

**BAY OF PLENTY DISTRICT HEALTH BOARD
TERMS OF TRADE FOR SUPPLY OF PRODUCTS**

1. Supply of Products

- 1.1 The Supplier must supply Products in an enthusiastic, prompt, efficient, professional and ethical manner and in accordance with:
- the terms of this Agreement;
 - all relevant published Crown objectives and guidelines;
 - BOPDHB's Objectives and all relevant standards published or approved by BOPDHB; and
 - all relevant Law.
- 1.2 Other than as specifically set out in this Agreement and/or purchase order issued by BOPDHB, BOPDHB does not guarantee the Supplier any specific volume of business under this Agreement. All estimates provided to the Supplier by BOPDHB are estimates only, and the Supplier confirms that these estimates will not be relied on in any circumstances.
- 1.3 In the event of an emergency or disaster affecting BOPDHB, the Supplier will use its best endeavours to supply Products, as requested by BOPDHB.

2. Purchase Order

- 2.1 Where appropriate, BOPDHB will confirm orders for Products by issuing a purchase order with a Purchase Order Number recorded on it.

3. Price

- 3.1 BOPDHB will pay the Supplier the Price plus GST (if any), for the supply of Products. For avoidance of doubt, the Price is exclusive of GST.
- 3.2 The Supplier acknowledges that:
- the Supplier's costs and expenses incurred in complying with the Supplier's obligations under this Agreement are included in the Price; and
 - BOPDHB will not be required to pay any sums in respect of any Products other than the Price.

4. Payment

- 4.1 BOPDHB will pay the Supplier by electronic funds transfer or such other method acceptable to BOPDHB by the end of the month following the month in which Products are delivered to BOPDHB.
- 4.2 All payments are subject to BOPDHB receiving a GST tax invoice complying with clause 5 of this Agreement. All invoices must be sent to BOPDHB (Accounts Section), Private Bag 12-024, Tauranga, New Zealand.
- 4.3 Failure by BOPDHB to dispute any invoice prior to payment will not prejudice BOPDHB's rights to subsequently dispute the correctness of such invoice.
- 4.4 BOPDHB will be entitled to deduct any withholding tax required to be deducted from payments BOPDHB is liable to make to the Supplier under this Agreement and will forward that withholding tax to the New Zealand Inland Revenue Department as required by Law. The net amounts paid by BOPDHB to the Supplier shall be complete and final discharge by BOPDHB of its obligations to make the relevant payments.
- 4.5 BOPDHB may withhold or deduct or set off the amount of any overpayment or any amount recoverable by BOPDHB from the Supplier under this Agreement from any future payment.
- 4.6 Account enquiries can be made by post, by telephone 0064 7 579 8801 or by fax 0064 7 577 9195.

5. Invoicing

- 5.1 Each GST tax invoice must meet all legal requirements and must state the following information:
- Supplier's legal name;
 - Supplier's GST number;
 - Supplier's invoice number;
 - Contract Number and Purchase Order Number (if applicable);
 - description of Products supplied to BOPDHB in accordance with this Agreement;
 - period Products supplied;
 - dollar amount to be paid plus GST (if any);
 - date the invoice is due to be paid.

6. Term

- 6.1 The Term will start on the commencement date and will end in accordance with this Agreement.
- 6.2 Notwithstanding clause 6.1, if BOPDHB permits the Supplier to supply Products after the expiration of the Term, such supply of Products shall be on a monthly basis terminable by one month's written notice and shall otherwise be upon and subject to the same terms and conditions expressed or implied in this Agreement.

7. Favourable Terms

- 7.1 During the Term, the terms and conditions applicable to BOPDHB shall be no less favourable than the terms and

conditions that the Supplier may offer to any third party and the Supplier shall offer to BOPDHB the opportunity to benefit from any such more favourable terms and conditions offered by the Supplier to third parties.

8. Access to Any BOPDHB Site

- 8.1 If access to any BOPDHB Site is necessary for the supply of Products to BOPDHB in accordance with this Agreement, BOPDHB will allow the Supplier access at reasonable times, as necessary.
- 8.2 The Supplier will comply with BOPDHB's security, operational and site requirements where the Supplier has access to any BOPDHB Site.
- 8.3 When required by BOPDHB, the Supplier must complete a BOPDHB Site specific induction programme before supplying Products to BOPDHB in accordance with this Agreement.

9. Delivery Documentation

- 9.1 A delivery note quoting the Contract Number and the Purchase Order Number will accompany each supply of Products to BOPDHB unless otherwise agreed by the Parties.

