - (ii) all risks associated with the supply of the Products;
 - (k) it is not in liquidation, receivership, or under statutory management; and
 - (l) it has made all efforts to become aware of the subject matter of the representations and warranties set out in this Clause 12.1.
- 12.2 The Supplier must notify the Company in writing promptly upon becoming aware at any time during the Term of any claim referred to in Clause 12.1(c)(i).
- 12.3 The Supplier further provides each of the Other Warranties in respect of the Products supplied by the Supplier under this Contract.
- 12.4 The warranties in Clause 12.1 and any Other Warranties given by the Supplier in relation to the Products are in addition to:
- (a) any warranty or service guarantee supplied by the manufacturer of a Product;
 - (b) any service guarantee separately provided by the Supplier; and
 - (c) any warranty implied by Law.
- 12.5 Without limitation to any other remedy available to the Company under this Contract or otherwise, if the Supplier is in breach of any of the Warranties, then the Supplier must, at the election of the Company, and at the Supplier's cost (including any relevant transportation and labour costs), either replace or repair to the Company's satisfaction, the Products, and replace or rectify the Relevant Software and Equipment.
- 12.6 Each of the Warranties:
- (a) will remain in full force and effect notwithstanding termination of this Contract for any reason;
 - (b) will not be read down by reason of the existence or absence of any other Warranty; and
 - (c) is repeated when each invoice is delivered.

13 Force Majeure

13.1 Notice of Force Majeure Event

If a Party (the 'Affected Party') is prevented from, or delayed in, performing the Contract by a Force Majeure Event and the Affected Party wants to rely on the Force Majeure Event, then it must notify the other Party in writing of the occurrence of the Force Majeure Event and the circumstances resulting or arising from it within 10 Business Days after the start of the Force Majeure Event. The notice must give:

- (a) details of the Force Majeure Event;
- (b) details of the Affected Party's obligations under the Contract which are affected;
- (c) details of the action that the Affected Party has taken and proposes to take to remedy the circumstances or situation arising or resulting from the Force Majeure Event;
- (d) an estimate of the time during which the Affected Party will be unable to carry out the affected obligations due to the Force Majeure Event; and
- (e) details of all insurance policies upon which the Affected Party will attempt to rely in making good loss or damage caused by the Force Majeure Event.

13.2 Mitigation of event

The Affected Party will use its best endeavours to remove or relieve any Force Majeure Event and to minimise the delay in the performance of the Affected Party's obligations under the Contract caused by a Force Majeure Event.

13.3 Information

The Affected Party must keep the other Party informed (not less than weekly) of the steps being taken to mitigate the effect of the Force Majeure Event upon the performance of the Affected Party's obligations under the Contract and of an estimate of the duration of any delays.

13.4 Cessation of Force Majeure Event

When the period for which the Affected Party's obligations are affected by a Force Majeure Event ceases:

- (a) the Affected Party must recommence performance of all its obligations under the Contract as soon as practicable; and
- (b) the Company will make an equitable adjustment to the Supplier's program (if any) to reflect the effect of the Force Majeure Event on the performance of the Contract.

13.5 No Entitlement to Compensation

- (a) The adjustment (if any) under Clause 13.4(b) will be the Supplier's sole remedy for a Force Majeure Event.
- (b) A Force Majeure Event will not in any way entitle the Affected Party or the other Party to any payment, damages or compensation from the Affected Party or the other Party (as the case may be).

13.6 Suspension of obligations

No Party is required to perform its obligations, other than an obligation to pay moneys outstanding prior to the occurrence of a Force Majeure Event, during the currency of a Force Majeure Event to the extent and for the duration that those obligations are unable to be performed by the Force Majeure Event.

13.7 Substituted supply

- (a) If it is able to do so, the Company may arrange for a third party to supply or provide any of the Products that are adversely affected by a Force Majeure Event.
- (b) Any action taken by the Company pursuant to Clause 13.7(a) will not give rise to any rights or entitlements for the Supplier.

14 No fault termination

14.1 Termination Notice

The Company may, at any time and for any reason whatsoever, terminate the Contract or any part of it by giving the Supplier not less than 30 days notice of its intention to do so ("Termination Notice").

14.2 Obligations upon receipt of Termination Notice

Upon receipt of a Termination Notice, the Supplier must:

- (a) immediately cease the supply of the Products in accordance with, but only to the extent specified in, the Termination Notice;
- (b) immediately take all possible action at its cost to ensure the safety of all Personnel and the protection of all Products;
- (c) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination; and
- (d) take any other action required by the Company in relation to the termination.

14.3 Obligations upon termination

On the date of termination specified in the Termination Notice, the Supplier must:

- (a) provide the Company with a detailed report in such form as the Company may require in relation to the obligations performed up to and including the date of receipt of the Termination Notice;
- (b) return to the Company any items issued to the Supplier by the Company during the Term;
- (c) offer the Company first right of refusal to purchase any of the Supplier's equipment used for the purposes of the Contract to be purchased by the Company at its depreciated value or such other value as agreed by the Parties; and
- (d) take any other action relating to the termination of the Contract as the Company may require.

14.4 Supplier compensation

- (a) Following termination of the Contract by the Company pursuant to Clause 14.1, the Company will pay the Supplier:

- (i) for all Products properly delivered to the Company as at the date of termination, less any payments previously made by the Company in respect of those Products; and
- (ii) its out-of-pocket costs and expenses which it has incurred or will incur solely as a result of the Contract and which it is unable to otherwise recover or mitigate, including as a result of (if applicable):
 - (A) complying with the Company's directions in relation to the termination;
 - (B) removing the Supplier's equipment from the Site; and
 - (C) returning the Supplier's Personnel to their place of engagement.
- (b) The amounts outlined in Clause 14.4(a) represent the only amounts or Liabilities recoverable from the Company by the Supplier following a termination of the Contract by the Company in accordance with this Clause 14.

