

[V1 Draft dated xx/xx/xxxx]

Contract for Design, Supply, Installation and Commissioning of TBA

Pan Pac Forest Products Limited (Pan Pac)
TBA (Contractor)

Details

Date

[Insert]

Parties

Name	Pan Pac Forest Products Limited
Short name	Pan Pac
Notice details	Private Bag 6203, Napier 4142, New Zealand
Facsimile	+64 6 8310100
Attention	[Insert]

Name	TBA
Short name	Contractor
Notice details	TBA
Facsimile	TBA
Attention	TBA

Background

- A Pan Pac desires that the works known as the design, supply and installation of TBA and other ancillary materials to be executed by the Contractor at the Site.
- B The Contractor represents that it has the personnel, equipment, materials and expertise to perform the Works and is willing to do so pursuant to the terms and conditions of this Contract for the Contract Price.
- C Pan Pac has accepted a proposal by the Contractor for the execution and completion of these Works and the remedying of any defects therein.
- D The parties wish to record the terms of their agreement relating to the Works.

Pan Pac and the Contractor agree as follows:

1. Defined terms and interpretation

1.1 Defined terms

In this document:

Commencement Date means the date this Contract is signed by all parties unless otherwise stated in the Special Conditions of Contract.

Contractor's Documents includes design documents, as-built documents and operation and maintenance manuals.

Contractor's Representative means the person named in the Special Conditions of Contract or appointed from time to time by the Contractor.

Confidential Information means:

- (a) the subject matter, and the terms and conditions and all other documents forming part of the Contract;
- (b) information acquired by the Contractor in anticipation of, or in connection with, the performance of the Contract in circumstances that can reasonably be taken to indicate such information is confidential; and
- (c) any other information obtained directly or indirectly from or on behalf of Pan Pac under or in connection with the Contract, including, without limitation, any information relating to the financial position or business of Pan Pac.

Contract means this agreement entered into between Pan Pac and the Contractor including the Special Conditions of Contract and all schedules attached thereto.

Contract Price means the lump sum price specified in the Special Conditions of Contract.

Defects Liability Period has the meaning given to that term at clause 6.1.

Due Date for Completion means the date stated in the Special Conditions of Contract.

Final Completion Certificate means the certificate issued under clause 5.8.

Force Majeure Event has the meaning given to it under clause 14.

Goods means TBA and all other materials and products to be supplied or supplied by the Contractor pursuant to this Contract and forming part of the Works.

Good Industry Practice means the practices, methods and procedures and that degree of skill, diligence, prudence and foresight that would reasonably be expected to be observed by a skilled and experienced contractor of international repute engaged in carrying out activities the same as or similar to the Works under the same or similar circumstances to those contemplated in this Contract.

Guarantee Period has the meaning given to it under clause 12.1.

Intellectual Property means a patent, registered design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right.

Intellectual Property Rights has the meaning given to it under clause 9.1.

LOI means the letter of intent issued to the Contractor by Pan Pac dated TBA.

Pan Pac's Representative means the person appointed by Pan Pac to act as Pan Pac's Representative for the purposes of the Contract and named in the Special Conditions of Contract, or other person appointed from time to time by Pan Pac and notified to the Contractor in writing.

PPSA means the Personal Property Securities Act 1999.

Practical Completion has the meaning given to that term at clause 5.7.

Scheduled Amount has the meaning given to it under clause 7.7.

Site means the land and other places on or over or under which the Works are to be carried out together with any other places made available to the Contractor by Pan Pac conditionally or unconditionally for the purposes of the Contract.

Special Conditions of Contract means the special conditions attached at Schedule 2.

Specifications means the specifications as attached at Schedule 1.

Variation means any variation to the Works pursuant to clause 4 and any other matter which is stated to be a Variation or to be treated as a Variation by the Contract.

Works means all works and services to be performed by the Contractor under the Contract including but not limited to the design, supply, delivery, installation and commissioning of the Goods as set out in detail in the Specifications.

Working Day means any day on which the major trading banks are open for business in Dunedin, New Zealand.

1.2 Interpretation

- (a) **Headings:** section, clause and other headings are for ease of reference only and will not affect the interpretation of this Contract.
- (b) **Plural and Singular:** words importing the singular number will include the plural and vice versa.
- (c) **Schedule and Appendices:** any schedules and appendices to this Contract and the provisions and conditions contained in such schedules and appendices have the same effect as if set out in the body of this Contract.
- (d) **Parties:** references to parties are references to parties to this Contract and includes that party's successors and permitted assigns including any person taking by way of novation.
- (e) **Persons:** references to persons includes references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities, in each case whether or not having separate legal personality and whether incorporated or existing in New Zealand or elsewhere.
- (f) **Clauses and Schedules:** references to sections, clauses, schedules and appendices are references to this Contract's sections, clauses, schedules and appendices.
- (g) **Statutes and Regulations:** references to any statutory provision includes any statutory provision which amends or replaces it, and any subordinate legislation made under it.
- (h) **\$ and Dollars:** \$ and dollars refers to New Zealand dollars.

2. Contractor's Obligations

2.1A Early Works

- (a) Where the Contractor has effected any design, services (including procurement of equipment) or works in the furtherance of the Works prior to the date of this Contract (whether or not pursuant to the LOI, (the “**Early Works**”), the same shall be deemed to form part of the Works.
- (b) As of the date of this Contract, the LOI shall terminate and cease to have any legal effect.
- (c) On the date of this Contract, the title to all works, facilities and equipment acquired under the LOI shall pass to Pan Pac in accordance with clause 13 of this Contract.
- (d) Any payment made by or on behalf of Pan Pac to the Contractor in respect of the Early Works shall constitute part of and be credited against the Contract Price payable by Pan Pac in accordance with the terms of this Contract.
- (e) The Contractor warrants to Pan Pac that all Early Works meet the requirements of this Contract and confirms that the warranties and undertakings set out in this Contract apply to such Early Works (without prejudice to the generality of such warranties and undertakings).

2.1 Commence, Complete and Remedy Defects in the Works

The Contractor must:

- (a) commence the Works on the Commencement Date or as soon as reasonably practicable thereafter;
- (b) provide all services, labour, materials, plant, temporary works, transport and everything necessary to undertake and complete the Works, and shall not be entitled to substitute any product specified in Specifications without Pan Pac's prior written approval;
- (c) warrant that the Works shall:
 - (i) be free from defects in title, design, materials or workmanship;
 - (ii) conform to all specifications and all applicable codes and standards set out in the Specifications;
 - (iii) conform in all respects to the terms and conditions of this Contract;
 - (iv) comply with all applicable laws; and
 - (v) where the Works include the provision of goods, use only goods that are new and of recent manufacture and of good quality, normal fair wear and tear excepted;
- (d) repeat, at the request of Pan Pac, any Works not complying with the Specifications or the provisions of this Contract, without additional compensation from Pan Pac until corrected, unless the non-conformity is expressly waived in writing by Pan Pac;
- (e) proceed with the Works with due care and diligence and in a proper and workmanlike manner and complete the Works in accordance with the Contract by the Due Date for Completion;
- (f) ensure the Works on completion are fit for the purpose which they are intended as can be reasonably ascertained from this Contract and with the requirements of Pan Pac;
- (g) perform the Works in a good and workmanlike manner, in accordance with all reasonable skill and care, and in accordance with this Contract including the Specifications and Good Industry Practice; and

- (h) promptly remedy defects in accordance with clause 6 of the Contract.

2.2 Comply with Laws and Authorities

In performing the Works, the Contractor shall:

- (a) comply with and shall ensure that all subcontractors comply with the requirements of all relevant authorities and with all relevant statutes, regulations and by-laws of relevant authorities;
- (b) comply with the any relevant codes of conduct, Site requirements, policies and procedures, including those relating to health and safety and security and any other requirements of Pan Pac as specified in the Contract or notified by Pan Pac to the Contractor from time to time.

2.3 Comply with Instructions

The Contractor must comply with Pan Pac's instructions and any variations issued under clause 4 of the Contract including the suspension of all or part of the Works.