10. Delivery

- 10.1 The Supplier will deliver Products:
- to BOPDHB by the Delivery Times specified in the Schedule. If no Delivery Times are specified in the Schedule, Products must be delivered to BOPDHB with all reasonable speed and due diligence; and
 - to the destination specified in the Schedule. If no destination is specified in the Schedule, Products must be delivered to BOPDHB's inward goods department at Tauranga Hospital or Whakatane Hospital, as applicable.
- 10.2 Quantities of Products delivered must conform to the quantities ordered by BOPDHB.
- 10.3 BOPDHB will only accept part deliveries and interim invoices if agreed to in writing prior to delivery by the Supplier.
- 10.4 BOPDHB can return any Products incorrectly delivered. The cost of return freight is payable by the Supplier.
- 10.5 Risk in any Products and unencumbered title in any Products will pass to BOPDHB upon signing of the delivery note accompanying the Products or if the Parties have agreed that a delivery note will not accompany the Products, upon delivery pursuant to clause 10.1.
- 10.6 The signing of a delivery note by a BOPDHB representative will not be taken as acceptance of either the quality or quantity of the Products and acceptance by BOPDHB of the Products will be subject to subsequent inspection by a BOPDHB representative and use of the Products.

11. Packaging

- 11.1 The Supplier will package Products in an appropriate manner having regard to the type of Products and the method of transport used.
- 11.2 On delivery of Products to BOPDHB, the Supplier will remove all packaging not required by BOPDHB and the Supplier will be responsible for the disposal of that packaging, at its cost.

12. Non-complying Products

- 12.1 The Supplier must give BOPDHB written notice immediately if it:
- is required by Law to recall or modify all or any of the Products; or
 - becomes aware of any non-compliance that affects or has the potential to affect the safety of all or any of the Products.
- 12.2 If any of the events referred to clause 12.1 occur, the Supplier shall:
- consult with BOPDHB; and
 - if required by BOPDHB, use its best endeavours to provide replacement products to BOPDHB as soon as possible.
- 12.3 Notwithstanding clause 12.2, BOPDHB reserves its rights to purchase alternative products elsewhere in accordance with clause 32 (failure to comply).

13. Compliance Standards/Quality Assurance

- 13.1 The Supplier must during the Term have and comply with all relevant compliance standards and a quality assurance system.
- 13.2 The Supplier must provide BOPDHB with details of relevant compliance standards and its quality assurance system if, BOPDHB requests them.

14. Licences, Authorisations and Certifications

- 14.1 The Supplier shall obtain at its own risk and expense any:
- licence and other authorisation for the supply of Products to BOPDHB; and
 - import licence and other authorisation.
- 14.2 The Supplier shall carry out all customs formalities for the importation of any Products supplied to BOPDHB.

