



GENERAL TERMS OF TRADE

These General Terms of Trade (**Terms**) apply to and will be incorporated into all contracts relating to the supply of Product and/or Services by Zenith Tecnica Limited and its related companies (**Zenith**) irrespective of how such Product and/or Services are ordered by Customer, except where Zenith has expressly agreed otherwise in writing. No verbal agreement between Customer and Zenith or any employee, servant or agent of Zenith will be binding on Zenith.

DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In this Agreement, unless the context otherwise requires:

Agreement means these General Terms of Trade and includes the particulars set out in any approved Zenith Customer Account Application and Order Form;

Business Day means a day on which registered banks are open for business in Auckland, New Zealand, excluding Saturdays, Sundays and public holidays;

Confidential Information means any information and other material (including trade secrets and any Intellectual Property):

- (a) of a confidential or proprietary nature which the disclosing party makes available to the receiving party including anything that the receiving party derives from this information and material;
- (b) relating to the terms of this Agreement;
- (c) relating to the business affairs of either party;
- (d) disclosed by a party to another on the express basis that such information is confidential; or
- (e) which might reasonably be expected by a party to be confidential in nature,

provided that where information relates exclusively to one party, nothing in this Agreement will require that party to maintain confidentiality in respect of that information;

Defect or Defective means in relation to a Product, that it does not comply with the requirements of this Agreement, an Order Form or any specifications agreed between the parties, or it has a fault, omission or malfunction.

Event of Default occurs if Customer:

- (a) becomes, or is deemed to be, insolvent or bankrupt;
- (b) makes an assignment for the benefit of, or enters into or makes any arrangement or composition with, its creditors (other than Zenith);
- (c) goes into receivership or has a receiver, administrator, trustee or manager (including a statutory manager) appointed in respect of Customer and/or all or any of Customer's property;
- (d) passes a resolution, or any proceeding is commenced, for Customer's winding up or liquidation (other than for the purposes of a solvent reconstruction); or
- (e) has:
 - (i) breached a provision of this Agreement that is incapable of remedy; or
 - (ii) failed to remedy any breach of this Agreement that is capable of remedy within 10 Business Days of notice of that breach having been given stating the nature of the breach and requiring remedy;

Force Majeure Event means any event or circumstance (whether arising from natural causes, human agency or otherwise) that is beyond a Party's reasonable control, including strikes, lockouts or other labour disputes, riot, civil commotion, fire, flood, drought, loss or delay at sea, breakdown or war (whether declared or not) or epidemic, pandemic (including in relation to the coronavirus, severe acute respiratory syndrome coronavirus 2, or any mutation thereof) or any government sanctioned shutdown;

Intellectual Property means all statutory, common law and proprietary rights and interests, including patents, designs, trademarks, copyright works, layout designs, know-how and other information, whether registered or unregistered (including applications for such rights) as may exist anywhere in the world at any time;

Price means the amount payable by Customer to Zenith in respect of the Product and/or Services provided by Zenith from time to time, being Zenith's applicable rates and/or prices at the relevant time as set out in the relevant Customer Account Application and Order Form or otherwise advised to Customer in writing by Zenith;

Product means the product to be supplied to Customer by Zenith, as set out in the relevant Customer Account Application and Order Form or otherwise agreed by Zenith in writing; and

Services has the meaning set out in clause 3.1.

1.2 **General Interpretation:** In this Agreement, unless the context requires otherwise:

(a) Including: means including, without limitation to the generality or specificity of the surrounding words; and

(b) Statutes and regulations: reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations.

1.3 **Construction:** This Agreement may not be construed adversely to a party just because that party prepared, or procured the preparation of, this Agreement.

2. DELIVERY OF PRODUCT

2.1 **Delivery:** Unless otherwise agreed in writing, Zenith will make available and/or deliver the Product to Customer at the delivery address and by the delivery date(s) specified in the relevant Customer Account Application and Order Form or otherwise as agreed by Zenith in writing. Zenith may deliver the Product by instalments and delivery may be effected by one or more shipments.