2.4 Subcontractors

- (a) The Contractor shall not subcontract any elements of this Contract (or replace any subcontractor previously approved by Pan Pac) without the prior written consent of Pan Pac. Such consent shall not relieve the Contractor of any of its obligations hereunder or create any contractual relationship between Pan Pac and such subcontractors.
- (b) The Contractor is fully responsible for the acts or omissions of any subcontractors. The Contractor's obligations and liability are not affected by the subcontracting of any part of the Works.
- (c) All subcontracts with subcontractors shall be freely assignable to Pan Pac upon Pan Pac's written request and the Contractor shall ensure each subcontract provides that such subcontract shall be freely assignable to Pan Pac by the Contractor.
- (d) The Contractor must ensure that:
 - (i) each sub-contractor is fully aware of the Contractor's obligations under this Contract, and
 - (ii) any subcontract it enters into is on terms that are consistent with this Contract.

2.5 Co-operate with Others

The Contractor is not entitled to exclusive possession of the Site and must co-operate with any other persons who come on to the Site, including representatives of Pan Pac, separate contractors, or other third parties including users and occupants of the Site.

2.6 Protect People and Property

- (a) Prior to commencing any work on the Site, the Contractor shall:
 - (i) identify any significant safety hazards associated with the Works or the Site;
 - (ii) identify any special safety measures required; and
 - (iii) complete the Site Specific Safety Plan (the "**Health and Safety Plan**") as may be required by Pan Pac and submit it to Pan Pac for approval.
- (b) The Contractor must take all reasonable steps to:
 - (i) keep the Site and the Works in an orderly state and in such a condition as to avoid danger to persons and property;

- (ii) provide and maintain a safe working environment;
 - (iii) ensure that any worker involved in carrying out the Works is not unnecessarily exposed to hazards which are under the Contractor's control; and
 - (iv) have proper procedures for dealing with emergencies that may arise.
- (c) The Contractor must in carrying out the Works:
 - (i) comply with Pan Pac's occupational health and safety systems;
 - (ii) comply with the requirements of the Health and Safety at Work Act 2015 (including any subsequent amendments or accompanying regulations);
 - (iii) prepare and update any health and safety plan (if required by Pan Pac) as Works progress to incorporate hazards unforeseen prior to the date of the Contract;
 - (iv) maintain a register of notifiable injuries or illnesses, incidents or events;
 - (v) so far as is reasonably practicable, consult, cooperate with, and coordinate activities with Pan Pac or any other person carrying out work at the Site
 - (vi) investigate notifiable injuries or illnesses, incidents or events and identify their cause; and
 - (vii) ensure that all persons under the Contractor's control are appropriately supervised and aware of the Contractor's health and safety obligations.
- (d) The Contractor must notify Pan Pac in advance of any communication with any public authority relating to the Works or any incidents resulting from carrying out the Works. The Contractor shall provide Pan Pac a copy of any report which the Contractor is required to make to a public authority on any accident which is associated with the carrying out of the Works and results in serious harm to any person.
- (e) The Contractor must provide, erect, maintain and when no longer required remove all barricades, fencing, signs and lighting necessary for the effective protection of property, for traffic and for the safety of others.
- (f) The Contractor must take all reasonable steps in accordance with Good Industry Practice to avoid nuisance (including unnecessary or excessive noise), prevent damage to property and to protect the environment (as that term is defined in section 2 of the Resource Management Act 1991 (both on and off the Site).
- (g) All of the Contractor's workers shall undergo a Pan Pac safety induction prior to commencing the Works on Site. The Contractor shall give advance notice of at least one Working Day for these inductions.
- (h) The Contractor agrees to keep and maintain an up to date record of the Contractor's workers on Site at all times and in case of an area or site evacuation ensure its workers are accounted for.
- (i) The Contractor agrees to have random site safety checks conducted by a Pan Pac representative.
- (j) The Contractor agrees that the failure to remedy a breach of any health and safety requirements of Pan Pac within a reasonable time frame will constitute a material breach of this Contract and may result in suspension or termination of this Contract.
- (k) The Contractor agrees that its workers will stay current with any specialised or refresher training related to or required by trade or occupation and will ensure that any workers are also adequately trained and informed.

- (l) The Contractor agrees to ensure all incidents, accidents and near misses are reported to Pan Pac as soon as practical after the event and carry out any accident/incident investigation involving Contractor workers. Results of any such investigation shall be communicated to Pan Pac within 24 hours of the event. Pan Pac may carry out an additional investigation. The Contractor shall participate as requested with any investigation and agrees to rectify any problems that are brought to their attention.
- (m) In the event of any damage to the Works or any part of the Site, the Contractor shall immediately report such damage to Pan Pac's supervisor. For cases where production is likely to be interrupted, or where repair costs is likely to exceed \$1000, a written damage report must be presented to Pan Pac's supervisor within 24 hours of the incident occurring.
- (n) Pan Pac reserves the right, in its sole discretion, to refuse admission to anyone (including the Contractor's workers) to the Site that Pan Pac considers (acting reasonably) not to be compliant with Pan Pac's site requirements.

2.7 Take Responsibility for Care of the Works

- (a) The Contractor is responsible for care of the Works and all plant or materials awaiting incorporation into the Works, from the Commencement Date until Practical Completion.
- (b) The Contractor must make good at its own cost any loss or damage to the Works, materials or plant to the extent that it is responsible for those Works, materials or plant under 2.7(a).
- (c) The Contractor shall at all times keep the Site and any other Site free from accumulations of waste and rubbish. At the completion of the Works, the Contractor shall remove from the Site all of the Contractor's tools, scaffolding and surplus materials and shall leave its lay-down area and any portions of the Site used by it 'broom-clean' and in a condition acceptable to Pan Pac.
- (d) The Contractor shall be liable for any direct loss or damage caused by actions performed by the Contractor after Practical Completion.

2.8 Insurance [Pan Pac Insurance Brokers to review and confirm insurance provisions]

- (a) The Contractor shall:
 - (i) insure the Goods for its replacement value against loss or damage occurring up to delivery to the Site, including during transit from the place of manufacture. Insurance shall be in the joint names of the parties and cover the parties' respective rights, interests and liabilities;
 - (ii) arrange and maintain public liability insurance in the joint names of the Contractor and Pan Pac until issue of the Final Completion Certificate. The insurance must cover both the Contractor and Pan Pac for any liability for loss or damage to any property, or injury or illness or death to any person that arises from the carrying out the Works. The insurance must be for the sum stated in the Special Conditions of Contract;
 - (iii) arrange and maintain insurance for the Contractor's plant and equipment and must maintain insurance against public liability arising from the use of any motor vehicle by the Contractor for the sum stated in the Special Conditions of Contract; and
 - (iv) effect and maintain professional indemnity insurance for the sums stated in the Special Conditions of Contract. The Contractor shall maintain such policy from

the commencement of the Works, up to the date of Final Completion and thereafter for a further period of 6 years.

- (b) All insurance policies taken by the Contractor shall be from reputable licensed insurers approved by Pan Pac. The Contractor shall provide evidence of the Contractor's insurances to the satisfaction of Pan Pac. All insurances shall conform to the reasonable requirements of Pan Pac.
- (c) Pan Pac will arrange and maintain construction insurance for the Works up to the date and time of Practical Completion. If any claim arises under the insurance maintained by Pan Pac, due an act or omission of the Contractor or those who the Contractor is responsible for under this Contract or for any matter, thing or circumstance in which the Contractor takes risk pursuant to this Contract, all deductibles applicable to such insurance (which currently is \$100,000) shall be for the sole account of the Contractor. The placing by Pan Pac of the insurance described in this clause shall by no means be construed as an exclusion of, or limitation of, any of the Contractor's liabilities under this Contract.

2.9 Fees and Taxes

- (a) The Contractor shall be responsible for and pay all fees, taxes and charges relating to the Works including but not limited to any taxes, duties, port charges or other such charges or fees imposed or levied at the place of manufacture or export or any other port during transit, in relation to the supply and export of the Goods and the Contract Price shall be inclusive of and not be adjusted for any of those costs.
- (b) Pan Pac shall be responsible for and pay all New Zealand import duties, taxes, fees, port charges in relation to the Goods necessary to facilitate the importation of the Goods into New Zealand.