14.5 Company access to Supplier records

For the purposes of Clause 14.4(a), the Supplier must provide the Company with such access to its Documentation (subject to confidentiality restrictions) as the Company may require in order to verify the amounts claimed by the Supplier.

15 Supplier default and insolvency

15.1 Supplier Default Notice

If the Supplier breaches any term or condition of the Contract, the Company may serve a notice of default ("Supplier Default Notice") on the Supplier.

15.2 Supplier Default Notice requirements

A Supplier Default Notice must:

- (a) either require that the breach be remedied within a specified period of not less than 30 days after service of the Supplier Default Notice on the Supplier or state that the breach is incapable of remedy; and
- (b) state that if the breach is not remedied within the period specified in the Supplier Default Notice or is incapable of remedy, then the Company may by further notice to the Supplier do one or more of the following:
 - (i) elect wholly or partly to suspend payment under the Contract until the breach has been remedied by the Supplier;
 - (ii) take such action as the Company deems necessary to cure the breach (the cost of such action so taken by the Company being recoverable from the Supplier as a debt due to the Company by the Supplier); or
 - (iii) terminate the Contract or any part of it with effect from a specified date ("Cancellation Date").

15.3 Obligations upon termination

If the Company gives notice pursuant to Clause 15.2(b)(iii), the Contract is terminated from the Cancellation Date and the Supplier must:

- (a) cease the supply of the Products in accordance with, but only to the extent specified in, the Supplier Default Notice;
- (b) immediately take all possible action at its cost to ensure the safety of all Personnel and the protection of all Products;
- (c) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination;
- (d) offer the Company first right of refusal to purchase any of the Supplier's equipment used for the purposes of the Contract to be purchased by the Company at its depreciated value or such other value as agreed by the Parties; and
- (e) take any other action required by the Company in relation to the termination.

15.4 No prejudice

Notwithstanding the terms of any Supplier Default Notice, no action taken by the Company under this Clause 15 will prejudice the existence of any of its rights and remedies under the Contract that the Company may have as a result of the relevant breach.

15.5 Supplier insolvency or bankruptcy

If the Supplier:

- (a) being a company:
 - (i) stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts;
 - (ii) does not satisfy the solvency test within the meaning of section 4 of the Companies Act;
 - (iii) must be presumed to be unable to pay its debts by reason of section 287 of the Companies Act;
 - (iv) fails to comply with a statutory demand (within the meaning of section 289(1) of the Companies Act);
 - (v) has a liquidator appointed over all or any of its assets or undertaking, or any step preliminary to the appointment of a liquidator is taken;
 - (vi) has a receiver or statutory manager within the meaning of the Companies Act or similar officer appointed to all or any of its assets or undertaking; or
 - (vii) has an application or order made, proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps, or for the purposes of reconstruction or amalgamation)

for its liquidation or dissolution or for it to enter into an arrangement, compromise or composition with or assignment for the benefit of its creditors, or class of them or any of them; or

- (b) being an individual, commits an act of bankruptcy or makes a compromise or composition with or assignment of his property in favour of creditors,

the Company may either:

- (c) terminate the Contract by notice to the Supplier or any other person in whom the Contract has been vested; or
- (d) give the Person in whom the Contract has been vested, the option to perform the Supply in accordance with the Contract, subject to that Person providing a guarantee satisfactory to the Company up to the value (as certified by the Company Representative) of the Supply remaining to be performed pursuant to the Contract.

16 Default by the Company

16.1 Company Default Notice

If the Company breaches any term or condition of the Contract, the Supplier may serve a notice of default ("Company Default Notice") on the Company.

16.2 Company Default Notice requirements

A Company Default Notice must:

- (a) either require that the breach be remedied within a specified period of not less than 30 days after service of the Company Default Notice on the Company or state that the breach is incapable of remedy; and
- (b) state that if the breach is not remedied within the period specified in the Company Default Notice or is incapable of remedy, then the Supplier may either:
 - (i) elect to wholly or partly suspend supply of the Products until the breach has been remedied by the Company; or
 - (ii) terminate the Contract by notice to the Company.

16.3 Costs recoverable by Supplier

- (a) Following termination of the Contract by the Supplier pursuant to Clause 16.2(b)(ii), the Company will pay the Supplier:
 - (i) for all Products properly delivered to the Company as at the date of termination, less any payments previously made by the Company in respect of those Products; and
 - (ii) its out-of-pocket costs and expenses which it has incurred or will incur solely as a result of the Contract and which it is unable to otherwise recover or mitigate, including as a result of (if applicable):
 - (A) complying with the Company's directions in relation to the termination;
 - (B) removing the Supplier's equipment from the Site; and
 - (C) returning the Supplier's Personnel to their place of engagement.
- (b) The amounts outlined in Clause 16.3(a) represent the only amounts or Liabilities recoverable from the Company by the Supplier following a termination of the Contract by the Supplier in accordance with Clause 16.2(b)(ii).

16.4 Company access to Supplier records

For the purposes of Clause 16.3(a), the Supplier must provide the Company with such access to its Documentation (subject to confidentiality restrictions) as the Company may require in order to verify the amounts claimed by the Supplier.

17 Insurance

17.1 The Supplier is required, at its cost, and to the extent permitted by law, to effect and maintain throughout the Term and any additional period the Company deems necessary, each of the insurances described in Clauses 17.2, 17.3, 17.4, 17.5 and 17.6 ("Supplier Insurances") in relation to risks or occurrences arising, or which may arise, out of the performance of the Contract.

17.2 General and product liability insurance

- (a) Insurance covering all Liabilities in respect of any injury to, or death of, any person or any loss, damage or destruction to any property however caused. Such insurance must provide cover to an amount of not less than \$10,000,000 in respect of each and every claim.
- (b) The insurance required by Clause 17.2(a) must, unless prohibited by law, be endorsed to:
 - (i) include the Company and its Personnel for their respective rights and interests arising out of the performance by the Supplier of the Contract and to the extent required by the terms of the Contract;
 - (ii) include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such party;
 - (iii) waive all express or implied rights of subrogation against the Company and its Personnel;
 - (iv) cover "Products in the physical and legal control of the Insured" for an amount not less than the value of the "Products" held by the Supplier or its Personnel; and
 - (v) include a clause that provides that a breach of a condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy.