- 14.3 If any Products are connected with equipment that requires additional certification including biomedical equipment, radiation equipment, autoclave equipment, hazardous equipment or boilers, the Supplier shall either:
- provide all certification services required by Law, at its cost; or
 - advise and assist BOPDHB with the obtaining of the required certification services from a provider of such certification services, such advice and assistance being included in the Price.
15. **Inspection/Observation**
- 15.1 The Supplier will, to the extent it can, ensure that BOPDHB representatives have access to any Products at any reasonable time and for any reasonable purpose, free of charge. For avoidance of doubt, BOPDHB representatives may require access to Products while they are being manufactured, prior to the Delivery Times specified in the Schedule or during the delivery process.
- 15.2 The Supplier shall permit any BOPDHB representative to take photographs of Products during any inspection or observation of those Products.
- 15.3 Any inspection, testing or observation pursuant to clause 15.1 shall not constitute any acceptance or prejudice any of BOPDHB's rights.
16. **Other Arrangements**
- 16.1 The Supplier must not enter into any other contract or arrangement, that might prejudice the Supplier's ability to meet its obligations under this Agreement, but subject to this the Supplier may supply products to others.
- 16.2 Nothing in this Agreement will prevent BOPDHB purchasing products similar to, or the same as, the Products from any other person.
17. **Confidential Information**
- 17.1 The Supplier acknowledges that in the course of the performance of its obligations under this Agreement, or otherwise, the Supplier may obtain access to, or become aware of Confidential Information which is, or may be of value to BOPDHB.
- 17.2 The Supplier must not disclose, communicate to or place at the disposal of any other person, any Confidential Information in any form or by any means and the Supplier must keep the Confidential Information in the strictest confidence, except in the following circumstances:
- the disclosure is required by Law in which case the Supplier must notify BOPDHB of the requirement for the Confidential Information to be disclosed. If BOPDHB objects to this disclosure on the basis that it is not required by Law, the Supplier must reconsider its decision;
 - the disclosure is to the Supplier's staff, to the extent that he, she or it needs to know the Confidential Information in order to fulfil the Supplier's obligations under this Agreement; or
 - BOPDHB consents in writing to the disclosure.
- 17.3 If BOPDHB authorises the Supplier to disclose any Confidential Information to any person the Supplier agrees, prior to such disclosure, to have such person execute an acknowledgement, to the effect that the Confidential Information is disclosed to that person in confidence.
- 17.4 The Supplier agrees not to use, or modify the Confidential Information for its own benefit or the benefit of any other person.
- 17.5 To ensure the continued proprietary and confidential nature of the Confidential Information the Supplier agrees to:
- initiate and maintain a system for the proper and secure custody of any Confidential Information within its custody or control; and
 - maintain complete and accurate records of the location of any Confidential Information within its custody or control (including all copies).
- 17.6 If BOPDHB so requests at any time, the Supplier agrees to:
- immediately disclose and deliver to, or do all things necessary to procure the disclosure and delivery to BOPDHB or as BOPDHB may direct, all Confidential Information which is in a physical form including all copies of the Confidential Information whether those copies are in the same form as the original or capable of being recreated into such or other form by any method;
 - deliver any part of the Confidential Information which is stored by any means by which no original or copy is kept at the relevant time but by use of any method, an original or copy may be recreated by creating and delivering a printed copy of such Confidential Information to BOPDHB or as BOPDHB may direct, and then destroying the means of recreation so as to prevent the future recreation of such Confidential Information;
- certify in writing to BOPDHB that the Supplier has returned all forms of Confidential Information and that the Supplier no longer has any part of the Confidential Information in its possession, custody or control; and
 - ensure that BOPDHB has access to the premises in which Confidential Information may be, or supposed to be, or has been kept from time to time.
- 17.7 The obligations under this clause survive the expiry or the termination of this Agreement for whatever reason.
18. **Stop Involvement**
- 18.1 The Supplier shall end the direct and indirect involvement with this Agreement of any person as requested by BOPDHB if, in BOPDHB's reasonable opinion, that person does not satisfy any of BOPDHB's security or operational requirements, or is not appropriate.
19. **Instructions to Leave Any BOPDHB Site**
- 19.1 BOPDHB may, at its sole discretion, ask the Supplier's Staff to leave any BOPDHB Site immediately if:
- there is an emergency;
 - BOPDHB believes the health or safety of any person is at risk; or
 - BOPDHB decides it is necessary in the circumstances.
- 19.2 If the Supplier's Staff have been asked to leave any BOPDHB Site pursuant to clause 19.1 the Supplier's Staff must:
- leave that BOPDHB Site immediately; and
 - not return to that BOPDHB Site or any other BOPDHB Site until authorised by the BOPDHB Contact Person.
20. **Reports**
- 20.1 The Supplier shall:
- complete and return within 10 working days, any reports required in accordance with:
 - this Agreement; and
 - BOPDHB's reasonable instructions; and
 - send any report direct to the Crown in the manner BOPDHB specifies, if requested by BOPDHB.
21. **Audit**
- 21.1 BOPDHB may from time to time audit the Supplier's performance and compliance with this Agreement. For the purpose of any audit, BOPDHB may want:
- access to the Supplier's premises;
 - access to all premises where Products or records relating to the Products are kept; and
 - to interview the Supplier's Staff or other people used by the Supplier to supply Products to BOPDHB.
- 21.2 The Parties agree to act reasonably for the purpose of any audit.
- 21.3 The Supplier shall co-operate with any person authorised by BOPDHB to carry out any audit.
- 21.4 BOPDHB's right to audit under this clause survives the expiry or the termination of this Agreement for whatever reason but only to the extent that it is relevant to the period during which this Agreement exists.
22. **Insurance**
- 22.1 The Supplier shall take out and maintain at its own cost, during the Term, the following insurances:
- Professional indemnity insurance for at least the minimum amount specified in the Schedule;
 - Public liability insurance for at least the minimum amount specified in the Schedule;
 - Other liability cover that may be specified in the Schedule.
- 22.2 The Supplier will keep professional indemnity insurance cover in force for six (6) years after the end of the Term subject to such insurance being available to the Supplier at a cost which is not prohibitive to the continuance of the Supplier's business. If the Supplier considers that the cost is prohibitive the Supplier must provide reasonable evidence of this to BOPDHB and if BOPDHB disagrees the dispute must be dealt with under clause 34 (dispute resolution).
- 22.3 The Supplier will require its insurer(s) to complete the attached standard insurance certificates for the insurances specified in the Schedule. The insurance certificates are to be provided to BOPDHB at the time of execution of this Agreement and thereafter on the anniversary date for any insurances that are required to be in place at that time.
- 22.4 If the Supplier does not satisfy its obligations under this clause 22, BOPDHB has the right at any time to independently arrange the insurances on the Supplier's behalf with the cost of those insurances being to the Supplier's account.