2.10 Contractor's Documents

- (a) The Contractor shall prepare all Contractor's Documents (in English) and submit them to Pan Pac for review as described below. In the following provisions of this sub-clause "review period" means the period required by Pan Pac for review.
- (b) Unless otherwise stated in the Specifications, each review period shall not exceed five (5) Working Days, calculated from the date on which Pan Pac receives a Contractor's Document.
- (c) Pan Pac may, within the review period, give notice to the Contractor that a Contractor's Document fails (to the extent stated) to comply with the Contract. If a Contractor's Document so fails to comply, it shall be rectified, resubmitted and reviewed in accordance with this sub-clause, at the Contractor's cost.
- (d) Execution of any part of the Works shall not commence prior to the expiry of the review periods for all the Contractor's Documents which are relevant to its design and execution. Execution of any part of the Works shall be in accordance with the Contractor's Documents, as submitted for review.
- (e) If the Contractor wishes to modify any design or the Works from any document which has previously been submitted for review, the Contractor shall immediately give notice to Pan Pac. Thereafter, the Contractor shall submit revised documents to Pan Pac in accordance with the above procedure.
- (f) The Contractor shall present to Pan Pac two (2) copies of each of the Contractor's Documents. The Contractor shall keep, on the Site, a copy of the Contract, publications named in the Specifications, the Contractor's Documents, and the variations and other communications given under the Contract. The Contractor's Representatives shall have

access to all these documents at all reasonable times. Prior to Practical Completion the Contractor shall provide Pan Pac with the Contractor's Documents as may be required by Pan Pac.

- (g) If either party becomes aware of an error or defect of a technical nature in a document prepared for use in executing the Works, the party detecting the error shall notify the other party of such error or defect.

2.11 Specification and Design Responsibility

- (a) Each item described in the Specifications shall include all things and services reasonably implied from such item or customarily provided in the Contractor's line of work, or necessary to complete such items for inspection and approval in accordance with all applicable laws and the provisions of this Contract.
- (b) The Contractor warrants that as of the date of this Contract it has checked and verified the correctness and accuracy of all designs, specifications, drawings, data and other technical documents relating to the Works that:
 - (i) are contained in this Contract;
 - (ii) have otherwise been provided to the Contractor prior to the date of this Contract; or
 - (iii) are prepared or approved by or on behalf of the Contractor or any subcontractor, whether or not any of the foregoing have been approved by Pan Pac.
- (c) The Contractor hereby fully endorses the Specification as being free from any errors, omissions, deficiencies, inaccuracies, contradictions, ambiguities, and/or discrepancies and as being a suitable design basis to satisfy Pan Pac's requirements and shall have no entitlement to any relief (including any adjustment to the to the Due Date for Completion and/or the Contract Price) in respect of the Specification (including arising out of the development of the Specification into detailed design) or its suitability for Pan Pac's requirements.

2.12 Training

The Contractor shall provide adequate training to Pan Pac's personnel in the correct commissioning, operation, maintenance and use of the Works as required by Pan Pac.

3. Pan Pac's Obligations

3.1 Pan Pac's Representative

Pan Pac's Representative for the purposes of administration of the Contract is the person named in the Special Conditions of Contract. Pan Pac must notify the Contractor in writing of any replacement Pan Pac's Representative. Pan Pac's Representative is authorised to perform all of Pan Pac's obligations and exercise all of Pan Pac's powers under the Contract.

3.2 Give the Contractor Possession of the Site

Pan Pac must make the Site available to the Contractor for installation of the Goods on the dates required by the Contractor, provided the Contractor is in compliance with all its obligations under this Contract including but not limited to providing Pan Pac with its health and safety plan (if required) and taking out the required insurances.

3.3 Pay the Contractor

Pan Pac must make payment to the Contractor in accordance with the requirements of the Contract.

3.4 Approval by Pan Pac

No approval, permission or comment by Pan Pac will affect the Contractor's obligations under the Contract.

3.5 Consents

Unless stated otherwise in the Special Conditions of Contract, Pan Pac will obtain all necessary consents and permits required by relevant authorities in relation to the Works. The Contractor shall provide any assistance required by Pan Pac in obtaining such consents and permits.

4. Variations

4.1 Pan Pac May Instruct Variations

The Contractor must carry out any Variations to the Works instructed in writing by Pan Pac. The Contractor must not vary the Works without an instruction in writing from Pan Pac.

4.2 Value of Variations

Unless Pan Pac directs otherwise in writing, the value of the Variation must be agreed prior to the Contractor commencing the varied work. If the Contractor and Pan Pac are unable to agree upon the value of a Variation, then Pan Pac will fix the value by referring to the Contractor's prices in relation to similar work under the Contract, if any, and/or what is fair and reasonable in the circumstances, provided it is understood that any margin to be applied to the value of the Variation shall not exceed 10%. The value of Variations will be added to or deducted from the Contract Price.

4.3 Contractor's Variations

Pan Pac must issue a Variation where the Contractor has suffered delay or incurred additional cost caused by the following events:

- (a) any instruction issued by Pan Pac which varies the Works;
- (b) the Contractor encountering on the Site physical conditions which increase the cost to the Contractor, providing that such physical conditions are notified to, and inspected by, Pan Pac prior to the Contractor continuing with the Works;
- (c) any default by Pan Pac or Pan Pac's Representative under the Contract,

providing that such events could not have been foreseen by a contractor experienced in undertaking work of the nature of the Works and result in a change in the scope of the Works and the Contractor notifies in writing to Pan Pac that the Contractor considers such event involves a Variation as soon as possible but no later than two weeks of the Contractor becoming aware of the event or its effects.

4.4 Omission of work

Pan Pac shall be entitled to vary the Works by omitting any work whether or not such work is carried out by another contractor or by Pan Pac itself.

5. Time for Completion

5.1 Delivery and Milestones

- (a) The Contractor must at its expense deliver the Goods to the Site by the Delivery Date as stated in the Special Conditions of Contract or as otherwise provided in the Specifications. If requested, the Contractor shall give Pan Pac reasonable advance notice of each delivery.
- (b) The Contractor shall promptly unload the Goods at the Site.

- (c) The Contractor shall perform the Works in accordance with the milestones set out in the Contract which shall include all major events and activities in the manufacture, supply and transportation of the Goods and the dates of any and all tests specified in or otherwise required to be undertaken by the Contractor under this Contract.
- (d) The Contractor shall meet and comply with any programme submitted by it as part of its proposal which has been approved by Pan Pac. Preparation of the programme by the Contractor and any approval of the same by Pan Pac shall not relieve the Contractor of liability or modify its duties and obligations under the Contract including the Contractor's obligation to achieve Practical Completion on or before the applicable Due Date for Completion.

5.2 Due Date for Completion

The Contractor must achieve Practical Completion by the Due Date for Completion stated in the Special Conditions of Contract, as may be adjusted in accordance with the Contract.

5.3 Liquidated Damages

- (a) The Contractor shall pay to Pan Pac the level of liquidated damages specified in Special Conditions of Contract for each day (or part of a day) of delay for the period between the Due Date for Completion and the actual date of Practical Completion.
- (b) The Contractor's liability for liquidated damages pursuant to this clause 5.3 shall not exceed 15 percent (15%) of the Contract Price. Pan Pac shall be entitled to terminate this Contract with immediate effect, if the liability of the Contractor for liquidated damages pursuant to this Contract reaches the cap on liquidated damages in this clause 5.3(b).
- (c) The liquidated damages payable pursuant to this clause 5.3 shall not relieve the Contractor from its obligation to complete the Works, or from any other duties, obligations or responsibilities which the Contractor may have under this Contract. The Parties agree that the levels of liquidated damages specified in the Special Conditions of Contract represent a reasonable pre-estimate of the losses likely to be suffered by Pan Pac in the event that completion of the Works is not achieved by the Due Date for Completion, and are not in the nature of a penalty.
- (d) The liquidated damages shall be payable within ten (10) days of written demand by Pan Pac or at Pan Pac's option, be recovered by Pan Pac from the Contractor by one or more of either: (i) deduction from payments to be made to the Contractor in respect of this Contract; (ii) withholding by Pan Pac from any other amount due from Pan Pac to the Contractor; and (iii) the application of any retention amounts held by Pan Pac pursuant to clause 7.11.