17.3 Supplier's plant and equipment

If the performance of the Contract requires the Supplier to use or provide for use plant and equipment that will be used at the Site in connection with the Contract, the Supplier must maintain or require the owner of such plant and equipment (except where the owner of such plant or equipment is the Company or a member of the Group) to maintain insurance covering all loss and damage to the Supplier's plant and equipment, for its replacement value. The insurance must, unless prohibited by law, waive all express or implied rights of subrogation against the Company and its Personnel.

17.4 Motor vehicle/automobile third party liability insurance

- (a) If the performance of the Contract requires the Supplier or its Personnel to use or provide for use motor vehicles, the Supplier must maintain or require the owners of such motor vehicles to maintain third party liability insurance covering all Liabilities in respect of any injury to, or death of, any person or any loss, damage or destruction to any property arising from the use of such motor vehicles.
- (b) The insurance required by Clause 17.5(a) must, unless prohibited by law, be endorsed to:
 - (i) include the Company and its Personnel for their respective rights and interests arising out of the performance by the Supplier of the Contract and to the extent required by the terms of the Contract;
 - (ii) include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such party;
 - (iii) waive all express or implied rights of subrogation against the Company and its Personnel; and
 - (iv) include a clause that provides a breach of a condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy.

17.5 Professional Indemnity Insurance

If the performance of the Contract includes or is related to the provision of professional advice or services, the Supplier must effect and maintain throughout the Term and for a period of not less than 3 years after termination of the Contract or completion of the Supplier's obligations under the Contract, professional indemnity insurance in respect of any negligent acts, errors or omissions in the advice or services provided by the Supplier under the Contract. Such insurance must provide cover to an amount of not less than \$5,000,000 in respect of each and every claim.

17.6 Insurance terms

- (a) If the Supplier Insurances are subject to the application of any self-insured retention, excess or deductible, the amount of the excess or deductible must be declared to the Company. The Company reserves the right to require the Supplier to reduce the amount of any self-insured retention, excess or deductible where such amount is considered unreasonable in the circumstances of the Contract.
- (b) The Supplier Insurances must be underwritten by a reputable insurer with a security rating from A.M. Best of not less than "A" and on terms and conditions consistent with prudent risk management practice.
- (c) No provision contained in this Clause 17 will limit the Supplier's liability in relation to the indemnities in the Contract.
- (d) Before performing any of its obligations under the Contract, and each time the policies are renewed or varied, the Supplier must provide the Company with such evidence as the Company may reasonably require that the Supplier and its Subcontractors are insured in accordance with the Contract.
- (e) In the event that the Supplier fails to effect or maintain any of the Supplier Insurances required pursuant to the Contract the Company may do one or more of the following:
 - (i) effect and maintain such insurances and deduct the costs of such insurances from any moneys due to the Supplier;
 - (ii) refuse the Supplier and its Personnel access to all or any part of the Site; and/or
 - (iii) treat the failure to insure as a default under the Contract.
- (f) All Supplier Insurances must not be varied to the detriment of the Company or its Personnel, cancelled or allowed to lapse unless the Supplier has received a written consent from the Company Representative.

17.7 Subcontractors' insurance

The Supplier must ensure that its Subcontractors, to the extent permitted by law, have the benefit of or effect and maintain insurances similar to the Supplier Insurances required to be effected by the Supplier.

17.8 Survival of clause

This Clause 17 will survive the expiry or earlier termination of the Contract.

18 Indemnities

18.1 Acknowledgement

The Supplier acknowledges that if it enters the Site, it does so at the Supplier's own risk. The Supplier must ensure that its Personnel are also aware that they enter the Site at their own risk.

18.2 Indemnity

Subject to Clause 18.3, the Supplier will, to the extent permitted by law, indemnify (and will keep indemnified) the Company and its Personnel ("Indemnified Parties") from and against all Liabilities that any Indemnified Party suffers, sustains or incurs, arising from:

- (a) the performance, non-performance or breach by the Supplier or its Personnel of any of the Supplier's obligations (including any warranty) under the Contract;

- (b) any negligent act or omission by the Supplier or its Personnel arising out of or in any way related to the Contract;
- (c) the entry onto and the activities undertaken on, and in, the Site by the Supplier and its Personnel;
- (d) the acceptance and use of the Products by any Indemnified Party;
- (e) the illness, injury or death of any of the Supplier's Personnel arising out of or in any way related to the Contract;
- (f) any Pollution which occurs after the Effective Date which is caused by the Supplier or its Personnel, in connection with the Supplier's performance or non-performance of the Contract, or the activities conducted by the Supplier or its Personnel at the Site;
- (g) any claim made against the Company or any member of the Group by any of the Supplier's Personnel in respect of relevant legislation concerning income tax, workers' compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal; and
- (h) any penalty imposed for breach of any applicable law in connection with the supply of the Products.

18.3 Exclusions

The Supplier will not be liable under Clause 18.2 to the extent that the Liability was directly caused by the Company's negligence or wilful default.

18.4 Indemnity held for benefit of the Company and Group Personnel

Every exemption, limitation, defence, immunity, indemnity or other benefit contained in the Contract or otherwise to which the Company or a member of the Group is entitled will be held by the Company for the benefit of, enforceable at the suit of (pursuant to the Contracts (Privity) Act 1982), and will extend to protect, each of the Company's and each Group member's Personnel.

18.5 Indemnity continuing

Each indemnity in the Contract is a continuing obligation separate and independent from the Supplier's other obligations and survives termination of the Contract.

18.6 No requirement for expense before enforcing indemnity right

It is not necessary for the Company, a member of the Group or their respective Personnel to incur expense or make payment before enforcing a right of indemnity conferred by the Contract.

