

1. Definitions

- 1.1 “EIS” means EIS Group Ltd, its successors and assigns or any person acting on behalf of and with the authority of EIS Group Ltd.
- 1.2 “Client” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by EIS to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Proposal” means the letters or other documents prepared by EIS and submitted to the Client to describe the scope of Services to be provided, the personnel and equipment proposed to be utilized, and the amount or method of calculation of the Price and reimbursable expenses.
- 1.5 “Agreement” means the entire contractual Agreement between the parties.
- 1.6 “Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Agreement, either party’s Intellectual Property, operational or technical information, know-how, trade secrets, financial and commercial affairs, contracts, client information, pricing details and other commercially valuable or sensitive information of whatever description which a party regards as confidential, proprietary or of a commercially or personally sensitive nature. It excludes information which:
 - (a) is lawfully in the public domain before is disclosure, or enters the public domain afterwards through an authorised disclosure;
 - (b) becomes available to the receiving party from someone lawfully in possession of it who lawfully discloses it on a non-confidential basis;
 - (c) is rightfully known by the receiving party before disclosure to it.
- 1.7 “Price” means the Price payable for the Goods as agreed between EIS and the Client in accordance with clause 5 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with EIS’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and EIS.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.4 Dimensions and specifications contained or referred to in any Agreement or in any publications maintained or issued by EIS are estimates only. Unless otherwise expressly agreed in writing by EIS, it is not a condition of any Agreement that the Goods will correspond precisely with such dimensions and specifications, and customary or reasonable tolerances will be allowed.
- 2.5 None of the EIS’s agents or representatives are authorised to make any representations, statements, conditions or Agreements not expressed by the manager of EIS in writing nor is EIS bound by any such unauthorised statements.
- 2.6 The Client accepts and acknowledges that EIS reserves the right to appoint at EIS’ discretion a project manager or managers to oversee the Services up to and including completion, the Client accepts that this party may be subject to change without notice, during the course of the Agreement.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2, the Client agrees that should the Client introduce any third party to EIS as the Client’s duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Goods, and/or to request any variation thereto, on the Client’s behalf (such authority to continue until all requested Goods have been delivered, or the Client otherwise notifies EIS in writing that said person is no longer the Client’s duly authorised representative).
- 3.2 In the event that the Client’s duly authorised representative, as per clause 3.1, is to have only limited authority to act on the Client’s behalf then the Client must specifically and clearly advise EIS in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to EIS for all additional costs incurred by EIS (including EIS’s profit margin) in providing any Goods, or variation/s thereto, requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Change in Control

- 4.1 The Client shall give EIS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by EIS as a result of the Client’s failure to comply with this clause.

5. Price and Payment

- 5.1 At EIS’s sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by EIS to the Client; or
 - (b) EIS’s estimated Price (subject to clause 5.2). No allowances shall be made for site preparation unless specified in the estimate. The final Price can only be ascertained upon completion of the Services. Variances in the estimated Price of more than 10% will be subject to Client approval before proceeding with the Services; or
 - (c) EIS’s quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation, proposal or otherwise for a period of thirty (30) days.
- 5.2 EIS reserves the right to change the Price:
 - (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications or additional commissioning) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site and/or crawl spaces, existing state of electrical components or switchboard, non-compliant wiring, availability of machinery, safety considerations including the discovery of asbestos or synthetic mineral fibres,