2.2 **Delivery dates:** Notwithstanding clause 2.1 and to the maximum extent permitted by law, Customer acknowledges that:

(a) unless otherwise agreed in writing, any delivery date specified is approximate only and time is not of the essence; and

(b) under no circumstances will Zenith be liable for any costs incurred by Customer as a result of any delay in

delivery (whether caused by factors beyond Zenith's control or otherwise).

- 2.3 **Delay or refusal to accept delivery:** Without prejudice to any other rights or remedies Zenith may have, if Customer refuses to collect, accept or unduly delays delivery of the Product (or any part) upon or after the date that it first becomes available for collection and/or delivery, Customer will pay to Zenith all additional costs incurred by Zenith as a result of such refusal or delay including (without limitation) any storage charges and insurance costs. Delay or default in delivery does not entitle Customer to cancel any order for Product.
- 2.4 **Import/export documentation:** If the Product is to be delivered by Zenith to a country other than New Zealand:
- (a) Customer will (at its own cost) obtain all necessary import licences and other documents and permits required to import the Product to the relevant country; and
 - (b) Zenith will (at Customer's cost) obtain all necessary documents and permits required to export or supply the Product to Customer in accordance with this Agreement.
- 2.5 **Compliance with local laws:** Customer will ensure that the delivery of the Product to the relevant delivery address, complies with all applicable local laws, statutes and ordinances. For clarity, Zenith will not be responsible for ensuring compliance with such laws.
- 2.6 **Costs:** Unless otherwise agreed in writing, all freight costs together with any required insurance relating to the delivery of the Product will be payable by Customer.
- 2.7 Zenith represents, warrants and agrees that on and from the
- 2.8 delivery date, the Products will be:
- (a) in accordance with this Agreement, any specifications, description, samples or examples of the Products provided by Zenith and accepted by Customer;
 - (b) of merchantable quality;
 - (c) free from Defects; and
 - (d) new and free from encumbrances.
3. **SERVICES**
- 3.1 **Scope of Services:** Zenith will provide the design, maintenance, support and/or other services set out in the relevant Customer Account Application and Order Form or otherwise agreed by Zenith in writing (the **Services**).
- 3.2 **Service standards:** In carrying out the Services, Zenith will:
- (a) ensure that it has (or has the use of) all necessary facilities, equipment, personnel, Intellectual Property and/or any other thing reasonably necessary to perform its obligations under this Agreement;
 - (b) use due skill and care when undertaking the Services, which includes taking all reasonable care of any property owned by Customer;
 - (c) ensure it provides the Services in a proper and professional manner and in accordance with best industry practice; and
 - (d) provide the Services in accordance with this Agreement.
- 3.3 **Customer duties:** Customer will:
- (a) promptly respond to all requests made by Zenith for instruction and information relating to the provision of the Services, and promptly do all things reasonably necessary to enable Zenith to fully and effectively provide the Services; and
 - (b) otherwise perform its obligations and liabilities under this Agreement in a timely manner, efficiently and diligently.

- 3.4 **Compliance with laws:** Customer will be responsible for and will ensure that the use, sale, installation and/or operation of the Product complies with all applicable laws, statutes, ordinances and codes. Zenith will not be responsible for:
- (a) ensuring compliance with such laws;
 - (b) for any misuse of the Product;
 - (c) contravention of such laws by Customer or any other person; or
 - (d) for any damage, loss, personal injury, harm or death caused or contributed to by the use of the Product, except to the extent the damage, loss, personal injury, harm or death was caused or contributed to by Zenith, including but not limited to Zenith's non-compliance with clause 2.7.
 - (e) the design of the Product, regardless of any advice or recommendations made by Zenith to the Customer. Zenith has no liability relating to the fitness for purpose of the Product for its intended end-use or otherwise.
- 3.5 **Personnel:** During the term of this Agreement and for a period of two years following expiry or termination of this Agreement, Customer will not, without the prior written consent of Zenith, directly solicit or offer employment to:
- (a) employees of, or individuals contracting to, Zenith; or
 - (b) a person who has been an employee of, or individual contracting to, Zenith within six months after that person leaves the employment of, or ceases its contract with Zenith.