19 Performance management and performance measures

19.1 The Company will monitor the Supplier's performance under this Contract.

19.2 The Supplier agrees to meet with the Company Representative regularly during the Term to discuss and assess the Supplier's performance under this Contract and the relationship between the Supplier and the Company.

19.3 The Supplier commits to continually improve the Supplier's performance under this Contract and to actively contribute to the Company's improvement processes.

20 Local communities

The Supplier recognises that the Group has a foundation for indigenous people and in performing this Contract the Supplier agrees to endeavour to identify opportunities to benefit indigenous people and local communities.

21 Pollution

21.1 The Supplier will promptly report to the Company the presence, release or discharge of Pollution caused or contributed to by the Supplier or its Personnel in connection with the Supplier's performance or non-performance of the Contract, or the activities conducted by the Supplier or its Personnel at the Site.

21.2 The Supplier will, without delay, clean up and remediate, at its own cost and expense, all Pollution referred to in Clause 21.1 to the complete satisfaction of the Company, whether such Pollution was intentional, accidental or otherwise.

22 Assignment and delegation

22.1 The Supplier may not assign or transfer its rights under this Contract without the prior written consent of the Company.

22.2 The Supplier may not delegate, subcontract or outsource any of the Supplier's duties and/or obligations under this Contract without the prior written consent of the Company.

22.3 If the Supplier delegates, subcontracts or outsources any of the Supplier's duties and/or obligations under this Contract at any time, the Supplier will remain liable to the Company for the performance and discharge of the delegated and/or subcontracted and/or outsourced duties and/or obligations under this Contract.

22.4 The Company may delegate, subcontract or outsource any of its duties and/or obligations under this Contract to any Group member without the Supplier's consent, but will inform the Supplier consequent upon any such delegation, subcontracting or outsourcing occurring.

22.5 The Company may assign or transfer its rights under this Contract without the Supplier's consent, but will inform the Supplier consequent upon any such assignment.

23 Dispute resolution

23.1 The Parties acknowledge that while disputes may arise from time to time, their common intent is to ensure that any dispute is resolved in a timely and cost effective manner.

- 23.2 Subject to Clause 23.5, the Parties must, before resorting to court proceedings, refer any dispute under or relating to this Contract initially to a representative nominated by the Company, and a representative nominated by the Supplier, who will in good faith endeavour to resolve the dispute within 10 Business Days of the giving of notice of a dispute by a Party.
- 23.3 If the dispute is not resolved by the Parties in accordance with Clause 23.2, within the time specified in that clause, then either Party may, in its sole discretion, initiate court proceedings.
- 23.4 Notwithstanding the existence of a dispute, each Party must continue to perform its obligations under this Contract, subject always to its rights of termination under this Contract.
- 23.5 A Party may commence court proceedings relating to any dispute arising under this Contract at any time where that Party seeks urgent or interim declaratory or injunctive relief.

24 Intellectual Property

- 24.1 The Parties acknowledge and agree that each Party remains the owner of its Background IP and that nothing in this Contract prevents, limits or restricts each Party's subsequent use or exploitation of its Background IP.
- 24.2 The Supplier agrees that all Contract IP will be vested in the Company and will be the Company's property as and when created and the Supplier assigns all rights, title and interest in the Contract IP to the Company.
- 24.3 The Company grants the Supplier a non-exclusive, non-transferable, royalty free, revocable licence to use the Contract IP for the sole purpose of complying with its obligations under this Contract.
- 24.4 For the purposes of this Clause 24:
- (a) "Background IP" means the Intellectual Property Rights of a Party that:
- (i) are in existence at the Date of signing the Contract; or
 - (ii) come into existence after the Date of signing the Contract otherwise than in connection with this Contract, and are necessary for the performance of that Party's obligations under this Contract.
- (b) "Contract IP" means the Intellectual Property Rights that are created as a result of the performance of the obligations under this Contract.

25 Confidentiality

- 25.1 The Supplier undertakes and agrees:
- (a) to hold in strict confidence all Confidential Information and not to disclose or permit or cause the Confidential Information to be disclosed to any Person other than any of its Personnel who require the Confidential Information for the purposes of this Contract; and
- (b) not to make use of the Confidential Information (including duplicating, reproducing, distributing, disseminating or directly or indirectly deriving information from the Confidential Information), except and solely to the extent necessary for the performance of the Contract,
- unless the Supplier has obtained the prior written consent of the Company to do so (which consent may be withheld by the Company in its discretion or given on such terms as it sees fit).
- 25.2 Clause 25.1 does not apply to:
- (a) information after it becomes generally available to the public other than as a result of the breach of this Clause 25 or any other obligations of confidence imposed on the Supplier; or
- (b) the disclosure of information in order to comply with any applicable law or legally binding order of any court, Government Instrumentality or recognised stock exchange, provided that prior to such disclosure the Supplier gives notice to the Company with full particulars of the proposed disclosure.
- 25.3 The breach of any of the conditions contained in a consent granted pursuant to Clause 25.1 will be deemed to be a breach of the Contract.
- 25.4 The obligations in this Clause 25 are in addition to and do not diminish the obligations of the Supplier in respect of secret and confidential information at common law or under any statute or trade or professional custom or use.
- 25.5 If requested by the Company, whether prior to or after the expiry or earlier termination of the Contract, the Supplier must promptly deliver to the Company all Confidential Information in the custody, possession or control of the Supplier or any of its Personnel.
- 25.6 Any Group member may use confidential information provided by the Supplier to the Company for the purposes of procurement by the Company and Group members of similar products to the Products, from the Supplier or a third party.
- 25.7 This Clause 25 will survive the termination of the Contract.

26 Privacy and data protection

- 26.1 Personal Information
- Each Party agrees to comply with their obligations under the Privacy Act in respect of Personal Information obtained by or disclosed to them pursuant to the Contract.
- 26.2 Warranty
- Each Party warrants to the other Party that it has complied with the Privacy Act in obtaining any Personal Information disclosed by it pursuant to the Contract.