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- prerequisite work by any third party not being completed or hidden pipes and wiring in walls etc.) which are only discovered on commencement of the Services; or
- (d) in the event of increases to EIS in the costs of supply and/or production of the Goods (Including fluctuations in currency exchange rates, etc.), and/or Delivery, due to circumstances beyond the reasonable control of EIS.
- 5.3 Variations will be charged for on the basis of EIS's quotation, proposal or charge-up, and will be detailed in writing, and shown as variations on EIS's invoice. The Client shall be required to respond to any variation submitted by EIS within ten (10) working days. Failure to do so will entitle EIS to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4 At EIS's sole discretion a non-refundable deposit may be required.
- 5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by EIS, which may be:
- (a) on delivery of the Goods;
- (b) before delivery of the Goods;
- (c) by way of instalments/progress payments;
- (d) for certain approved Clients, payment is due the 20th of the month following the date of invoices received up to and including the 10th of that month;
- (e) the date specified on any invoice or other form as being the date for payment; or
- (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by EIS.
- 5.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and EIS.
- 5.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to EIS an amount equal to any GST EIS must pay for any supply by EIS under this or any other Agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 5.8 Receipt by EIS of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then EIS's rights and ownership in respect of the Goods, and this Agreement, shall continue.
- 6. Delivery of Goods**
- 6.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at EIS's address; or
- (b) EIS (or EIS's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 6.2 At EIS's sole discretion the cost of delivery is in addition to the Price.
- 6.3 The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then EIS shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.4 EIS may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.5 Any time specified by EIS for provision of the Services is an estimate only and EIS will not be liable for any loss or damage incurred by the Client as a result of late provision. However, both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that EIS is unable to provide the Services as agreed solely due to any action or inaction of the Client then EIS shall be entitled to charge a reasonable fee for re-providing the Goods or Services at a later time and date (including any additional time occurred due to unavailability of plant for EIS to perform duties required under this Agreement, which will be charged at EIS' normal hourly rates).
- 7. Free Issue Equipment**
- 7.1 Any equipment to be supplied to EIS for incorporation in the Services by EIS ("**Free Issue Equipment**") is accepted only under the following conditions:
- (a) EIS will not be responsible for delays caused by late delivery, or delivery in an incomplete or damaged form;
- (b) EIS will not be responsible for process performance issues relating to Free Issue Equipment, or where said Free Issue Equipment impacts on the performance of Products supplied by EIS;
- (c) EIS will not be responsible for compatibility issues relating to the Free Issue Equipment;
- (d) EIS will not be responsible for any and all other problems associated with the Free Issue Equipment; and
- (e) any time spent dealing with issues relating to the Free Issue Equipment, will be charged at EIS' normal hourly rates under clause 5.2.
- 8. Risk**
- 8.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, EIS is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by EIS is sufficient evidence of EIS's rights to receive the insurance proceeds without the need for any person dealing with EIS to make further enquiries.
- 8.3 If the Client requests EIS to leave Goods outside EIS's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 8.4 The Client acknowledges that Goods supplied may exhibit variations in shade, colour, texture, surface and finish. EIS will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 8.5 The Client warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and EIS shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.
- 8.6 Subject to clause 14 EIS shall not be liable for any defect or damage resulting from incorrect or faulty installation carried out by any other third party.

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- 8.7 The Client acknowledges that EIS is only responsible for parts that are replaced/supplied by EIS and does not at any stage accept any liability in respect of components supplied by any other third party that subsequently fail and are found to be the source of the failure, the Client agrees to indemnify EIS against any loss or damage to the Goods, or caused thereby, or any part thereof howsoever arising.
- 8.8 Where the Client has supplied materials/equipment for EIS to complete the Services and/or installation thereof, the Client acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in those materials. EIS shall not be responsible for any defects in the materials, any loss or damage howsoever arising from the use of materials supplied by the Client.

9. Compliance and Consents

- 9.1 The Client and EIS shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods, including any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 9.2 EIS has Tertiary Level ACC Workplace Safety Management Practices in effect. The principles and practices of safety and management are strictly adhered to by EIS; a copy of EIS' Health, Safety, Environmental and Quality Documentation is available upon request.
- 9.3 The Client shall obtain (at the expense of the Client) all licenses, building consents or permits from local council or government bodies for the Services that may be required for the installation of the Goods.