4. **PRICE AND PAYMENT**

- 4.1 **Deposit:** Customer will pay the deposit specified in the relevant Customer Account Application and Order Form (**Deposit**) to Zenith in full upon signing of this Agreement. Subject to Zenith's provision of the Products and Services in accordance with this Agreement, Customer acknowledges and agrees that the Deposit is non-refundable except as otherwise agreed by Zenith (at its sole discretion) and will be applied as part payment of the Price.
- 4.2 **Price:** Subject to Zenith's provision of the Products and Services in accordance with this Agreement, Customer will pay the balance of the Price to Zenith in full and without setoff, counterclaim or deduction on or before the relevant payment date (as set out in clause 4.4).
- 4.3 **Reimbursable expenses:** In addition to the Price, all expenses actually and properly incurred by Zenith in connection with the provision of the Product and/or the Services will be reimbursed by Customer to Zenith as an additional charge (unless specifically incorporated in the Price), provided that Customer pre-approved the expenses in writing.
- 4.4 **Time for payment:** Subject to clause 4.1 and unless otherwise agreed in writing, amounts due to Zenith from Customer (including the Price and any reimbursable expenses) will be paid to Zenith within thirty days of the date of issue by Zenith (or its authorised agent) of an invoice in respect of such amounts.
- 4.5 **Taxes:** Customer acknowledges and agrees that all amounts stated in and payable by Customer under this Agreement exclude all national, federal, state or local sales, use, excise, value added or other taxes (including New Zealand GST, if any), customs duties or similar tariffs and fees which may be required to be paid or collected upon the delivery of the Product and/or the Services. If any tax or levy is payable, Customer will pay such tax or levy and indemnify and hold harmless Zenith against any claim or demand for the payment of such tax or levy.
- 4.6 **International payments:** The Customer will pay all bank fees and any and all associated costs of any international transfers that may be required to pay the Price of any Product or

Services, including (without limitation) bank processing fees, payment processor fees, card issuer international fees, foreign exchange fees, and currency conversion fees.

- 4.7 **Cancellation recovery:** If Customer terminates, repudiates and/or cancels any sales order for Product or Services prior to delivery, then without prejudice to Zenith's other rights and remedies, Customer will pay Zenith all reasonable costs (including time, materials and labour) and expenses sustained by Zenith in relation to the preparation or production of such Product or Services, capped at a maximum of the Price of the Products.
- 4.8 **Default interest:** Interest at Zenith's bank's commercial overdraft interest rate plus a margin of 5% per annum will be payable on any amount that is overdue for payment by Customer to Zenith under this Agreement, calculated on a daily basis from the day payment is due until the date payment is received by Zenith in full.
5. **TITLE AND RISK**
- Passing of title:** Title to the Product remains with Zenith and does not pass to Customer until the Price has been paid to and received by Zenith in full.
- 5.1 **Risk:** Risk of any loss of, damage or deterioration to the Product supplied by Zenith will be borne by Customer from the time that such Product leaves Zenith's premises unless otherwise agreed by Zenith. Risk in the Products will pass back to Zenith if the Products are returned to Zenith or collected by Zenith in accordance with clauses 5.5, 5.6 or 11.1.
- 5.2 **Insurance:** Customer will ensure that the Product is adequately insured for full replacement value from the time that the Product leaves Zenith's premises.
- 5.3 **Damage or destruction:** If the Product (or parts) are damaged or destroyed prior to title to them passing to Customer, Zenith will be entitled to receive all insurance proceeds payable in respect of such damage (whether or not the balance of the Price has become payable under this Agreement). The production of this Agreement by Zenith will be sufficient evidence of Zenith's right to receive payment of such insurance proceeds without the need for further enquiry by any person dealing with Zenith.
- 5.4 **Application of insurance proceeds:** Any insurance proceeds received under clause 5.4, will be applied by Zenith as follows:
- (a) firstly, in payment of the Price of the damaged or destroyed Product (or parts);
 - (b) secondly, in payment of any other money payable to Zenith by Customer whether under this Agreement or not; and
 - (c) lastly, any balance will be paid to Customer.
- 5.5 **Change of mind:** Product may not be returned for change of mind without the prior written consent of Zenith. Product supplied from stock (and identified as a stock item in the relevant Customer Account Application and Order Form) may be returned, provided the Product is:
- (a) received by Zenith within 14 days of the date of sale; and
 - (b) in the same condition as supplied by Zenith.
- 5.6 If a Product is returned in accordance with this clause 5.5 Zenith will refund the Customer any amounts already paid and Zenith will charge and Customer will pay a fee equal to 20% of the Price paid or payable in respect of any such returned Product. **Rejects:** If a Product is deemed to be Defective and is rejected by the Customer, Zenith reserves the right to inspect or review Product Specifications and Quality documentation to establish the validity of the Customer's determination that the part is Defective. If Zenith agrees that the part is Defective, the rejected part:

- (a) Must either be returned to Zenith, at Zenith's expense for shipping and import/export fees; or, be destroyed by the Customer and proof of destruction provided to Zenith by the Customer.
- (b) If returned to Zenith, may be retained by Zenith for internal training purposes, or ultimately destroyed by Zenith.

6. PERSONAL PROPERTY SECURITIES ACT 1999

- 6.1 **Security agreement:** Without limiting anything else in this Agreement, Customer acknowledges that this Agreement constitutes a security agreement for the purposes of the Personal Property Securities Act 1999 (the **PPSA**), which provides for a security interest in Zenith's favour in respect of any Product (other than in respect of any Product paid for in full by Customer) provided by Zenith to Customer, and all Customer's present and future rights in relation to such Product including all proceeds of sale of such Product, to secure the payment by Customer to Zenith of the Price payable in respect of such Product.
- 6.2 **Security outside New Zealand:** The parties acknowledge and agree that where Product is supplied to a country other than New Zealand that has legislation which is similar, or of similar effect, to the PPSA, Zenith will be entitled to, and they will each do all things necessary to ensure that Zenith has, such rights under the relevant local legislation as it would otherwise be entitled to under the PPSA (with all necessary amendments for context).
- 6.3 **Further assurances:** On request by Zenith, Customer will promptly do all things (including signing any documents) and provide all information necessary to enable Zenith to perfect and maintain the perfection of any security interest Customer grants to Zenith (including by registration of a financing statement). Customer will give Zenith at least 14 days prior written notice if it wishes to change its name. Customer agrees to indemnify Zenith, upon demand, for all costs and expenses Zenith incurs in registering, maintaining and changing any financing statement.
- 6.4 **Contract out:** To the maximum extent permitted by law, Customer:
- (a) agrees that nothing in sections 114(1)(a) (to receive notice of sale of goods), 116 (to receive a statement of account), 117(1)(c) (to receive any surplus), 119 (to recover any surplus), 120(2) (to receive notice of proposal to take goods), 133 (to reinstate security agreement) and 134 (limit on reinstatement) of the PPSA will apply to this Agreement or the security under this Agreement;
 - (b) waives all its rights under sections 121 (to object to proposal), 125 (damage to goods on removing accession), 129 (notice of removal of accession), 131 (court order preventing removal or accession) and 132 (redemption of collateral) of the PPSA; and
 - (c) waives its right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest created by this Agreement.
- 6.5 **Priority:** Customer agrees that the security interest created by this Agreement has the same priority in relation to all amounts owing by Customer to Zenith in respect of Product and/or Services supplied from time to time and will continue until Zenith gives Customer a final release.
- ## 7. CONFIDENTIALITY
- 7.1 **Confidential Information:** Subject to clauses 7.2 and 7.3, each party (**Recipient**) receiving Confidential Information belonging to the other party will treat, and will ensure that its employees, agents, and contractors treat, such Confidential Information with confidence and will not use or disclose such Confidential Information for any purpose other than as is permitted by, or otherwise required to, comply with this

Agreement.