26.3 Data protection

In addition to its obligations under the Privacy Act, the Supplier agrees to:

- (a) only Process the Company's Personal Information for the purposes of the Contract;
- (b) not disclose the Company's Personal Information to any other Person without the Company's prior written consent, unless the disclosure is required by Law;
- (c) immediately notify the Company that the disclosure of the Company's Personal Information may be required by Law;
- (d) put into place and maintain appropriate technical and organisational measures against unauthorised and/or unlawful Processing of the Company's Personal Information;
- (e) put into place and maintain appropriate technical and organisational measures against unauthorised access, loss, destruction, misuse, modification, disclosure or damage to the Company's Personal Information; and
- (f) take all necessary steps to ensure that its Processing of the Company's Personal Information will be fair and lawful and, for this purpose, the Supplier may reasonably enquire of the Company as to the manner in which the Company obtained the Company's Personal Information.

26.4 Individual complaints

- (a) If an individual complains to the Company that the Supplier (or any of its Personnel) has, in the performance of the Contract, handled his or her Personal Information inappropriately, the Company must promptly give the Supplier sufficient details about the complaint to minimise any further misuse.
- (b) If an individual complains to the Supplier that the Supplier (or any of its Personnel) has, in the performance of the Contract, handled his or her Personal Information inappropriately, the Supplier must:
 - (i) promptly inform the Company of the complaint; and
 - (ii) provided the individual has consented, provide the Company with the Personal Information that is the subject of the complaint.

26.5 Supplier indemnity

Without limiting Clause 18, the Supplier indemnifies the Company and must keep the Company indemnified in respect of all Liabilities incurred by or awarded against the Company relating to any breach by the Supplier of its obligations under the Privacy Act or this Clause 26.

26.6 Survival of clause

This Clause 26 will survive the termination of the Contract.

27 Costs

27.1 Each Party must bear its own costs arising out of:

- (a) the negotiation, preparation and execution of this Contract; and
- (b) except as expressly provided otherwise in this Contract, any transaction contemplated by this Contract.

28 Delay and disruption

28.1 Supplier not to delay or disrupt

The Supplier must not delay or disrupt the work or activities of the Company or any other suppliers or contractors or their Personnel (whether employed or engaged by the Company or not) on the Site during the Term.

28.2 No compensation

The Supplier is not entitled to any increase in the Prices or damages or any other financial compensation in respect of any delay or disruption suffered by the Supplier that was caused by the Company or any other suppliers or contractors or their Personnel.

28.3 Amendment to Supplier's program

If, through no fault of its own, the Supplier is delayed or disrupted by the Company or any other suppliers or contractors or their Personnel, the Company may (in its discretion) make an equitable adjustment to the Supplier's program (if any).

29 Notices

29.1 A notice, approval, consent or other communication in connection with this Contract must be:

- (a) in writing;
- (b) marked to the attention of the Company Representative or Supplier Representative (as the case may be); and
- (c) delivered personally or sent by facsimile, post or email to the address specified in this Contract or to the last advised address of the addressee.

29.2 A letter, email or facsimile is deemed to be received:

- (a) in the case of a posted letter, on the fifth day (seventh if posted to or from a country other than the country from which it was sent);
- (b) in the case of an e-mail, on receipt of the e-mail by the machine of the person to whom the email was sent; and
- (c) in the case of a facsimile, on production of a successful transmission report.

30 Governing law and jurisdiction

- 30.1 This Contract and the transactions contemplated by this Contract are governed by the Laws of the Relevant Jurisdiction.
- 30.2 Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts the Relevant Jurisdiction and the courts of appeal from them.

31 Miscellaneous

31.1 Exercise of rights

A Party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a Party does not prevent a further exercise of that or any other right, power or remedy. Failure by a Party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

31.2 Waiver

A provision of or a right created under this Contract may not be waived except in writing signed by the Party granting the waiver.

31.3 Severability

- (a) If the whole or any part of a provision of this Contract is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this Contract has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This Clause has no effect if the severance alters the basic nature of this Contract or is contrary to public policy.
- (b) Where a provision is prohibited or unenforceable, the Parties must negotiate in good faith to replace the invalid provision by a provision which is in accordance with the applicable Law and which must be as close as possible to the Parties' original intent and appropriate consequential amendments (if any) will be made to the Contract.

31.4 Entire Agreement

This Contract (including any issued Purchase Orders) constitute the entire agreement of the Parties about their subject matter and any previous agreements, understandings and negotiations on that subject matter, including (without limitation), any agreements, understandings or negotiations under, derived from or relating to the Request for Proposal or other materials supplied by the Company cease to have any effect.

31.5 No merger

None of the terms of this Contract, or anything done under or by virtue of this Contract or any other agreement, instrument or document, or judgment or order of any court or judicial proceeding will operate as a merger of any of the rights and remedies of the Parties under this Contract and those rights and remedies will at all times continue in force.

31.6 Alterations

No amendment or variation of this Contract is valid or binding on a Party unless made in writing executed by all Parties.

31.7 Approvals and consents

Except where this Contract expressly states otherwise, a Party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Contract.

31.8 Counterparts

This Contract may be executed in counterparts. All executed counterparts constitute one document.

31.9 Further action

Each Party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Contract and any transaction contemplated by it.

31.10 No reliance by Supplier

The Supplier acknowledges and agrees that:

- (a) in entering into this Contract, the Supplier does not, except to the extent expressly stated in this Contract, rely on any representation, warranty, condition or other conduct which may have been made by the Company, any member of the Group, or any person purporting to act on behalf of the Company or any other member of the Group;
- (b) the Supplier has had the opportunity to make, and have made, all necessary and independent inquiries in relation to all matters relevant to the entry into this Contract; and
- (c) subject to any Law to the contrary, all terms, conditions, warranties and statements, whether express, implied, written, oral, collateral, statutory or otherwise, are excluded and the Company disclaims all liability in relation to these to the maximum extent permitted by Law.