- 22.5 The Supplier must not do anything that might render the insurances referred to in this Agreement or any other insurances in the name of BOPDHB, void or voidable.
- 23. Intellectual Property**
- 23.1 Where:
- a. any licence or any other authorisation from any person is required to own, possess, use or resell any Products:
 - i. the Supplier must inform BOPDHB of the requirements prior to the supply of any Products. If BOPDHB is not prepared to accept those requirements, then BOPDHB may terminate this Agreement without any compensation to the Supplier and the Supplier shall refund any amount paid under this Agreement to BOPDHB; or
 - ii. the Supplier will, within the Price, procure an irrevocable licence (on a non-exclusive and transferable basis) for BOPDHB to own, possess, use and resell any Products, unrestricted;
 - b. any new information (including any design, data, specification, know-how or any other form of intellectual property) is developed in respect of any Products when designing or producing any Products specifically for BOPDHB, that information will belong to BOPDHB and the Supplier shall keep that information confidential and secure and, on demand and free of charge, transfer every proprietary right in that information to BOPDHB or its nominee.
- 24. Subcontracting and Assignment**
- 24.1 The Supplier shall not subcontract or assign the benefit or burden of any of its obligations under this Agreement without BOPDHB's prior written consent which may not be unreasonably withheld.
- 24.2 If BOPDHB consents to the Supplier subcontracting or to an assignment pursuant to clause 24.1, the Supplier must comply with any reasonable conditions BOPDHB imposes as part of that consent.
- 24.3 BOPDHB may transfer its rights under this Agreement by giving the Supplier written notice of this.
- 25. Warranties**
- 25.1 The Supplier warrants to BOPDHB that:
- a. the person or persons signing this Agreement on its behalf are duly authorised to do so and bind it to the terms of this Agreement;
 - b. clear title to all Products supplied by it will pass to BOPDHB at the time title passes;
 - c. ownership, possession, use or resale of any Products to BOPDHB will not infringe any proprietary or other intellectual property right or interest of any person;
 - d. all:
 - i. facts, information, representations and statements made or given to BOPDHB or its employees, agents, representatives or advisers by the Supplier's Staff are true and accurate in all respects and there is no information or circumstance pertaining to the Products that has not been disclosed to BOPDHB; and
 - ii. information published in whatever form but not given directly to BOPDHB or its employees, agents, representatives or advisers by the Supplier's Staff is true, complete and accurate.
 - e. it will be responsible for all acts and omissions of the Supplier's Staff even if they are done without the Supplier's knowledge and approval;
 - f. it will carry out its obligations under this Agreement with reasonable care, skill and diligence and will employ techniques of a high quality and standard and in accordance with best industry practices;
 - g. all of the Supplier's Staff associated with the supply of any Products are:
 - i. competent;
 - ii. adequately trained and supervised in the safe use of all vehicles, machinery, tools, processes, substances, protective clothing and equipment, which they may be required to use in relation to the supply of Products; and
 - iii. appropriately qualified and are, where relevant, registered with or licensed by the appropriate statutory or professional body;
 - h. all equipment required to carry out the supply of Products will be maintained in good condition and where relevant, all materials and other consumables are safely and securely stored when not in use;
 - i. all Products supplied by the Supplier:
 - i. are of merchantable quality and are fit for their intended purpose;
 - ii. comply in all respects with all:
 - (1) Laws; and
 - (2) standards relevant to the Products both in New Zealand and overseas.
 - iii. conform as to:
 - (1) design, quality, quantity, configuration and description specified by the Parties; and
 - (2) samples (if any) provided to BOPDHB;
 - iv. are free from any defect (including any latent defect) in design, materials and workmanship and/or faults;
 - v. are appropriately packed and securely stored until completion of delivery and installation (if applicable) to minimise damage, deterioration and theft;
 - vi. are compatible with and will not damage any BOPDHB system and/or property;
 - vii. are new and unused on delivery unless otherwise agreed with BOPDHB, and if a shelf life is applicable, at least 95% of that shelf life remains on delivery; and/or
 - viii. if applicable, are registered in New Zealand with Medsafe and that such registration will remain in place during the Term;
 - j. if any Products supplied by the Supplier contain any ozone depleting or hazardous substance or are dangerous, all packaging and those Products will be marked with a prominent warning and a material safety data sheet will be provided to BOPDHB;
 - k. no specialised equipment to perform maintenance and no specialised tools or test equipment, in addition to those advised in writing to BOPDHB prior to BOPDHB entering into this Agreement and included in the Price, will be necessary for the installation and commissioning, operation, maintenance or testing of any Products or system they are part of; and/or
 - l. no form of inducement or reward has been or will be directly or indirectly provided to any of BOPDHB's employees, agents, representatives or advisers.
- 25.2 The warranties set out in this Agreement are additional to any other warranties and guarantees given by the Supplier or implied by Law.
- 26. Warranty Claims**
- 26.1 If BOPDHB notifies the Supplier in writing of a breach of warranty the Supplier shall, at its expense, promptly remedy each claim to BOPDHB's satisfaction.
- 26.2 If the Supplier fails to promptly remedy a warranty claim or if BOPDHB determines that an urgent or other situation so justifies, BOPDHB or a third party may remedy the breach and recover the cost of doing so from the Supplier.
- 26.3 The Supplier shall promptly, at its own cost, supply BOPDHB with a report describing the work carried out in the remediation or rectification of any warranty claim.
- 27. Third Party Warranties**
- 27.1 The Supplier shall pass to BOPDHB, or if the Supplier is unable to do so will hold for BOPDHB's benefit, all warranties provided by third parties in respect of any Products supplied by a third party.
- 27.2 If the Supplier is unable to pass a third party warranty to BOPDHB, the Supplier shall be responsible for making all or any warranty claims on any Products supplied by third parties to BOPDHB at no cost to BOPDHB.
- 28. Indemnity**
- 28.1 The Supplier shall fully protect and indemnify BOPDHB from and against any direct, indirect or consequential losses, liability, damages, actions, proceedings, claims, demands, costs and expenses (including legal and solicitor/client costs) incurred directly or indirectly in connection with or as a consequence of the Supplier's failure to comply with its obligations under this Agreement or any act or omission by the Supplier's Staff or any person for whom the Supplier is responsible. This obligation survives the expiry or the termination of this Agreement for whatever reason.
- 29. BOPDHB's Liability Limited**
- 29.1 Except to the extent of direct damage or loss to the Supplier caused by a breach of this Agreement by BOPDHB and to the extent allowed by Law, BOPDHB has no liability (in contract, tort, or equity, including negligence) to the Supplier or any other person in respect of this Agreement.