- 7.2 **Permitted disclosure:** Either party may disclose Confidential Information to its employees, agents, contractors and/or professional advisers, to the extent necessary, provided that such persons agree in writing to be bound by the obligations of confidence set out in this clause 7.
- 7.3 **Exceptions:** The provisions of this clause 7 will not apply to information that:
- (a) legally must be disclosed;
 - (b) is part of, or legitimately enters, the public domain;
 - (c) is in the unrestricted possession of the Recipient prior to disclosure to the Recipient by the disclosing party; or
 - (d) is independently developed by the Recipient without reference to the disclosing party's Confidential Information.
- 7.4 **Return of Confidential Information:** Upon termination of this Agreement, the disclosing party may request the destruction or return of any Confidential Information and the Recipient will promptly destroy or return (at the disclosing party's sole discretion) all Confidential Information (whether documents, reports, exhibits and other papers, and whether on paper or in any electronic information storage and retrieval system or in any other storage medium), in the Recipient's possession or control to the disclosing party.
8. **CUSTOMER INFORMATION**
- 8.1 **Collection:** Customer and Guarantor expressly grant Zenith the right to contact any credit reporting agency for the purposes of assessing Customer's and Guarantor's creditworthiness. Customer and Guarantor further authorise Zenith to obtain any personal and/or commercial information from such credit reporting agencies and any other person that Zenith deems necessary. All information so collected will be held by Zenith at its registered office or on servers and/or databases that are access controlled by Zenith unless advised otherwise.
- 8.2 **Use:** Customer and Guarantor acknowledge and agree that the information collected by Zenith under clause 8.1 may be used by Zenith and disclosed to any prospective third party financier or other product/service provider in relation to the provision of the Product and/or the Services under this Agreement and otherwise used by Zenith for its business activities (including, without limitation, for operational, marketing, credit control and accounts management purposes).
9. **INTELLECTUAL PROPERTY**
- 9.1 **Existing and new Intellectual Property:** Subject to clause 9.4, the parties agree to the following ownership arrangements for Intellectual Property:
- (a) Existing Intellectual Property which is not developed, prepared or paid for under this Agreement but is used for the purposes of this Agreement, including techniques, knowledge, information, practices or code (**Existing IP**), will remain the property of its current owner.
 - (b) Any new Intellectual Property, or modifications and additions to Customer's Existing IP, that is developed by Zenith and commissioned and paid for in full by Customer as part of the Services (**Commissioned IP**) will be owned by Customer on creation, and Customer will be free to use and deal with the same as it sees fit.
 - (c) Any new Intellectual Property, or modifications and additions to Existing IP which is developed by Zenith and is not Commissioned IP will be owned by Zenith on creation, and Zenith will be free to use and deal with the same as it sees fit.
- 9.2 **Supply of documentation:** Where Zenith has developed or procured the development of Intellectual Property which is or

becomes Customer's property under clause 9.1(b), Zenith will, at the same time as delivering the Product, deliver to Customer all documentation and instructions necessary to allow Customer to fully use and exploit its Intellectual Property. Zenith may retain copies of the documentation and instructions to the extent necessary to perform its obligations under, and otherwise give effect to the terms of, this Agreement.