5.4 Extension of Time

Pan Pac must grant an extension of time to the Due Date for Completion if the Contractor is fairly entitled to an extension by reason of delays caused by:

- (a) any Variation; or
- (b) any circumstances not reasonably foreseeable by an experienced contractor and not due to any default of the Contractor

in each case only to the extent that such event has not occurred as a result of the Contractor's negligent act or omission or its failure to perform its obligations under this Contract and provided that as soon as possible upon becoming aware of an event affecting its performance of the Works, the Contractor has: (i) taken all reasonable measures to avoid or minimise the occurrence of and effect of such event; (ii) has informed Pan Pac of such measures; and (iii) has supplied Pan Pac with such information as Pan Pac may reasonably require and *provided that* Pan Pac shall not be

required to grant any adjustment to the Due Date for Completion if the Contractor would have suffered a delay notwithstanding the occurrence of any of the events in clause 5.4(a) and 5.4(b) above.

5.5 Delay

If it becomes evident to the Contractor that completion of the Works is likely to be delayed, the Contractor shall notify Pan Pac as soon as possible of:

- (a) the possibility of any delay; and
- (b) the cause and effect of any such delay.

5.6 Notice

Pan Pac shall not be obliged to grant any extension of time unless the Contractor has provided Pan Pac with notice in writing of the cause and details of the delay in accordance with clauses 5.4 and 5.5.

5.7 Practical Completion

- (a) Practical Completion means:
 - (i) when the Works are complete except for minor omissions and minor defects which in the opinion of Pan Pac:
 - (A) the Contractor has reasonable grounds for not promptly correcting;
 - (B) do not prevent the Works from being used for the intended purpose; and
 - (C) rectification of which will not prejudice the convenient use of the Works;
 - (ii) those tests which are required by the Contract to be carried out and passed before the Works reach Practical Completion have been carried out and passed to the reasonable satisfaction of Pan Pac;
 - (iii) all commissioning has been completed to the reasonable satisfaction of Pan Pac;
 - (iv) training of Pan Pac's personnel has been completed in accordance with the requirements of the Contract;
 - (v) Contractor's Documents and any other information required under the Contract, which in Pan Pac's opinion are essential for the use, operation and maintenance of the Works have been supplied; and
 - (vi) when the Works meet the acceptance criteria as specified in the Specifications.
- (b) The Contractor must notify Pan Pac in writing when it considers the Works are at the stage of Practical Completion.
- (c) Pan Pac must inspect the Works within five (5) Working Days of receiving the Contractor's notice. If Pan Pac considers that the Works are practically complete and the Contractor has complied with all of its other obligations under the Contract (including performing any tests required), Pan Pac must issue a practical completion certificate. The practical completion certificate must state the date when Practical Completion was achieved and list any items Pan Pac has authorised to be completed after Practical Completion along with the date by which such items must be completed.

5.8 Final Completion Certificate

Pan Pac shall issue a certificate (the "**Final Completion Certificate**") on the date when all of the following conditions have been satisfied:

- (a) the Defects Liability Period (including any extensions to the Defects Liability Period in accordance with clause 6) has expired;
- (b) the Contractor has completed all the Works required by this Contract; and
- (c) there are no outstanding claims or disputes between the Parties.

5.9 Effect of Certificates

No certificate issued by Pan Pac constitutes approval of any work or releases the Contractor from any obligation under the Contract or at law. The Contractor shall remain liable for the fulfilment of any obligation of the Contractor under the Contract or at law which remains unperformed or not properly performed.

6. Defects Liability

6.1 Defects Liability Period

The Defects Liability Period will commence on the date of Practical Completion and will continue for twelve (12) months (unless some other period is stated in the Special Conditions of Contract) or until the issue of the Final Completion Certificate, whichever is later.

6.2 Promptly Remedy

- (a) If at any time prior to the expiry of the Defects Liability Period, the Works and/or the Goods are found or suspected to be defective, faulty or non-conforming with the requirements of the Contract, the Contractor shall promptly take all measures necessary to correct any and all defaults, defects or non-conformities, or to replace or have replaced, faulty, defective or non-conforming work with the greatest diligence. Any and all repair, replacement or remedial work undertaken by the Contractor pursuant to this clause 6 shall be undertaken at the Contractor's own cost and expense, such costs to include but not be limited to the cost of dismantling and re-installation.
- (b) All defective Works repaired, replaced, re-performed or otherwise remedied during the applicable Defects Liability Period shall be re-warranted for a further twelve (12) months from the date of completion of such repair, replacement, re-performance and/or remedy, the Defects Liability Period shall be extended accordingly (but only in respect of such parts of the Works repaired and/or replaced, re-performed or otherwise remedied) and this clause 6 shall continue to apply in full in respect of such defective Works repaired, replaced, re-performed and/or remedied.
- (c) Where required by Pan Pac acting reasonably, the Contractor (whether prior to or post Practical Completion) shall, at the Contractor's cost, perform all necessary tests to demonstrate the correction of any defect.
- (d) Notwithstanding any other provision to the contrary, the Contractor shall not be required to remedy any defective Works to the extent that any use of the Works by Pan Pac is non-compliant with the reasonable requirements of any operation and/or maintenance manuals or specifications set forth in the Specifications or operation and/or maintenance instructions as they may otherwise be furnished to Pan Pac, and provided that the contents of such manuals, specifications and/or instructions are reasonable in accordance with Good Industry Practice.

6.3 Cost and Risk

All defects in the Works referred to in clause 6.2 shall be executed at the risk and cost of the Contractor.

6.4 Failure to Remedy Defects

If the Contractor fails to remedy any defect or damage within a reasonable time, a date may be fixed by (or on behalf of) Pan Pac, on or by which the defect or damage is to be remedied. The Contractor shall be given reasonable notice of this date. If the Contractor fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the Contractor, Pan Pac may (at its option):

- (a) carry out the work himself or by others, in a reasonable manner and at the Contractor's cost, and the Contractor shall pay to Pan Pac the costs reasonably incurred by Pan Pac in remedying the defect or damage;
- (b) agree a reasonable reduction in the Contract Price; or
- (c) if the defect or damage deprives Pan Pac of substantially the whole benefit of the Works or any major part of the Works, terminate the Contract as a whole, or in respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the Contract or otherwise, Pan Pac shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus the cost of dismantling the same, clearing the Site and returning plant and materials to the Contractor.

7. Payment

7.1 Contract Price

The Contract Price is the lump sum stated in the Special Conditions of Contract or such greater or lesser sum as may become payable under the Contract.

7.2 Conditions Precedent to Payment

It shall be a condition precedent to the Contractor's entitlement to receive any advance payment from Pan Pac under this Contract that the Contractor has provided to Pan Pac, and is maintaining, an advance payment bond in accordance with clause 18.

7.3 Sufficiency of Contract Price

The Contractor is deemed to have inspected the Site and examined all other documents and information available in relation to the Works and to have satisfied itself as to the correctness and sufficiency of the Contract Price.

7.4 Contractor to provide the payment claims

The Contractor shall provide Pan Pac with payment claims at the intervals stated in the Schedule of Prices. The payment claim (where applicable) shall be in the form of a GST invoice. The payment claim must be addressed to Pan Pac and must detail the amounts claimed for payment and show details of any amendments to the original Contract Price.

7.5 Payment for Material not on Site

If the Contractor is requesting payment for materials that are not on Site, such request shall only be made if agreed by Pan Pac at its sole discretion and only if the following conditions are met:

- (a) the materials are to the satisfaction of Pan Pac, appropriately secured and protected;
- (b) the materials are clearly marked as the property of Pan Pac and insured for Pan Pac;
- (c) the materials are required to meet the reasonable requirements of the Contract schedule and not being prematurely procured; and
- (d) the Contractor has incurred a liability to pay for the materials and has demonstrated that liability to the satisfaction of Pan Pac.