31.11 Loss of Documentation

Documentation required for or generated during the supply of the Products remains at the Supplier's risk so long as such Documentation is in the Supplier's possession, custody or control.

31.12 Relationship of Parties

The relationship between the Parties is one of independent contractors. Nothing in this Contract is or will be taken as constituting the relationship of partners or joint venturers between the Parties or otherwise sharing risks or rewards or constituting any Party the agent, servant, employee or representative of another Party.

31.13 Public Announcements

Except as required by any applicable Law or as otherwise permitted by this Contract, no Party may make any public announcements or disclosures as to this Contract, or otherwise in relation to the subject matter of this Contract, without the prior written consent of the other Party and in this regard no media release or public announcement will be made in relation to the fact of this Contract without the written approval of both Parties. Should such approval be given then the wording of such release and the manner or publication of such release must first be approved in writing by both Parties.

32 Interpretation

32.1 In this Contract unless the contrary intention appears:

- (a) a reference to this Contract or another instrument includes any variation or replacement of either of them;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a Person or a Party includes a reference to the Person's or Party's executors, administrators, successors, substitutes (including but not limited to, persons taking by a novation) and assigns;
- (d) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (e) a reference to a recital, annexure, appendix, attachment or schedule is a reference to a recital, annexure, appendix, attachment or schedule to this Contract, and a reference to this Contract includes a recital, annexure, appendix, attachment or schedule;
- (f) a gender includes all genders;
- (g) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (h) the meaning of general words is not limited by specific examples introduced by "including" or "for example";
- (i) a reference to an Act or legislation, or to a provision of an Act or legislation, includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (j) where it is provided that the Supplier will perform any act or provide any thing at its cost, this means the Supplier will not be entitled to any additional compensation for such act or thing and the cost will be deemed to be included in the Price;
- (k) a reference to a clause is a reference to a clause in this Contract;
- (l) a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this Contract or any part of it;
- (m) a reference to a third person or a third party is a reference to a person who is not a party to this Contract;
- (n) a reference to "NZ\$", "\$NZ", "dollar" or "\$" is a reference to New Zealand currency, unless expressly stated to be otherwise in the Contract;
- (o) any agreement, representation, warranty or indemnity by two or more parties (including where two or more Persons are included in the same defined term) binds them jointly and severally;
- (p) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more Persons are included in the same defined term) is for the benefit of them jointly and severally; and
- (q) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

32.2 Headings are inserted for convenience and do not affect interpretation of this Contract.

33 Definitions

33.1 The following words have these meanings in this Contract unless the contrary intention appears:

Agreed Testing Period means the period of days, or number of operational hours, or other period as may be relevant, as set out in Appendix 1, in which inspection and testing of the Products which are to be installed or incorporated by the Company into a plant or premises will take place.

Alternative Purchases is defined in Clause 8.1.

Business Day means every day, ending at 5.00pm other than a Saturday, a Sunday or a gazetted public holiday at the Site.

Claim means any action, suit, proceeding or demand of any kind.

Company is defined in the Schedule.

Company Representative is, initially, as defined in the Schedule, and includes:

- (a) such other person as the Company may, in writing, substitute for that representative; or
- (b) any person authorised by that representative to perform any of that representative's powers, duties, discretions or authorities.

Confidential Information means any information (in whatever form) or Documentation of a confidential nature (or which the Supplier or its Personnel ought reasonably to know to be confidential) that relates to the business, affairs or activities of the Company or members of the Group (including in relation to the supply of the Products) and which:

- (a) is disclosed to the Supplier or its Personnel by or on behalf of the Company;

- (b) is generated by the Supplier or its Personnel in performing the Contract; or
- (c) otherwise comes to the knowledge of the Supplier or its Personnel.

Consequential Loss means any incidental, special, indirect or consequential damage, cost or loss.

Contract means this agreement and comprises:

- (a) Purchase Orders (if any);
- (b) the Schedule;
- (c) the Contract for Products - General Terms and Conditions (including Appendices); and
- (d) any other document(s) stated to be part of the Contract.

Companies Act means the *Companies Act 1993*.

Currency means the currency specified in the Schedule.

Date of signing the Contract means the date specified in the Schedule.

Day or day means a calendar day of 24 hours from 12.00am and includes Saturdays, Sundays and holidays.

Defects Liability Period means the period specified in the Schedule.

Delivery Point means the delivery point specified in this Contract.

Documentation includes contracts, plans, designs, drawings, calculations, engineering information, data, specifications, sketches, notes, samples, reports, maps, accounts, invoices and any other material specified in the Contract (and whether embodied in tangible or electronic form).

Effective Date means the date specified in Schedule.

Employment Relations Act means the Employment Relations Act 2000.

Force Majeure Event means any circumstance that is not within the reasonable control, directly or indirectly, of a Party (the 'Affected Party'), but only if and to the extent that:

- (a) despite the exercise of reasonable diligence, it cannot be (or be caused to be) prevented, avoided, or removed by the Affected Party;
- (b) it materially adversely affects (in cost and/or time) the ability of the Affected Party to perform the Contract;
- (c) the Affected Party has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the affect of that event on its ability to perform the Contract (and to mitigate the consequences of it); and
- (d) such event is not the direct or indirect result of the failure of the Affected Party to perform any of its obligations under the Contract,

and includes, provided it satisfies the requirements of the preceding paragraph:

- (e) fire, lightning, explosion, flood, earthquake, storm, cyclone, action of the elements, act of God, natural disaster, radioactive contamination, toxic or dangerous chemical contamination, epidemic or force of nature;
- (f) riots, civil commotion, malicious damage, sabotage, act of a public enemy, war (declared or undeclared) or revolution;
- (g) action or inaction by a court, government or authority (including denial, refusal or failure to grant any permit, authorisation, licence, approval or acknowledgment despite timely best endeavours to obtain the grant);
- (h) strikes, lockouts, industrial and/or labour disputes and/or difficulties, work bans, blockades or picketing which do not result from acts, errors or omissions within the control of the Supplier or are caused or contributed to by the Supplier;
- (i) breakdown or failure of any facilities, machinery or equipment which by the exercise of due diligence the Company or the Supplier (as the case may be) is unable to prevent or overcome, provided however that such breakdown or failure has been caused by any one or more of the events set out in paragraphs (e) to (h);
- (j) unavailability of essential equipment, goods, supplies or services that by the exercise of due diligence or the expenditure of reasonable sums of money, the Company or the Supplier (as the case may be) is unable to prevent or overcome.