- 9.3 **Licence:** Customer licences to Zenith the right to use its Existing IP and any Commissioned IP to the extent necessary for the performance of its obligations under this Agreement.
- 9.4 **Zenith to own techniques:** Notwithstanding any other provision of this Agreement, Customer acknowledges and agrees that Zenith will own and be entitled to use either for Customer or any other customer, any techniques, knowledge, information, practices or methodologies (**Techniques**) which are disclosed to or developed by Zenith as a result of completing its obligations under this Agreement, provided that such Techniques do not contain the unique business methodologies or Confidential Information of Customer.
- 9.5 **Other arrangements:** Where Zenith or Customer intend to develop new Intellectual Property under this Agreement that is to be owned and/or used otherwise than in accordance with the provisions of this clause 9, the parties will agree the relevant ownership and use rights in respect of the new Intellectual Property in writing before development is commenced. In the absence of such agreement the provisions of this clause 9 will apply.
- 9.6 **Use or provision of Intellectual Property:** Where either party (**Provider**) agrees to provide, or provides, Intellectual Property, whether owned by the Provider or not, for use by the other party (**User**) under this Agreement the Provider will ensure that it has all necessary rights to use and provide the Intellectual Property and will licence the User to use the Intellectual Property for the intended use under this Agreement.
- 9.7 **Infringements:** A Provider will notify User of any actual or potential infringement of any Intellectual Property right and of any claim by a third party that the use of the Provider's Intellectual property infringes the rights of any other person, as soon as that infringement or claim comes to the Provider's attention. Provider will do all things that may reasonably be required by User to assist User in pursuing or defending any proceedings in relation to any such infringement or claim.
10. **WARRANTIES**
- 10.1 **Customer warranties:** Customer warrants to Zenith that it:
- (a) is in trade (as defined in section 2(1) of the Consumer Guarantees Act 1993).
- 10.2 **Product warranties excluded:** Except to the extent expressly set out in this Agreement or the Order Form, all warranties, conditions, descriptions or representations about the Product and/or the Services (for example, but without limitation, about quality, fitness for purpose or safety) are expressly excluded to the maximum extent permitted by law, except for any warranties, conditions, descriptions or representations provided by any third party manufacturer of the Product or part thereof or otherwise provided by Zenith in writing.
- 10.3 **Third party warranties:** Zenith will pass through to Customer, or if it is unable to do so, will hold for Customer's benefit, all warranties provided by third parties in respect of those parts of the Product that are manufactured and/or supplied by such third parties but subject to any exclusions, conditions and/or limitations that may apply in respect of such warranties. The specific terms of any applicable third party warranties will be available from Zenith on request.
- 10.4 **New Zealand consumer laws:** In particular but without limiting the generality of clause 10.2, Customer acknowledges and agrees that the Product is being supplied by Zenith and purchased by Customer in trade and that, pursuant to section 43 of the Consumer Guarantees Act 1993, the provisions of

that Act are expressly excluded. All implied terms, conditions and warranties under the Sale of Goods Act 1908 are also expressly excluded to the maximum extent permitted by law.

11. LIABILITY

11.1 **Product liability:** Customer may reject any Products that it deems to be Defective by written notice to Zenith. To the maximum extent permitted by law and subject to clauses 5.6, 11.2 to 11.4, the liability of Zenith (whether in contract, equity, tort (including negligence) or otherwise) for any Defect in or non-compliance of the Product (or parts), is limited, at the option of Customer, to either a replacement or repair of such defective or non-complying Products, or a refund of the Price for such Defective or non-complying Products.

11.2 **Total liability:** To the maximum extent permitted by law and subject to clauses 11.3 to 11.4, the liability of Zenith (whether in contract, equity, tort (including negligence) or otherwise) arising from any:

- (a) breach of any of Zenith's obligations under or in connection with this Agreement;
- (b) negligence, misrepresentation or other act or omission on the part of Zenith, its employees, agents or contractors; or
- (c) other cause whatsoever,

will not exceed the Price paid by Customer to Zenith under this Agreement.

Despite anything to the contrary, to the maximum extent permitted by law, Customer's liability for any liability arising from or in connection with this Agreement will be limited to the Price paid by Customer to Zenith in respect of the supply of the relevant Products or Services to which the liability relates.

11.3 **Exclusions:** To the maximum extent permitted by law and notwithstanding any other provision of this Agreement, under no circumstances will the measure of damages against Zenith for any breach of this Agreement, equity, tort (including negligence), or other action or contravention of any statute, include special, incidental, consequential or indirect loss, nor will Zenith be liable for:

- (a) damage or loss resulting from:
 - (i) the misuse of the Product by Customer or any other person;
 - (ii) a Force Majeure Event;
 - (iii) the removal by Customer or any other person of any "Zenith" labels, serial numbers, safety equipment or warning signs;
 - (iv) the implementation by Zenith or any other person of any designs and/or instructions provided by Customer; or

(b) personal injury, harm or death caused or contributed to by:

- (i) the misuse of the Product by Customer or any other person; or
- (ii) contravention of any laws by Customer,

whether or not Zenith was aware, or should have been aware, of the possibility of such loss or damage, personal injury, harm or death.