10. Title

- 10.1 EIS and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid EIS all amounts owing to EIS; and
 - (b) the Client has met all of its other obligations to EIS.
- 10.2 Receipt by EIS of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 10.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 10.1 that the Client is only a bailee of the Goods and must return the Goods to EIS on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for EIS and must pay to EIS the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for EIS and must pay or deliver the proceeds to EIS on demand.
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of EIS and must sell, dispose of or return the resulting product to EIS as it so directs.
 - (e) the Client irrevocably authorises EIS to enter any premises where EIS believes the Goods are kept and recover possession of the Goods.
 - (f) EIS may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of EIS.
 - (h) EIS may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

11. Personal Property Securities Act 1999 ("PPSA")

- 11.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Client to EIS for Services – that have previously been supplied and that will be supplied in the future by EIS to the Client.
- 11.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which EIS may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, EIS for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of EIS; and
 - (d) immediately advise EIS of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 11.3 EIS and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 11.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 11.5 Unless otherwise agreed to in writing by EIS, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 11.6 The Client shall unconditionally ratify any actions taken by EIS under clauses 11.1 to 11.5.

12. Security and Charge

- 12.1 In consideration of EIS agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 12.2 The Client indemnifies EIS from and against all EIS's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising EIS's rights under this clause.

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- 12.3 Unless otherwise agreed in writing, the Client irrevocably appoints EIS and each director of EIS as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.
- 13. Defects**
- 13.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify EIS of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford EIS an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which EIS has agreed in writing that the Client is entitled to reject, EIS's liability is limited to either (at EIS's discretion) replacing the Goods or repairing the Goods.
- 13.2 Goods will not be accepted for return other than in accordance with 13.1 above, and provided that:
- (a) EIS has agreed in writing to accept the return of the Goods; and
 - (b) the Goods are returned at the Client's cost within seven (7) days of the delivery date; and
 - (c) EIS will not be liable for Goods which have not been stored or used in a proper manner; and
 - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 13.3 Subject to clause 13.1, non-stocklist items or Goods made to the Client's specifications are not acceptable for credit or return.
- 14. Warranty**
- 14.1 Subject to the conditions of warranty set out in clause 14.2 EIS warrants that if any defect in any workmanship of EIS becomes apparent and is reported to EIS within twelve (12) months of the date of delivery (time being of the essence) then EIS will either (at EIS's sole discretion) replace or remedy the workmanship.
- 14.2 The conditions applicable to the warranty given by clause 14.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Client to properly maintain any Goods; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by EIS; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (b) the warranty shall cease and EIS shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without EIS's consent.
 - (c) in respect of all claims EIS shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 14.3 For Goods not manufactured by EIS, the warranty shall be the current warranty provided by the manufacturer of the Goods. EIS shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 15. Intellectual Property**
- 15.1 If during the course of providing the Services, EIS designs, develops, discovers, or supplies the Client with any Products, information, ideas, documentation (including designs, plans, reports, proposals, designs, programs, strategies, plans, specifications and other Goods and aids, etc.), new concepts, products or processes ("Intellectual Property") which are capable of being patented, then copyright in that Intellectual Property shall remain the property of EIS, and the Client must not reproduce, copy or use it in any manner without the prior written permission of EIS.
- 15.2 Upon completion of this Agreement, the Client must return to EIS all copies of any Intellectual Property (whether in written, electronic or other form), except as otherwise agreed with EIS. No copies of such Intellectual Property are to be retained, used or passed on to any third party by the Client.
- 15.3 The Client warrants that all designs, specifications or instructions given to EIS will not cause EIS to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify EIS against any action taken by a third party against EIS in respect of any such infringement.
- 15.4 The Client agrees that EIS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which EIS has created for the Client.
- 15.5 Each party:
- (a) shall treat all Confidential Information belonging to the other party as confidential and safeguard it accordingly; and
 - (b) shall not disclose any Confidential Information belonging to the other party to any other person without the prior written consent of the other party, except to such persons and to such extent as may be necessary for the performance of this Agreement or any Agreement between the parties, or except where disclosure is otherwise expressly permitted by the provisions of this Agreement or such Agreement.
- 16. Default and Consequences of Default**
- 16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at EIS's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Client owes EIS any money the Client shall indemnify EIS from and against all costs and disbursements incurred by EIS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, EIS's collection agency costs, and bank dishonour fees).