7.6 Pan Pac to assess payment claims

Pan Pac shall assess the Contractor's payment claims and may amend them as necessary to comply with the terms of the Contract and its valuation of the Works performed.

7.7 Pan Pac to issue payment schedules

If a payment claim is issued under the Construction Contracts Act 2002, Pan Pac shall issue to the Contractor a payment schedule within twenty (20) Business Days of receipt of the payment claim. The payment schedule will indicate the amount of the payment claim which Pan Pac proposes to pay the Contractor ("the **Scheduled Amount**"). Where the Scheduled Amount is less than the amount claimed in the payment claim, the payment schedule shall indicate:

- (a) the manner which Pan Pac has calculated the Scheduled Amount; and
- (b) Pan Pac's reasons for the difference between the Scheduled Amount and the amount of the payment claim; and
- (c) where the difference is because Pan Pac is withholding payment on any basis, Pan Pac's reasons for withholding payment.

7.8 Failure to make deductions

Failure by Pan Pac to deduct any sums from the amount paid to the Contractor shall not prevent Pan Pac from requiring any such amendment or deduction to be included in subsequent payment schedules, or prejudice any other method of recovery of such sums.

7.9 Payment

- (a) Pan Pac shall pay the Scheduled Amount within ten (10) Working Days of the issue of the payment schedule to the Contractor under clause 7.7.
- (b) If the Contractor issues an invoice which is not a payment claim under the Construction Contracts Act 2002, subject to clause 7.9 (c), Pan Pac will pay any undisputed amounts to the Contractor on the 25th day of the month following receipt of the payment claim or valid invoice by Pan Pac. If such day falls on a weekend or statutory holiday, Pan Pac will make payment on the next Business Day following the 25th.
- (c) Payments shall be made in the currencies stated in the Schedule of Prices (Schedule 2) into the bank account nominated by the Contractor.

7.10 Set off

Pan Pac is entitled to set off against any payments otherwise due to the Contractor amounts in respect of claims Pan Pac has against the Contractor under the Contract or at law.

7.11 Retentions

- (a) All payment claims are subject to a retention of 10% which Pan Pac shall retain out of the amount which would otherwise be payable to the Contractor. Pan Pac may, at its discretion, apply such withheld amounts towards remedying any breach of this Contract by the Contractor.
- (b) The monies retained, less any deductions which Pan Pac is entitled to make in accordance with the terms of this Contract shall be paid to the Contractor as follows:
 - (i) Within 20 days of the date of issue of the practical completion certificate under clause 5.7, of any amount in excess of the defects liability retention specified in the Special Conditions;

- (ii) Within 20 days of the date of issue of the Final Completion Certificate in accordance with clause 5.8, any remaining defects liability retention.

7.12 Non-Resident Contractor Withholding Tax

Pan Pac shall be entitled to deduct any tax including but not limited to non-residential contractor withholding tax as required by law from any payments made to the Contractor under this Contract unless the Contractor can establish, to the satisfaction of Pan Pac that any such tax need not be withheld.

8. Default and Termination

8.1 Notification of Intention to Terminate

If either the Contractor or Pan Pac fails to fulfil their respective obligations under the Contract the other is entitled to notify the defaulting party in writing of the default giving that party ten (10) Working Days to remedy the default. If after ten (10) Working Days the default has not been remedied the party that notified the default may notify the defaulting party in writing the termination of the Contract.

8.2 Termination without notice

The Contractor or Pan Pac may notify the other in writing that the Contract is terminated if the other becomes bankrupt, compounds with creditors, makes an assignment for the benefit of creditors, goes into liquidation, or has a receiver appointed.

8.3 Consequences of Termination

- (a) In the event Pan Pac terminates this Contract due to the Contractor's default, Pan Pac may procure, upon such terms and in such manner as Pan Pac may deem appropriate to reasonably meet its requirements under the circumstances, works similar to the Works and the Contractor shall pay Pan Pac:
 - (i) the difference between the price paid for all such similar works and the Contract Price;
 - (ii) all other reasonable costs incurred by Pan Pac as a result of delay caused by the Contractor's default; and
 - (iii) all other reasonable costs incurred by Pan Pac as a result of remedying any Contractor default, including the remedy of any defect.
- (b) The Contractor shall assist Pan Pac in the event that re-procurement action is necessary as a result of its default.
- (c) The Contractor shall be entitled to payment for Works performed prior to the effective date of such termination and shall promptly pay Pan Pac any amounts paid in advance to the Contractor for work not done by the Contractor.

8.4 Termination for convenience

- (a) Pan Pac may at any time, and from time to time, and without cause, by giving written notice to the Contractor terminate the Contract. Any such notice must specify a date (which must be on or after the date of the notice) from which the termination is to take place.
- (b) In the event that the Contract is terminated under this clause the Contractor shall take all such steps as are directed by Pan Pac to protect the Works and cease all activity in a safe, orderly and economical manner.

- (c) Pan Pac shall meet the full costs of early termination and demobilisation and the Contractor shall be entitled to be paid in accordance with the Contract for all work performed (including overheads) up to the date of termination. The Contractor shall be entitled to any other costs which he can demonstrate are a direct result of such early termination but he will not be entitled to any payment on account of his anticipated profit or for preliminary and general costs in respect of the unfinished work or any consequential loss of any kind whatsoever.

8.5 Obligations of Contractor upon termination

- (a) Upon termination, the Contractor must:
 - (i) stop the Works;
 - (ii) comply with any conditions contained in the termination notice;
 - (iii) immediately do everything reasonably possible to reduce its losses, costs and expenses arising from the termination of this Contract;
 - (iv) immediately return or securely destroy all Confidential Information and other material or property belonging to Pan Pac.
- (b) The termination of this Contract does not affect those rights of each Party which: (a) accrued prior to the time of termination, or (b) relate to any breach or failure to perform an obligation under this Contract that arose prior to the time of termination.

9. Intellectual Property

9.1 Grant of IP Rights

The Contractor, in the furnishing of the Goods shall have or shall acquire for the benefit of Pan Pac all patents, utility models, registered designs and models, trademarks, service marks, applications for any of the foregoing and the rights to apply for any of the foregoing, ownership of inventions, copyrights, proprietary information and/or technical know-how and any other similar rights (collectively, the “**Intellectual Property Rights**”) that may subsist in the Goods or documents necessary to allow Pan Pac to use the Goods or documents for their intended use, which shall include maintenance of the same. The Contractor hereby grants Pan Pac a non-exclusive, irrevocable, royalty-free licence to any and all such Intellectual Property Rights that may subsist in the Goods and documents supplied by the Contractor, to allow Pan Pac to use the Goods and documents for their intended use.

9.2 Warranty and Indemnity

- (a) The Contractor warrants that any design, materials, documents and methods of working, provided by the Contractor under this Contract shall not infringe any Intellectual Property Rights.
- (b) The Contractor shall indemnify Pan Pac against any action, suit, claim or proceeding which is based upon a claim, whether rightful or otherwise, that any of the Goods or other documents provided hereunder, constitutes an infringement of any Intellectual Property Rights of any third party. In case any of the Goods and/or documents provided hereunder, are in such suit or action held to constitute infringement and/or their use is enjoined, the Contractor shall, at its own expense, either procure for Pan Pac an irrevocable, royalty-free licence to continue using such Goods and/or documents or with Pan Pac’s prior written approval, replace the same with substantially equal but non-infringing Goods and/or documents, provided that no such replacement shall in any way relieve the Contractor of its warranty obligations hereunder.

10. Contractor's Representative

10.1 Representative

The Contractor shall appoint a representative (named in Special Conditions of Contract) and shall give them all authority necessary to act on the Contractors behalf under the Contract.

10.2 Replacement

The Contractor shall not, without the prior consent of Pan Pac or Pan Pac's Representative, revoke the appointment of the Contractor's Representative or appoint a replacement.