11.4 **Proportionality:** Despite anything to the contrary, to the maximum extent permitted by law, a party's liability under this Agreement will be reduced to proportionately to the extent the relevant liability was caused or contributed to by the acts or omissions of the other party (or any of its personnel), including any failure by that other party to mitigate its loss.

11.5 **Customer Indemnity:** Customer hereby indemnifies and holds harmless Zenith, its employees, agents and contractors from and against any and all claims or liabilities asserted

against any or all of them in connection with the manufacture, sale, delivery, repair or use of any Product or Services supplied under this Agreement arising in whole or in part, out of or by reason of the:

- (a) failure by Customer or Customer's employees, agents or contractors to follow instructions, warnings or recommendations furnished by Zenith, its employees, agents or contractors in connection with such Product or Services;
- (b) failure by Customer or Customer's employees, agents or contractors to comply with any laws applicable to the use of such Product or Services, including any occupational health and safety requirements and building codes;
- (c) negligence of Customer or Customer's employees, agents or contractors; or
- (d) implementation by Zenith or any other person of any designs and/or instructions provided by Customer.

11.6 **Zenith Indemnity:** Despite anything to the contrary, Zenith hereby indemnifies and holds harmless Customer, its employees, agents and contractors from and against any and all claims or liabilities asserted against any or all of them in connection with:

- (a) any property loss or damage, or personal injury or death, arising from or in connection with a Defect;
- (b) failure by Zenith or Zenith's employees, agents or contractors to comply with any laws applicable to the manufacture of such Product or provision of the Services, including any occupational health and safety requirements and building codes; and/or negligence of Zenith or Zenith's employees, agents, or contractors.

12. FORCE MAJEURE

12.1 **Force Majeure:** Notwithstanding any other provision of this Agreement, non-performance by a party (**Affected Party**) of any of its obligations under this Agreement will be excused, without liability for non-performance, during the time and to the extent that performance is prevented, wholly or substantially, by a Force Majeure Event either affecting Zenith or affecting Customer to such an extent that the relevant party is unable to perform its relevant obligations. Performance of any obligation affected by a Force Majeure Event will be resumed as soon as reasonably possible after the termination or abatement of the Force Majeure Event.

12.2 **Notice of Force Majeure Event:** An Affected Party will promptly advise the other party in writing, specifying the cause and extent of its inability to perform any of its obligations and the likely duration of such non-performance.

13. DISPUTE RESOLUTION

13.1 **Negotiation:** If any dispute arises between the parties in connection with the interpretation or application of the provisions of this Agreement, its breach or termination, the validity of any documents provided by either party pursuant to the provisions of this Agreement, or any other matter arising out of or in connection with this Agreement (**Dispute**), then the following will apply:

- (a) either party may, by written notice (**Dispute Notice**), require the other party to meet and attempt to resolve the Dispute;
- (b) the Dispute Notice will state the nature and subject matter of the Dispute and set a time and date (not to be later than five Business Days from the date of the Dispute Notice) for the parties to meet (whether by telephone, videoconference or physical meeting) to attempt to resolve the Dispute; and
- (c) the parties will use all reasonable endeavours to resolve the Dispute.

13.2 **Referral to mediation:** If the Dispute remains unresolved after the expiry of ten (10) Business Days from the date of the

original Dispute Notice(**Negotiation Due Date**), any party may refer the Dispute to the mediation of one mediator. Failing agreement as to an appropriate mediator within three Business Days of the Negotiation Due Date, the mediator will be appointed at the request of any party by the chairperson or any other similar office holder for the time being of the New Zealand chapter of the Resolution Institute, or the nominee of such chairperson or other office holder. The guidelines which will govern the mediation will be set by the parties. Failing agreement within three Business Days after the date of appointment of the mediator, any party may request the mediator to set the guidelines (whether or not in conjunction with that party) which will govern the mediation.