30. Health and Safety Law

- 30.1 The Supplier must promptly notify BOPDHB in writing once the Supplier is aware that, in respect of any location at any BOPDHB Site that the Supplier has access:
- any hazard may or does exist, or any situation may arise or has arisen where any person may not be safe or harm may result to any person;
 - any accident or serious harm to any person has occurred and what steps have been taken or are proposed; and
 - any improvement or prohibition notice is likely to be, or has been, issued.
- 30.2 The Supplier must have and comply with:
- an appropriate health and safety plan;
 - the Health and Safety in Employment Act 1992; and
 - any BOPDHB Site rules.

31. Resource Management/Hazardous Substances Law

- 31.1 The Supplier shall:
- ensure that every resource consent and other authorisation for it to supply Products to BOPDHB is obtained and maintained;
 - not allow any discharge of any contaminant, or make excessive noise, at any BOPDHB Site which is not in compliance with, or is not authorised by, the relevant District Plan or requirements of the relevant authority having jurisdiction;
 - establish and maintain appropriate procedures to promptly:
 - identify any unauthorised discharge of any contaminant or other environmental accident at any BOPDHB Site;
 - avoid, mitigate and remedy every adverse effect of them; and
 - inform the BOPDHB Contact Person of them and consult BOPDHB as to how to deal with them;
 - not sell any ozone depleting substance to BOPDHB without having the necessary exemption in each case; and
 - comply with the provisions of the Resource Management Act 1991.

32. Failure to Comply

- 32.1 If:
- any Products:
 - are not delivered how, by when or to where required by BOPDHB;
 - fail to comply with the requirements of this Agreement or the Sale of Goods Act 1908;
 - are destroyed or damaged prior to acceptance by BOPDHB; or
 - fail any acceptance test;
 - any warranty claim is not promptly dealt with by the Supplier;
 - the Supplier breaches or fails to properly or promptly provide any of its obligations under this Agreement and fails to properly or promptly remedy the situation to BOPDHB's satisfaction within 5 working days after notice from BOPDHB of the breach or failure;
 - the Supplier is or becomes insolvent or bankrupt, goes into receivership or liquidation, or amalgamates with any other person(s);
 - any resolution is passed, or proceedings are commenced, for the Supplier's amalgamation or liquidation;
 - the Supplier directly or indirectly assigns or transfers, or attempts to assign or transfer, any of its benefits or burdens in this Agreement;
 - any direct or indirect change of control (whether by change of legal or beneficial ownership of shares, securities, possession of voting power or by contract, trust or otherwise) of the Supplier occurs, whether by a single event or a series of events over any period of time after the date of this Agreement, without the prior written consent of BOPDHB; or
 - a Force Majeure event continues for more than 10 consecutive working days or for an aggregate of more than 15 working days in any 12 month period;
- BOPDHB may:
- withhold any payment otherwise due to the Supplier until the matter is resolved to BOPDHB's satisfaction;
 - return to the Supplier any Products already delivered, at the Supplier's risk and expense. If Products are returned to the Supplier, BOPDHB will:
 - no longer be obliged to pay for them;

- if paid for, receive a refund (without any deduction) from the Supplier; or
 - set-off the amount paid therefore against any amount BOPDHB may owe the Supplier;
- suspend or terminate (in whole or in part) this Agreement immediately by written notice to the Supplier;
 - purchase alternative Products elsewhere;
 - for any event under this clause 32, recover from the Supplier:
 - amounts for any direct or indirect damage, loss or cost (including legal and solicitor/client costs) to BOPDHB due to the non-performance by the Supplier;
 - any difference between the Price and the actual cost of purchase of alternative products, if the cost of the alternative products is higher than the Price;
 - all money paid by BOPDHB to the Supplier for or on account of Products; and/or
 - deduct from or set-off against any amount BOPDHB may owe the Supplier.

33. Notification of Problems

- 33.1 The Supplier must advise BOPDHB promptly in writing:
- of anything that may or is likely to materially reduce or affect the Supplier's ability to supply Products including anything relating to any premises or equipment used by the Supplier;
 - if the Supplier materially fails to comply with any of its obligations under this Agreement;
 - of any serious complaints or disputes which directly or indirectly relate to the Products and/or the supply of Products; or
 - of any issues concerning Products that might have media or public interest.
- 33.2 The Supplier must have in place realistic and reasonable risk management processes and contingency plans to enable it to continue to supply Products on the occurrence of any of the matters in clause 33.1 and must provide BOPDHB with details of those risk management processes and contingency plans, if BOPDHB requests them.