11. Tests

11.1 Tests

The Contractor shall perform all tests required by the Contract at the times and manner set out in the Contract.

11.2 Failure to pass tests

- (a) If the Works or the Goods or a part of them fails to achieve the performance requirements as demonstrated by the tests, Pan Pac may (at its sole option):
 - (i) order the Contractor to:
 - (A) undertake all necessary remedial action to cause the Goods (or part of the Goods) to achieve the performance requirements; and
 - (B) repeat the tests in respect of all or part of such Goods under the same terms and conditions;
 - (ii) if the failure deprives Pan Pac of substantially the whole of the benefit of the Goods or a part of them, reject the Goods or such part (as the case may be), in which event the Contractor shall remedy such Goods or part (as the case may be) in accordance with clause 6.2; or
 - (iii) deem the Goods or part of them (as the case may be) to have successfully passed the tests and achieved the performance requirements, in which case the Contractor shall proceed in accordance with all other obligations under this Contract and the Contract Price shall be reduced to reflect the reduced value to Pan Pac as a result of the failure to achieve the performance requirements. Unless the relevant reduction for this failure is stated (or its method of calculation defined in this Contract), such reduction in Contract Price shall be determined by Pan Pac acting reasonably.

11.3 Pan Pac may order additional tests

At any time prior to the issue of the Final Completion Certificate, Pan Pac may direct that any Goods under the Contract to be further tested. The Contractor shall provide such assistance as may be required by Pan Pac in this respect.

11.4 Conducting of additional tests

Tests shall be conducted by Pan Pac or a person (who may include the Contractor) nominated by Pan Pac.

11.5 Notice of Tests

Before conducting any test under the Contract Pan Pac or the Contractor shall give reasonable notice to the other of the time, date and place of the test. If the other does not then attend, the test may nevertheless proceed.

11.6 Procedure if tests delayed

Without prejudice to any other rights or remedies under the Contract, if Pan Pac or Contractor delays in conducting a test, the other, after giving reasonable notice of this intention to do so, may conduct the test.

11.7 Results of tests

Results of tests shall be promptly made available by each party to the other.

11.8 Costs of additional testing

Costs of any additional testing required by Pan Pac under clause 11.3 shall be borne by Pan Pac or paid by Pan Pac to the Contractor unless:

- (a) the test shows that the material or work is not in accordance with the Contract; or
- (b) the test is consequent upon a failure of the Contractor to comply with a requirement of the Contract,

in which case the Contractor shall reimburse Pan Pac for all costs associated with such additional testing.

12. Guarantees

12.1 Guarantee

- (a) Without prejudice to any other rights Pan Pac may have under this Contract or at law the Contractor hereby guarantees the Works against all defects and/or failure to comply with the requirements of the Contract, for a period of (two) 2 years from Practical Completion (the “**Guarantee Period**”).
- (b) If during the Guarantee Period, the Works fail to satisfy the requirements of the Contract for reasons relating to defective or faulty design or materials relating to the Goods or due to failure of workmanship of the Contractor, the Contractor will forthwith rectify the defects and/or provide adequate replacements at its own cost. For the avoidance of doubt such costs shall include but not be limited to the cost of dismantling and re-installation (if applicable). If the Contractor fails to take any action as required by this clause, the provisions of clause 6.4 shall apply.

12.2 Trade Warranties

The Contractor shall obtain all usual and customary trade warranties in a form satisfactory to Pan Pac from manufacturers and sub-manufacturer’s (if applicable) of any component of the Works and shall ensure that Pan Pac will have the benefits of the warranties.

13. Title and Security

13.1 Title

Title to the Works (or any portion of the Works) shall pass to Pan Pac as legal and beneficial owner, free of any encumbrance on the earlier of:

- (a) completion of any such part of the Works; and
- (b) payment of the corresponding portion of the Contract Price for such Works under this Contract.

The Contractor shall not charge, mortgage, sell, impose a lien on or deal with the Works in any manner which is inconsistent with Pan Pac’s ownership of the Works.

14. Force Majeure

- (a) If either party is delayed or prevented from performing its obligations under the Contract by any act or event beyond the reasonable control of that party (“a **Force Majeure Event**”), then the affected party shall as soon as reasonably practicable notify the other of the nature and extent of the event delaying or preventing performance. Such notice shall provide:
 - (i) the nature of the circumstances giving rise to the Force Majeure Event;
 - (ii) the extent of that Party’s inability to perform under this Contract;
 - (iii) the likely duration of that non-performance; and
 - (iv) what steps are being taken to minimise the impact of the Force Majeure Event on the Works.
- (b) If a party is affected by a Force Majeure Event, it shall use all reasonable endeavours to overcome the effects of such event and resume performance of the Contract as soon as reasonably practicable.
- (c) Neither Pan Pac nor the Contractor shall be deemed to be in breach of this Contract by reasons of any delay or non-performance of obligations under this Contract to the extent that such delay or non-performance was caused by a Force Majeure Event of which proper notice was provided as required by this clause.
- (d) It is specifically understood that none of the following conditions shall constitute a Force Majeure Event:
 - (i) reasonably foreseeable weather conditions including high ambient temperatures and rain;
 - (ii) the failure of any subcontractor to furnish labour, services, materials or equipment on the dates agreed to unless such failure is itself due to a Force Majeure Event;
 - (iii) general economic conditions and exchange rate fluctuations;
 - (iv) the financial condition of the Contractor or any subcontractor;
 - (v) the financial condition of Pan Pac; and
 - (vi) any matter, thing or circumstance that the Contractor takes risk in pursuant to this Contract.
- (e) If Pan Pac, acting reasonably, requires the Works to be performed during the period affected by an Force Majeure Event, then despite clause 14(f), Pan Pac may terminate this Contract immediately by giving notice.
- (f) If a Party is unable to perform any obligations under this Contract for forty (40) Working Days or more due to a Force Majeure Event, the other Party may terminate this Contract immediately by giving notice.

15. Indemnity and Liability

- (a) The Contractor agrees to indemnify and hold harmless Pan Pac from and against:
 - (i) any and all claims, demands, losses, causes of action, damage, lawsuits, judgments, including attorneys’ fees and costs, to the extent caused by, arising out of, or relating to breach of this Contract by the Contractor.

- (ii) all claims, liabilities, costs, losses or damages arising from damage to any property, or personal injury to any person or illness or death of any person that arises from the Contractor's performance of the Contract.
- (b) Under no circumstances whatsoever will either party be liable to the other for any indirect or consequential loss or for any loss of profit.

16. Pan Pac's Monitoring Rights and Factory tests

- (a) Pan Pac shall have the right, but not the obligation, to audit and inspect the progress of this Contract. The Contractor shall allow Pan Pac's inspectors free access to the Contractor's and its sub-vendor's workshops and the Contractor shall provide all assistance to facilitate such access during all phases of this Contract. Pan Pac shall be responsible for the travel and accommodation costs of its staff.
- (b) The Contractor shall carry out such inspection and tests of the Goods at the place of manufacture or any other place as is deemed necessary by Pan Pac for compliance with this Contract and for compliance with all applicable codes and standards. The Contractor shall at its own expense provide such assistance, labour, material, electricity, fuel, stores, apparatus and instruments required to carry out such shop tests efficiently.
- (c) The Contractor shall give Pan Pac written notice of the date and place at which the Goods may be ready for inspection and/or testing. Pan Pac or its agent may at Pan Pac's discretion attend the inspection and/or testing.
- (d) The fact that the Goods are been inspected by Pan Pac shall not release the Contractor from the responsibility of making good any defects discovered after such inspection or relieve the Contractor of liability for, or modify, any of Contractor's duties, obligations or responsibilities under this Contract.
- (e) If any defects become apparent during inspection and/or testing, the Contractor shall promptly at its own expense make good the defects.
- (f) Upon completion of fabrication and testing of the Goods, the Contractor shall provide Pan Pac with inspection and test certificates that the Goods has been furnished in accordance with this Contract and have satisfactorily passed all required quality assurance inspections and/or tests.