- 13.3 **Termination of mediation:** If the Dispute is not resolved within ten (10) Business Days of the date of commencement of the mediation, any party may:
- (a) terminate the mediation by giving written notice to the other party; and
 - (b) commence court or other proceedings in respect of the Dispute.
- 13.4 **Interim relief:** The provisions of this clause 13 will not preclude either party from obtaining interim relief on an urgent basis from a court of competent jurisdiction.
14. **DEFAULT**
- 14.1 **Termination:** Customer may terminate this Agreement if Zenith:
- (a) breaches a provision of this Agreement that is incapable of remedy; or
 - (b) fails to remedy any breach of this Agreement that is capable of remedy within 10 Business Days of notice of that breach having been given stating the nature of the breach and requiring remedy.
- 14.2 **Remedies:** To the maximum extent permitted by law, if an Event of Default occurs, payment of any money owing by Customer to Zenith for Products or Services actually provided in accordance with this Agreement will immediately become due and payable and Zenith may:
- (a) suspend performance of any or all of its obligations under this Agreement;
 - (b) enforce its security interest under this Agreement;
 - (c) appoint a receiver (without Customer consent) in respect of any Product and such receiver will be authorised to do anything referred to in this Agreement and otherwise to exercise all rights and powers conferred on a receiver by law; and/or
 - (d) enter any premises where the Product may be and take possession of and remove such product without being responsible for any damage caused and all costs or expenses incurred by Zenith as a result of any such action will be payable by Customer upon demand. Zenith and Customer agree that (if applicable) section 109(1) of the PPSA is contracted out of in respect of the particular Product if, and only for so long as, Zenith is not the secured party with priority over all other secured parties in respect of such Product.
- 14.3 **Right of resale:** Zenith may resell any Product removed under clause 14.2(d) and apply the proceeds in or towards payment of any monies payable to Zenith by Customer whether under this Agreement or not.
15. **GENERAL**
- 15.1 **Assignment:** Neither party may assign or otherwise transfer all or any of its rights and obligations under this Agreement without the prior written approval of the other party.
- 15.2 **Entire agreement:** To the maximum extent permitted by law, this Agreement constitutes the entire understanding and agreement of the parties relating to the matters contemplated

by this Agreement and supersedes and extinguishes all prior agreements, arrangements, understandings or representations between the parties relating to such matters. Customer acknowledges and agrees that the Product is being supplied by Zenith and purchased by Customer in trade and that, pursuant to section 5D of the Fair Trading Act 1986, sections 9, 12(a) and 13 of that Act are expressly excluded.

- 15.3 **Amendment:** No amendment to this Agreement will be effective unless it is in writing and signed by both parties.
- 15.4 **Waiver:** No delay, grant of time, release, compromise, forbearance (whether partial or otherwise) or other indulgence by either party in respect of any breach of the other party's obligations under this Agreement is to:
- (a) operate as a waiver or prevent the subsequent enforcement of that obligation; or
 - (b) be deemed a delay, grant of time, release, compromise, forbearance (whether partial or otherwise) or other indulgence in respect of, or a waiver of, any subsequent or other breach.
- 15.5 **Severance:** To the extent permitted by law, any unlawful or voidable provision in this Agreement will be read down so as to be valid and enforceable or, if it cannot be read down, will be severed from this Agreement without affecting the validity, legality or enforceability of the remaining provisions, provided that the reading down or severing does not materially affect the purpose of or frustrate this Agreement.
- 15.6 **Independent advice:** Customer warrants it has had the opportunity to obtain independent legal advice about its obligations under this Agreement, and confirms the terms and conditions of this Agreement are fair and reasonable.
- 15.7 **Counterparts:** This Agreement may be executed in two or more counterparts (including by way of an email exchange of signed and scanned PDF copies) each of which will be deemed an original, but all of which together will constitute one and the same instrument.
- 15.8 **Governing law:** This Agreement is governed by and will be construed in accordance with the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
16. **EXPORT COMPLIANCE**
- Zenith Tecnica is committed to compliance with all import/export regulatory controls in New Zealand and overseas, such as the U.S. International Traffic in Arms Regulations (ITAR) and U.S. Export Administration Regulations (EAR). In order to comply with requirements, Zenith may require additional information from the Customer prior to processing any order, such as, but not limited to:
- 16.1 Declaration of End Use document completed and signed by a duly authorised person for the Customer;
 - 16.2 Export classification numbers, technology agreements, waivers, licences or permits as may be required.