Government Authorisations means all approvals, consents, authorisations, permits, clearances, licences or other requirements that are required from any Government Instrumentality for the Supplier to perform its obligations under the Contract.

Government Instrumentality means the central and any local government, or any governmental or quasi-governmental or regulatory.

Group means the dual listed company structure incorporating Rio Tinto plc ("RT") and Rio Tinto Limited ("RTL") and including:

- (a) any Related Company of RT or RTL;
- (b) any unincorporated joint venture in which RT or RTL or any Related Company of RT or RTL has a participating interest of not less than 50%;
- (c) any body corporate or unincorporated joint venture managed by RT or RTL or any Related Company of RT or RTL; and
- (d) such other entities as the Parties agree in writing.

GST means goods and services tax payable under the GST Act.

GST Act means the Goods and Services Tax Act 1985.

Intellectual Property includes inventions, designs (whether or not registrable), patents, databases, trademarks, service marks, logos, get-up, styles, circuit layouts, copyright and trade secrets.

Intellectual Property Rights means (in the context of a Party) all rights (including moral rights) conferred by law, equity or legislation in relation to Intellectual Property, and all other intellectual property rights as defined by Article 2 of the World Intellectual Property Organisation Convention of July 1967.

Law means common law, principles of equity, and laws made by parliament (and laws made by parliament include central and local government laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them).

Liabilities means damages, Claims, losses, liabilities, costs and expenses of any kind.

Other Warranties means the other warranties in relation to the Products specified in Appendix 1.

Party or Parties means either the Company, the Supplier or both of them as the context may require.

Person includes an individual, corporation, partnership, joint venture, trust, unincorporated organisation, association, or Government Instrumentality.

Personal Information has the meaning given in the Privacy Act.

Personnel means:

- (a) in relation to the Supplier, any of its employees, Subcontractors, agents and representatives involved either directly or indirectly in the supply of the Products under the Contract;
- (b) in relation to the Company or a member of the Group, any of its past or present officers, employees, agents or representatives; and
- (c) in relation to a Subcontractor, any of its employees, agents or representatives involved either directly or indirectly in the supply of the Products under the Contract.

Pollution means any hazardous or harmful substance, pollutant or contaminant regulated by any statute or applicable Government Instrumentality and also any other contamination or pollution.

Prices means the prices for the Products specified in Appendix 2.

Price Adjustment Mechanism means the Price adjustment mechanism specified in Appendix 2.

Privacy Act means the *Privacy Act 1993*.

Processing means collecting, holding, using, transferring, destroying and any other dealing.

Products means the products specified in Appendix 3.

Purchase Order means individual purchase orders as may be issued by the Company to the Supplier for the supply by the Supplier to the Company of the Products.

Related Company has the meaning given to it in the Companies Act.

Relevant Jurisdiction means the jurisdiction in which the Site is located.

Relevant Software and Equipment means Software and Equipment which:

- (a) is used in, or attached to, the Products supplied by the Supplier, so far as they relate to the use and/or operation of the Products;
- (b) affects the supply and/or the delivery by the Supplier (including the Supplier's Personnel) of the Products; and/or
- (c) constitutes the Products.

Request for Proposal means the document of that name specified in the Schedule.

Rio Tinto Limited means Rio Tinto Limited (ABN 96 004 458 404) having its registered office at 33rd Floor, 55 Collins Street, Melbourne, Victoria, 3000 Australia.

Rio Tinto plc means Rio Tinto plc (Company No. 719885) of 6 St James's Square, London SW1Y 4LD, United Kingdom.

Schedule means the schedule at the front of this Contract.

Site means the site stated in the Schedule.

Site Conditions means the conditions relating to the Site specified in Appendix 4.

Software and Equipment means software, licensed software, developed software, supported software, package software, system, hardware, supported hardware, supplied hardware, firmware, micro code and associated parts and equipment.

Special Conditions means the special conditions specified in Appendix 1.

Specifications means the specifications specified in Appendix 5.

Specified Lead Time means the period specified in Appendix 1.

Standards means the standards specified in Appendix 5.

Subcontractor means any Person engaged or employed by the Supplier to perform any of its obligations.

Supplier is defined in the Schedule.

Supplier Health, Safety and Environment Standards means the Company's Supplier health, safety and environment standards or otherwise provided to the Supplier, as replaced or amended by the Company from time to time.

Supplier Representative is, initially, as defined in the Schedule, and includes:

- (a) such other person as the Supplier may, in writing, substitute for that representative; or
- (b) any person authorised by that representative to perform any of that representative's powers, duties, discretions or authorities.

Supply Chain means all steps and processes involved in the supply of the Products by the Supplier and their use by the Company, commencing with the sourcing of the Products and finishing with the use of the Products by the Company.

Taxes or Tax means any and all sales, use, personal, property, real property, value added, goods and services, consumption, turnover, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever (other than taxes on the Company's net income), together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed by any government, governmental, semi-governmental or other relevant authority or otherwise payable on or in respect of the Products.

Tax Invoice has the meaning given in section 2 of the GST Act.

Term means the term specified in this Contract.

Warranties means the warranties set out in Clause 12 and the Other Warranties.