17. Disputes

17.1 Negotiate in good faith

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

17.2 Arbitration

If the dispute is not resolved within twenty (20) Working Days after the date of the notice of dispute, then unless both parties agree otherwise, the dispute must be referred to a sole arbitrator, to be agreed between the parties or appointed under the procedures of the Arbitration Act 1996, for resolution in accordance with the Arbitration Act 1996 (excluding Clauses 4 and 5 of the Second Schedule).

18. Advance Payment Bond

- (a) If the Contractor requires any advance payment under this Agreement, prior to commencing the Works, the Contractor shall provide to Pan Pac a properly executed advance payment bond issued by a first class bank located in New Zealand acceptable to Pan Pac and in a form attached as Schedule 3. The advance payment bond shall be for an amount equal to the advance payment requested by the Contractor.
- (b) The advance payment bond shall remain valid and enforceable until achievement of delivery confirmation to Milburn, Otago. If the advance bond shall expire before such date, then at any time within the fourteen (14) days prior to such expiry Pan Pac may draw down the full value of the advance bond and Pan Pac shall retain the proceeds so drawn until provision of a replacement advance payment bond which is valid for a period acceptable to Pan Pac.
- (c) In addition to the circumstances set out in clause 18(b), Pan Pac has the right to draw down, and, at Pan Pac's discretion, apply the proceeds in remedying any breach of this Contract, all or part of the value of the advance payment bond where a Contractor default has occurred and such Contractor default has not been waived or cured (to the satisfaction of Pan Pac) within ten (10) Working Days of the notice issued by Pan Pac pursuant to clause 8.1 or such other agreed period in respect of the relevant Contractor default. In respect of a Contractor default under clause 8.2, Pan Pac may draw down the performance bond without any such ten (10) Working Day or such other agreed cure period. Such recourse against the performance bond shall be without limitation to any other right or remedy of Pan Pac in relation to the Contractor default.
- (d) Pan Pac shall return the advance payment bond to the Contractor within 10 days of achievement of the delivery confirmation to Milburn, Otago.

19. Confidentiality

19.1 Confidentiality Obligation

- (a) The Contractor undertakes both during the continuance of this Contract and after its termination:
 - (i) to keep confidential and in safe custody all Confidential Information and not to disclose to any third party any Confidential Information except with the prior written consent of Pan Pac;
 - (ii) not to use any Confidential Information for any purpose other than the purpose falling within the scope of this Contract;
 - (iii) to limit access to Confidential Information to those employees who will reasonably require such information for the purpose of this Contract, to inform each such employee of the foregoing restrictions as to the confidentiality, disclosure and use of such Confidential Information and to ensure each such employee shall observe such restrictions;
 - (iv) to ensure that any third party to which any Confidential Information is disclosed pursuant to 19.1(a)(i) shall keep the same confidential, shall not disclose it to any third party, shall not use such information other than for the purposes to which Pan Pac has given its consent and shall comply with such restrictions as Pan Pac may impose in giving its consent pursuant to 19.1(a)(i).
- (b) The foregoing restrictions concerning confidentiality shall not apply to any information which is or becomes public knowledge otherwise than by default on the part of the

Contractor or which is or becomes lawfully available to the Supplier otherwise than directly or indirectly from Pan Pac and without restriction on the Contractor against subsequent use, duplication or disclosure.

- (c) Upon completion or early termination of this Contract, the Contractor shall return any documents which Pan Pac has marked with the words “to be returned upon completion of the contract”. Furthermore, the Contractor undertakes not to make copies, in whole or in part, of such documents.

19.2 No announcements

The Contractor is not to make any public announcement, respond to media, publish or authorise the publication of any article, photograph or other illustrations of the Works or issue any release to the media in relation to Works, the Contract or the subject matter of the Contract without the prior written consent of Pan Pac.

20. Miscellaneous

20.1 Further Assurances

The parties agree to do any and all acts and things and to execute and deliver any and all papers and documents necessary or appropriate to give effect to the intent and purpose of this Contract.

20.2 Entire Agreement

This Contract constitutes the entire understanding and agreement of the parties concerning its subject matter and all previous negotiations, representations, warranties, arrangements and statements are hereby cancelled and excluded.

20.3 Amendments

No amendment to this Contract will be effective unless in writing and signed by all the parties.

20.4 Notices

All notices and other communications required or permitted under this Contract shall be in writing and shall be delivered personally, sent by registered post, email address or sent by facsimile transmission (and promptly confirmed by registered post). Any such notice shall be deemed given when so delivered personally, or sent by facsimile transmission to the parties or the next day after sending by registered post, at the addresses specified in the Special Conditions of Contract (or at such other address for a party as shall be specified by like notice). If sent by email, notice shall be deemed to be given on receipt by the sender of an email message indicating that the email has been opened at the recipient's terminal.

20.5 Severability

Should any part or provision of this Contract be held unenforceable or in conflict with the applicable laws or regulations of any applicable jurisdiction, the invalid or unenforceable part or provision shall be replaced with a provision which accomplishes, to such extent as possible, the original business and purpose of such part or provision in a valid and enforceable manner and the remainder of the Contract shall remain binding on the parties.

20.6 Waiver

The waiver or relaxation partly or wholly of any of the terms of this Contract shall be valid only if in writing and signed by both parties and shall apply to a particular occasion and shall not be continuous unless expressed so to be and further shall not constitute a waiver or relaxation of any other condition or term.

20.7 Counterparts

This Contract may be executed in any number of counterparts each of which will be deemed an original and all of which together will constitute a single instrument. Either party may enter into this Contract by signing any counterpart. Facsimile copies of executed Contract will be sufficient evidence that an original of this Contract has been executed.

20.8 Independent Contractor

The Contractor shall act as an independent contractor in performing this Contract and shall in no event represent Pan Pac or act in Pan Pac's name without approval. Nothing in this Contract shall create an association, joint venture or partnership between the Parties or grant any right, power or authority to a Party to enter into any agreement or act on behalf of or otherwise bind the other Party without that Party's prior written consent.

20.9 Cumulative Rights and Remedies

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

20.10 Conflicts of interest

- (a) The Contractor represents to the best of its knowledge and belief that:
 - (i) at the date of this Contract no conflict of interest exists; and
 - (ii) it will use its best endeavours to ensure that no conflict of interest is likely to arise or arises in relation to the performance of its obligations under the Contract.
- (b) If, during the term of the Contract, any such conflict of interest or risk of conflict of interest arises, the Contractor must immediately notify Pan Pac of that conflict or risk.
- (c) For the purpose of this clause, a conflict of interest is:
 - (i) a situation that might give rise to a conflict of interest or compromise or appear to compromise the Contractor's or Pan Pac's integrity; or
 - (ii) any financial or other interest or undertaking that might interfere with or compromise the performance of the Contractor's obligations under the Contract, or the integrity or standing of Pan Pac.

20.11 Permission to transfer rights or obligations

The Contractor shall not assign, novate or otherwise transfer this Contract or any part of it without the prior written consent of Pan Pac. Notwithstanding any assignment, novation or transfer to which Pan Pac has given consent, the Contractor shall: (a) be and remain solely responsible for the due and proper execution of this Contract; (b) remain responsible for the performance of any assignee; and (c) remain liable for any breach of this Contract. Pan Pac may at any time assign, transfer, novate and/or charge the benefit of this Contract and/or any of Pan Pac's present or future rights, interests and/or benefits hereunder to any person, provided that Pan Pac provides prior written notice of the same to the Contractor.

20.12 Independent Contractor

Nothing in this Contract constitutes a legal relationship between the Parties of partnership, joint venture, agency, or employment. The Contractor is responsible for the liability of its own, and its personnel's, salary, wages, holiday or redundancy payments and any GST, corporate, personal

and withholding taxes, ACC premiums or other levies attributable to the Contractor's business or the engagement of its personnel.

20.13 Law

This Contract shall be governed by and construed in all respects in accordance with the laws of New Zealand, and the parties submit to the non-exclusive jurisdiction of the New Zealand Courts.