34. Dispute resolution

- 34.1 If a Party has any dispute with the other Party in connection with this Agreement:
- that Party will promptly give full written particulars of the dispute to the other Party's contact person;
 - the Parties will promptly meet together and in good faith try and resolve the dispute.
- 34.2 The Parties must always act in good faith and cooperate with each other to promptly resolve any dispute.
- 34.3 If the dispute is not resolved within 30 working days of written particulars being given (or any longer period agreed to by the Parties) the dispute will be referred to arbitration.
- 34.4 a.
- The arbitration will be conducted by one arbitrator appointed by the Parties.
 - If the Parties cannot agree on an arbitrator within 15 working days the appointment will be made by the President of the New Zealand Law Society or the President's nominee.
 - The arbitration will be conducted in accordance with the Rules in the Arbitration Act 1996.
- 34.5 Neither Party will unreasonably delay the dispute resolution procedures in this clause 34.
- 34.6 The Parties must continue to comply with their obligations under this Agreement during the dispute resolution process but disputed payments may be withheld to the extent that they are disputed.
- 34.7 This clause 34 does not apply to:
- any dispute arising in connection with any attempted renegotiation of this Agreement; or
 - an application by a Party for urgent interlocutory relief.

35. Public Statements and Advertising

- 35.1 The Parties must not during or after this Agreement has terminated or expired either directly or indirectly criticise the other publicly. Nothing in this clause prevents a Party from discussing any matters of concern with their respective employees, agents, representatives, advisers or subcontractors.
- 35.2 The Supplier must not use BOPDHB's name or logo in advertising its business or activities without BOPDHB's prior written consent and the Supplier must comply with all terms and conditions upon which such consent is given.

36. Termination

- 36.1 This Agreement continues until ended:

- a. by expiry of the Term;
 b. by agreement between the Parties; or
 c. in accordance with this Agreement.
- 36.2 Any termination of this Agreement will be without prejudice to the rights of a Party arising prior to termination.
- 36.3 Nothing in this clause 36 affects the operation of any clauses in this Agreement which are expressed or implied to have effect after its termination.
37. **Obligations on Termination**
- 37.1 On the termination of this Agreement, the Supplier shall:
- take all reasonable steps to keep BOPDHB aware of any matters that come to its attention which require BOPDHB to act to protect BOPDHB's interests;
 - at BOPDHB's request, immediately return to BOPDHB, at no charge to BOPDHB, all property, files, manuals (including any process manuals relating to the Products which have been developed by the Supplier or any other person in relation to this Agreement), Confidential Information or other property and/or information in its possession or control belonging to BOPDHB. If necessary, property must be secured and stored in a weatherproof store;
 - transfer to BOPDHB all resource consents, permits, licences or authorisations relating to this Agreement as are held by the Supplier and are transferable to BOPDHB;
 - provide to BOPDHB copies of such of the Supplier's records relating to this Agreement as will enable BOPDHB to determine accurate details of the outputs achieved by the Supplier in the performance of its obligations under this Agreement;
 - forward all claims for payment (if any) to BOPDHB within 10 working days of the termination; and
 - at BOPDHB's request, continue to perform its obligations under this Agreement until all obligations under this Agreement existing as at the date of termination for which the Supplier remains liable, have been completed. If the Supplier does not complete these obligations within 10 working days after the date of termination or such longer period as BOPDHB agrees in writing, BOPDHB may complete the outstanding obligations and any costs incurred will be recoverable from the Supplier.
38. **Failure to Remove Property**
- 38.1 If any of the Supplier's property is not removed from any BOPDHB Site when required by BOPDHB, BOPDHB may, at the Supplier's risk and cost, and without any recourse to BOPDHB:
- remove it to any other location;
 - store it at any location and charge a reasonable amount plus GST for that storage until it is removed to BOPDHB's satisfaction; or
 - dispose of it, apply the proceeds towards the storage, disposal and removal costs, and forward the balance (if any) to the Supplier.
39. **Force Majeure**
- 39.1 Neither Party will be liable to the other for any delays or non-performance of contractual obligations under this Agreement caused by a Force Majeure event provided each Party has taken all reasonable steps to minimise any loss, damage or delay resulting from a Force Majeure event.
40. **Special Conditions Prevail**
- 40.1 Where there is any conflict in the interpretation or application of any special terms and conditions of this Agreement with the general terms and conditions of this Agreement then the relevant special terms and conditions of this Agreement (if any) shall prevail.
- 40.2 If any other terms and conditions are to apply or prevail they must be agreed to in writing by BOPDHB.
41. **Agreement Paramount**
- 41.1 Notwithstanding any terms of the Supplier entered into including terms of trade and invoices, this Agreement will be paramount and will apply to the exclusion of any of the Supplier's documentation, even if at some later date BOPDHB signs or otherwise purports to accept the terms of that documentation other than in the manner outlined in this Agreement.
42. **Notices**
- 42.1 a.
- Any notice or other communication ("notices") given under this Agreement must be in writing.
 - It may be served personally or sent to any of the relevant Party's communication points listed in the Schedule.
 - Each Party will notify the other in writing of any changes.
- 42.2 Notices are deemed served at the following times:
- when given personally, upon delivery;
 - when sent by post (other than airmail), 3 working days after posting;
 - when sent airmail outside New Zealand, 5 working days after posting;
 - when sent by facsimile or email upon receipt of the correct answerback or receipt acknowledgement.
- 42.3 Any notice that has been served on a day other than a working day is deemed to be served on the first working day after that day.
- 42.4 a.
- Notice may be given personally to the Supplier's Contact Person, a director, employee or agent of the Supplier at the Supplier's address or to a person who appears to be in charge at the time of delivery or according to section 387 to section 390 of the Companies Act 1993.
 - If the Supplier is a natural person, partnership or association, the notice may be given to that person or the Supplier's Contact Person, or any partner or responsible person. If they refuse to accept the notice, it may be brought to their attention and left in a place accessible to them.
 - Any notice served personally on the BOPDHB must be given personally to the BOPDHB Contact Person or BOPDHB's Chief Executive Officer.
43. **Variations To This Agreement**
- 43.1 The terms of this Agreement may be varied by written agreement, signed by the Parties.
- 43.2 If BOPDHB is required to vary the terms of this Agreement to give effect to its obligations under its funding agreement with the Crown, or any directive issued to it by the Crown, then BOPDHB will give the Supplier written notice of such variation ("Variation Notice") and of the date on which such variation is to take effect ("the Variation Date").
- 43.3 Where possible the Variation Date will be at least 20 working days after the date of the Variation Notice and BOPDHB will consult with the Supplier to reach agreement on the variations set out in the Variation Notice.
- 43.4 If the Variation Notice is, in the Supplier's opinion onerous and the Parties cannot agree, the Supplier may, within 30 working days of the date of the Variation Notice give BOPDHB written notice of termination of this Agreement ("Termination Notice"). Such termination will take effect on the later of:
- the date 10 working days from the date the Termination Notice is served on BOPDHB; and
 - the Variation Date.
- 43.5 If the Supplier fails to provide BOPDHB with a Termination Notice within 30 working days of the date of the Variation Notice, then the Supplier will be deemed to be bound by the contents of the Variation Notice from the Variation Date and unless otherwise specified in the Variation Notice, the terms of this Agreement will be deemed to have been varied in accordance with the Variation Notice.
44. **Costs**
- 44.1 The Parties will bear their own costs of negotiating, preparing and executing this Agreement.
45. **No Action by Third Parties**
- 45.1 This Agreement is not intended to confer legally enforceable benefits on any person who is not a Party to it and no third party may enforce any of the provisions in this Agreement.
46. **No Waiver**
- 46.1 a.
- If a Party delays or does not exercise any right or remedy under this Agreement, it is not a waiver of that right or remedy.
 - The single or partial exercise of any right or remedy under this Agreement does not preclude the exercise of any other right or remedy or its further exercise.
 - The rights and remedies provided in this Agreement are cumulative. They do not exclude any rights or remedies provided by Law.
 - Any waiver or consent given by a Party must be in writing and will be effective only in the specific instance and for the specific purpose for which it is given.
47. **Relationship**
- 47.1 The Supplier acknowledges that it is an independent contractor to BOPDHB and nothing in this Agreement may be construed to make a Party a partner, servant, agent, employer or employee of the other.

47.2 No Party has any authority to bind the other or act on the other Party's behalf except to the extent expressly provided in this Agreement.

48. Counterparts

48.1 This Agreement may be executed in counterparts, which, when executed, will constitute and be read as one document.

49. Severance

49.1 Any illegality, unenforceability or invalidity in this Agreement will not affect the rest of this Agreement which will remain in full force and effect unless the commercial interests of a Party are materially and adversely affected.

50. Further Assurance

50.1 Each Party agrees to execute any further documents and do any further acts within their powers as may be reasonably necessary from time to time to give effect to the terms and intentions of this Agreement.

51. United Nations Convention on Contracts

51.1 The Parties agree that the provisions of the United Nations Convention on Contracts for the International Sale of Products will not apply to this Agreement.

52. Governing Law

52.1 This Agreement will be governed by and construed in accordance with the Laws of New Zealand and the Parties submit to the jurisdiction of the courts of New Zealand.