Appendix 1 Special Conditions of Contract

1.1 Order of Precedence

All documents that comprise this Contract, including amendments are essential parts of this Contract and a requirement occurring in one is binding as though occurring in all. Where there is an inconsistency between any of the documents that comprise this Contract, the following order of precedence will apply:

- (a) Purchase Order (if any)
- (b) Schedule
- (c) Appendix 2 – Terms of Compensation
- (d) Appendix 1 – Special Conditions of Contract
- (e) Appendix 3 – Products
- (f) Appendix 5 – Specifications and Standards
- (g) Appendix 4 – Site Conditions
- (h) Contract for Products - General Terms and Conditions

Figured dimensions shall have precedence over scaled dimensions.

1.2 Other Warranties

1.3 Contract Milestones

1.4 Contract Implementation Plan

1.5 Specified Lead Time

1.6 Agreed Testing Period

1.7 Agency

1.8 Modifications to “Contract for Products - General Terms and Conditions”

1.9 Additions to “Contract for Products - General Terms and Conditions”

Appendix 2 Terms of Compensation

2.1 Pricing

- (a) The term of this Contract will be __ __.200_ to __ __.200_, both dates inclusive.
- (b) All invoices, Prices and payments must be stated and made in (_____) dollars.

[Example]

Description	Item	Material	Extension Unit	Unit Price (pc)	Extension (set)
SNBSC Tile	Lines 1, 2	50203230	Cell Set	1.00	184.00
SNBSC Tile	Line 3	50407683	Cell Set	2.00	210.00

2.2 GST

All pricing is exclusive of GST.

2.3 Price Formula Review

2.4 Quantities

2.5 Delivery Schedule / Inventory Management

2.6 Delivery Points

	BSL	NZAS	Bell Bay
Ex Works	<i>Name Plant, location</i>	<i>Name Plant, location</i>	<i>Name Plant, location</i>

Free Into Store (FIS)	<i>Name Site, Location</i>	<i>Name Site, Location</i>	<i>Name Site, Location</i>
Free on Board (FOB)	<i>Name Port</i>	<i>Name Port</i>	<i>Name Port</i>
Cost and Freight (CFR)	<i>Port of Brisbane, Queensland Australia</i>	<i>1st Preference: Port of Bluff, Southland NZ 2nd Preference: Port Chalmers Dunedin, Otago NZ</i>	<i>Port of Bell Bay, Tasmania Australia</i>

2.7 Payment

Payment terms for each delivery option will be as specified below:

Ex Works	60 days from date of invoice.
Free On Board (FOB)	60 days from Bill of Lading date.
Free Into Store (FIS)	60 days from receipt of delivery documentation.
Cost and Freight (CFR)	60 days from Bill of Lading Date.

2.8 Supplier Invoice Submission Requirements

2.8.1 The Supplier shall submit all invoices for payment of goods and/or services authorised under this Contract via electronic mail, facsimile, or postal mail, as follows:

- (a) *Email:* invoices.nz@comalco.riotinto.com.au
- (b) *Facsimile:* +64 4 576 4329
- (c) *Postal Mail:* New Zealand Aluminium Smelters Limited
Accounts Payable
PO Box 31629
Lower Hutt
New Zealand

2.8.2 All invoices submitted to NZAS as per Appendix 2, Clause 2.8.1 must include the following information:

- (a) NZAS' full legal name: **New Zealand Aluminium Smelters Limited**
- (b) Purchase Order Number (numbered either as **47XXXXXXXXX** or **45XXXXXXXXX**)
- (c) Item(s) invoiced by the Supplier must reference either the agreed-to price list in Appendix 2, Clause 2.1 above, OR as amended (including reference number and date of the Contract amendment)

2.8.3 Invoices submitted by the Supplier that do not conform to instructions provided in Appendix 2, Clause 2.8 may encounter delays in payment, due to the nature of the NZAS automated invoicing system.

2.9 Automated Payments

Appendix 3 Products

3.1 Products

Example

<i>SNBSC Tile</i>	<i>Material Number / Description / Drawing</i>
<i>BSL</i>	
<i>Lines 1, 2</i>	<i>Material # 50203230 Comalco Specification CRS104 Rev 2 Drawing #42-M-4664 Rev 1 184 tiles per cell set comprising:</i> <ul style="list-style-type: none"><i>• 68 each 250 x 250 x 75mm</i><i>• 4 each 150 / 75 x 250 x 75mm</i><i>• 68 each 340 x 250 x 75mm</i><i>• 4 each 250 / 175 x 340 x 75mm</i><i>• 28 each 250 x 250 x 65mm</i><i>• 8 each 250 / 223 x 250 x 65mm</i><i>• 4 each 300 / 235 x 250 x 65mm</i>
<i>Line 3</i>	<i>Material # 50407683 Comalco Specification CRS104 Rev 2 Drawing # (N/A) 105 tiles per cell set Size: 590 x 350 x 75mm</i>

Appendix 4 Site Conditions

4.1 Site Conditions

If the Supplier or its Personnel enter the Site, then the Supplier will ensure that it and its Personnel comply with the conditions, standards, codes and policies set out below, and any amendments or additions that the Company may see fit to make from time to time.

- (i) Site Health, Safety and Environment (HS&E) Standards 2005
- (ii) Site Alcohol and Other Drug Policy (Revision B)
- (iii) Site Banned Items
- (iv) Other relevant Site Standards, Conditions
- (v) Quality Assurance
- (vi) Rio Tinto business integrity standards "The Way We Work" and "Code of Conduct"

Appendix 5 Specifications and Standards

All Products supplied to the Company by the Supplier must conform to the minimum specifications and standards detailed below and as amended from time to time by the Company.

5.1 Specifications

PRODUCT OFFERED (Grade)	PRODUCT SOURCE	COMPANY SPECIFICATION

5.2 Standards

PRODUCT OFFERED (Grade)	PRODUCT SOURCE	COMPANY STANDARD

5.3 Packaging

5.4 Drawings

The following drawings are relevant to this Contract:

DRAWING NUMBER / REVISION	DESCRIPTION