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- 16.3 Further to any other rights or remedies EIS may have under this Agreement, if a Client has made payment to EIS by credit card, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by EIS under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Agreement.
- 16.4 Without prejudice to any other remedies EIS may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions EIS may suspend or terminate the supply of Goods to the Client. EIS will not be liable to the Client for any loss or damage the Client suffers because EIS has exercised its rights under this clause.
- 16.5 Without prejudice to EIS's other remedies at law EIS shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to EIS shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to EIS becomes overdue, or in EIS's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

17. Cancellation

- 17.1 EIS may cancel any Agreement to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice EIS shall repay to the Client any money paid by the Client for the Goods. EIS shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by EIS as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 17.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

18. Privacy Act 1993

- 18.1 The Client authorises EIS or EIS's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by EIS from the Client directly or obtained by EIS from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 18.2 Where the Client is an individual the authorities under clause 18.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 18.3 The Client shall have the right to request EIS for a copy of the information about the Client retained by EIS and the right to request EIS to correct any incorrect information about the Client held by EIS.

19. Unpaid Seller's Rights

- 19.1 Where the Client has left any item with EIS for repair, modification, exchange or for EIS to perform any other service in relation to the item and EIS has not received or been tendered the whole of any moneys owing to it by the Client, EIS shall have, until all moneys owing to EIS are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 19.2 The lien of EIS shall continue despite the commencement of proceedings, or judgment for any moneys owing to EIS having been obtained against the Client.

20. Insurance

- 20.1 EIS undertakes to act in all professional matters as a faithful consultant to the Client, whose interests will be watched over with skill and care. Notwithstanding, EIS shall only be liable to the Client for the consequences of any negligent act, omission or statement of EIS, and then only to the extent and limitations referred to herein, and the quotation, proposal or any other documentation pertaining to this Agreement.
- 20.2 EIS shall take out and maintain Insurance in respect of any potential liability, loss or damage that may arise relating to the performance of the Services under this Agreement. EIS will also cover Professional Indemnity for consultancy, project management, and project engineering to the amount of NZD \$5,000,000.00.
- 20.3 Notwithstanding any other provision of this Agreement, the total amount the Client is able to recover from EIS in respect of any claim or series of related claims giving rise to any liabilities shall be capped at the amount of NZD \$10,000,000.00. Each party shall take all reasonable steps to avoid or mitigate any loss or liability that might give rise to any liabilities under or in connection with this Agreement.

21. Construction Contracts Act 2002

- 21.1 At EIS's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Construction Contracts Act 2002 may apply.
- 21.2 Nothing in this Agreement is intended to have the effect of contracting out of any applicable provisions of the Construction Contracts Act 2002 of New Zealand, except to the extent permitted by the Act where applicable.

22. Health & Safety at Work Act 2015

22.1 EIS has not and will not at any time assume any obligation as the Client's agent or otherwise which may be imposed upon the Client from time to time pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") arising out of the engagement. The parties agree that for the purposes of the HSW Act, EIS shall not be the person who controls the place of work in terms of the HSW Act.

23. Dispute Resolution

23.1 All disputes and differences between the Client and EIS touching and concerning this Agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing Agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

24. General

24.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

24.2 These terms and conditions and any Agreement to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Invercargill Courts of New Zealand.

24.3 EIS shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by EIS of these terms and conditions (alternatively EIS's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

24.4 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by EIS to the Client.

24.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by EIS nor to withhold payment of any invoice because part of that invoice is in dispute.

24.6 Neither party to this Agreement may assign this Agreement, any payment or any other right, benefit or interest under this Agreement without the written consent of the other party (which shall not be unreasonably withheld). EIS may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Agreement by so doing.

24.7 The Client agrees that EIS may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for EIS to provide Services to the Client.

24.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

24.9 Both parties warrant that they have the power to enter into this Agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Agreement creates binding and valid legal obligations on them.