For and on behalf of:

Pan Pac Forest Products Limited

Authorised Signatory

Name: [●]

Title: [●]

For and on behalf of:

TBA

Authorised Signatory

Name: [●]

Title: [●]

Special Conditions of Contract

Clause	Subject	Special Condition
1.1	Commencement Date:	TBA
3.1	Pan Pac's Representative: Address: Phone number: Fax number: Email address:	<i>[insert]</i> Private Bag 6203, Napier 4142, New Zealand +64 6 831 0100 +64 6 836 6443 <i>panpac</i> @panpac.co.nz
2.8	Public Liability Insurance Motor Vehicle Professional Indemnity Insurance:	\$10,000,000 \$10,000,000 \$1,000,000
3.5	Consents to be obtained by Pan Pac:	<i>All relevant consents relating to the Works in New Zealand</i>
5.1	Delivery Date(s)	<i>[insert date of delivery here]</i>
5.2	Due Date for Completion	<i>[insert date of completion here]</i>
5.3	Liquidated Damages	<i>\$(insert) per day</i>
6.1	Defects Liability Period	<i>See clause 6.1</i>
7.1	Contract Price	<i>The Lump Sum price of: \$</i>
7.11(b)	Defects Liability Retention	<i>[insert]% of the Contract Price</i>
10.1	Contractor's Representative	TBA

Schedule 1 - Specifications

- *TBA.*

DRAFT

Schedule 2 - Schedule of Prices

The Contract Price shall include consideration for items such as:

- (a) the performance of all Works set out in this Contract;
- (b) the provision, supervision and management of all labour required to perform the Works;
- (c) the supply, including delivery to the Site, of construction machinery, equipment, materials, temporary works, tools, furnishings and/or services required to perform the Works;
- (d) all handling of material, equipment, tools and/or supplies provided by Pan Pac (if any) at the Site and intended for use in the Works, including loading, transporting, unloading, stocking and safekeeping;
- (e) any increase in the price of the Works including without limitation to any forecast increase in the price of labour;
- (f) all wages, fringe benefits, contributions to social programs and other costs of a similar nature;
- (g) all costs incurred in the preparation of the quality control program and its application;
- (h) the cost of all safety equipment and services required by an applicable law and/or required to implement Pan Pac's prevention and safety program and any other cost aimed at protecting people and property;
- (i) all insurance coverage required by the Contractor pursuant to the provisions of this Contract;
- (j) all overhead costs directly or indirectly related to the execution of the Works;
- (k) all training, manuals, engineering and drawings; and
- (l) all other direct and indirect charges, fixed costs, variable costs, overhead, profit or loss.

1. Contract Price

The Contract Price shall be a lump sum amount of: *TBA*

The breakdown of Contract Price is made up of the following individual costs:

	ITEM	PRICE, NZD
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		

11		
12		
13		
14		
15		
16		
17		
	TOTAL LUMP SUM PRICE	TBA

2. Timing of Payments - Milestones

Subject to the Contractor performing its obligations under the Contract, payments shall be made by Pan Pac in accordance with the following milestones:

No.	Milestone	% of Contract Price	Amount
1	Order Deposit Payment <ul style="list-style-type: none"> - Pan Pac requires Commercial Invoice - APG (Advanced Payment Guarantee) activated. 		
2	Shipment Acknowledgment Payment <ul style="list-style-type: none"> - Engineering report and manufacturing data supplied as proof equipment - Shipment documents required. - Commercial Invoice 		
3	Delivery Confirmation to Milburn, Otago <ul style="list-style-type: none"> - APG released. 		
4	Post Installation Payment		
5	Post Commissioning and Performance Test Payment <ul style="list-style-type: none"> - 5% Performance Bond after Practical completion - 5% Defects Liability after final Completion certificate. 		

Schedule 3 – Form of Contractor's Advance Payment Bond

This Deed of Contractor's Advance Payment Bond is made on

20xx

Parties

By (1) **[insert name of Bank]** (the **Bank**)
in favour of (2) Pan Pac Forest Products Ltd (the **Principal**)

Background

- A The Principal and TBA (the **Contractor**) are the parties to the **[describe nature of contract]** dated **[●]** (the **Contract**) pursuant to which the Contractor will perform the Works (as defined in the Contract).
- B In consideration of the Principal agreeing to make payments in advance to the Contractor, the Contract requires the Contractor to provide the Principal with a contractor's advance payment bond.

It is declared

1. The Bank irrevocably undertakes to the Principal to pay immediately on demand, and in any case within three (3) calendar days after the date of demand being made (time being of the essence), any sum or sums which may from time to time be demanded by the Principal, up to a maximum aggregate sum of NZ **\$[insert]** (the **Guaranteed Amount**) and is bound for payment of the Guaranteed Amount to the Principal.
2. Any demand by the Principal pursuant to clause 1 of this deed shall be in writing to the Bank's address specified above demanding payment by the Bank of an amount up to the Guaranteed Amount which such demand shall be conclusive evidence for the Bank's purposes (only) of the existence of such claim and the amount payable without further enquiry by the Bank. The amount demanded shall be paid forthwith on demand by the Bank to a bank account in New Zealand nominated by the Principal without reference to the Contractor and notwithstanding any notice by the Contractor to the Bank not to pay the amount demanded.
3. The undertaking contained in this deed shall be a continuing undertaking and the liability of the Bank under it shall not be affected by any act, omission, matter or thing that would otherwise operate in law or in equity to reduce or release the Bank from liability under this deed. Without limitation to the foregoing, the Bank shall remain liable under this deed notwithstanding:
 - (a) any invalidity, illegality or unenforceability of the Contract;
 - (b) any alteration, amendment or variation in the terms of the Contract or the scope, nature or extent of the Contract Works under the Contract;
 - (c) any allowance of time by any party under the Contract;

- (d) any forbearance or waiver or other indulgence by the Principal in respect of any of the Contractor's obligations, or in respect of any default by the Contractor, under the Contract;
 - (e) the occurrence of an insolvency event in respect of the Contractor; or
 - (f) any dispute or disagreement whatsoever between the Principal and the Contractor under or in relation to the Contract.
4. The undertakings contained in this deed shall terminate upon the earlier of the following events:
- (a) upon payment by the Bank of the Guaranteed Amount;
 - (b) such earlier date as may be agreed in writing by the Principal and the Bank; or
 - (c) the date of issue of the practical completion certificate under the Contract.
5. The expiry of this bond pursuant to clause 4 of this deed will not affect or discharge the liability of the Bank to make payment of any written demand from the Principal made on or before the date of such expiry.
6. Notwithstanding anything else in this deed, the Bank may at any time without being required, pay to the Principal to a bank account in New Zealand advised by the Principal the Guaranteed Amount less any amount or amounts the Bank may previously have paid under this deed or such lesser sum as may be required and specified by the Principal. Upon payment of that sum, the liability of the Bank under this deed shall immediately cease and determine. Amounts paid to the Principal pursuant to this clause will be held by the Principal as security for the Contractor's performance under the Contract.
7. Any notice by the Principal pursuant to this deed shall be deemed to have been properly given if signed by or on behalf of the Principal and sent by registered mail or delivered by hand to the Bank at the Bank's address set out in the signing block of this deed. If sent by registered mail notice shall be deemed to have been properly given on the third working day after posting to the Bank at such address.
8. This deed and the Principal's rights and benefits under it may only be assigned by the Principal:
- (d) to a successor of the Principal;
 - (e) to a transferee or assignee of the Principal's interest under the Contract;
 - (f) by way of security to the Principal's financiers; or
 - (g) otherwise with the prior written consent of the Bank which shall not be unreasonably withheld.
9. The Principal shall give the Bank notice in writing of any assignment advising the address and details of the assignee.
10. For the avoidance of doubt the Bank may not assign any right or obligation under this deed.
11. All payments under this bond shall be made in New Zealand dollars and shall be free of any set-off, withholding or deduction of any kind whatsoever.
12. This bond is governed by and will be construed in accordance with the laws of New Zealand and the Bank irrevocably submits to the non-exclusive jurisdiction of the courts of New Zealand and

any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to proceedings being brought in those courts.

Signing

Executed as a deed.

By:

.....

Authorised signatory

.....

Name and Title

DRAFT