53. Definitions and interpretation

Definitions

53.1 In this Agreement the following expressions have the stated meaning.

- a. "Act" means the New Zealand Public Health and Disability Act 2000.
- b. "Agreement" means this Agreement signed by the Parties and comprising each Schedule as amended from time to time.
- c. "BOPDHB Contact Person" means the BOPDHB Contact Person recorded in the Schedule or such other BOPDHB Contact Person as notified to the Supplier in writing by BOPDHB from time to time.
- d. "BOPDHB's Objectives" include:
 - i. the objectives specified in BOPDHB's statement of intent (as defined in the Act); and
 - ii. to meet the Crown's objectives notified to BOPDHB under the Act from time to time.
- e. "BOPDHB Site" means the Tauranga Hospital campus, Whakatane Hospital campus, any sites leased or rented by BOPDHB and any other sites where Products, products, equipment or material owned or leased by BOPDHB may be situated from time to time.
- f. "Confidential Information" means all information about the current or future interests, methods or affairs of BOPDHB. It includes:
 - i. technical matters;
 - ii. research and development information;
 - iii. notes, products, know-how, trade secrets, data;
 - iv. specifications, processes, formulae;
 - v. planning procedures, techniques or information;
 - vi. accounting procedures or financial information;
 - vii. the possible function or application of the above items;
 - viii. any improvements to the above items;
 - ix. any recommendation, test or report on the above items by any of BOPDHB's employees, agents, representatives or advisers.
Confidential Information can be oral, written or recorded in any form, whether physical or electronic. Confidential Information remains so even if it has been translated, altered or partially copied, compiled or recompiled.
- g. "Contract Number" means the number recorded on the cover sheet of this Agreement.
- h. "Crown" means Her Majesty the Queen in right of New Zealand and includes all Ministers of the Crown and all departments.
- i. "Delivery Times" means the delivery times for Products specified to in the Schedule.
- j. "Force Majeure event" means any event or cause reasonably beyond a Party's control including action superimposed by the Crown after the date of this Agreement, acts of God, fire, earthquake, storm, flood, landslide, explosion, communication line failure, power failure, sabotage, civil disturbance, insurrection, epidemic, national emergency or act of war but does not include:
 - i. financial management difficulties or other like difficulties; or

- ii. labour disputes or industrial action on the Supplier's part or inability on the Supplier's part to obtain supplies or materials due to disputes with its third party suppliers where the Supplier has not taken reasonable steps to ensure continuity of supply; or
 - iii. any risk or event, including those listed above, the effects of which the Party affected could have prevented or overcome by taking reasonable care.
- k. "GST" means goods and services tax chargeable or for which a person may be liable under the Goods and Services Tax Act 1985.
 - l. "Health Professional Authority" means any authority or body that is empowered by any statute or the rules of any body or organisation, to exercise disciplinary powers in respect of any person who is involved in the supply of health and disability services.
 - m. "Law" includes:
 - i. common law, principles of equity, and laws made by Parliament, and a reference to laws made by Parliament or any legislation includes regulations, codes and other instruments under them and consolidations, amendments, re-enactments or replacements of any of them;
 - ii. any rule, protocol, code of ethics, practice or conduct, ethical standard or other standard, guidelines and requirements of any authority, statutory or professional body or Health Professional Authority; and
 - iii. any future law.
 - n. "Parties" means both BOPDHB and the Supplier and "Party" means either one of them.
 - o. "Price" means the prices (exclusive of GST) for the Products specified in the Schedule.
 - p. "Products" include the products described in the Schedule, any other specific products ordered by BOPDHB together with any associated works and services, intellectual property and anything else required to supply the Products to the BOPDHB or required to satisfy BOPDHB's requirements under this Agreement.
 - q. "Public Holiday" means a day listed as a holiday in section 44 of the Holidays Act 2003.
 - r. "Purchase Order Number" means the number recorded on the purchase order issued by BOPDHB when requesting the supply of Products.
 - s. "Renewal Date" means the date specified in the Schedule.
 - t. "Review Dates" mean the dates specified in the Schedule.
 - u. "Schedule" means, in respect of this Agreement, each Schedule that is part of this Agreement.
 - v. "Supplier's Contact Person" means the Supplier's Contact Person recorded in the Schedule or such other Person as notified to BOPDHB in writing from time to time.
 - w. "Supplier's Staff" means the Supplier, its employees, consultants, agents, representatives and subcontractors.
 - x. "Term" means the term of this Agreement specified in the Schedule and includes any renewed period.
 - y. "working day" means a day (beginning at 9 am and ending at 5 pm) other than a Saturday or Sunday or Public Holiday observed in the Bay of Plenty, New Zealand.

Interpretation

53.2 In this Agreement:

- a. terms given a defined meaning in this Agreement have that meaning where the context permits;
- b. words referring to the singular include the plural and the reverse;
- c. any reference to any of the Parties includes that Party's executors, administrators or permitted assigns, or if a company, its successors or permitted assigns or both;
- d. everything expressed or implied in this Agreement which involves more than one person binds and benefits those people jointly and severally;
- e. clause headings are for reference purposes only;
- f. a reference to a person includes any other entity or association recognised by law and the reverse;
- g. all references to dollars and "\$" are references to New Zealand dollars unless otherwise stated;
- h. references to a time of day are references to New Zealand time.
- i. all periods of time or notice exclude the days on which they are given and include the days on which they expire;
- j. "including" and similar words do not imply any limitation;
- k. time is of the essence.