

North Harbour Powertools Limited T/A Onehunga Powertools Centre– Terms & Conditions of Trade

1. Definitions

- 1.1 **"Contract"** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. If the Customer does not wish to allow Cookies to operate in the background when using OPTC's website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.
- 1.3 **"Customer"** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting OPTC to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.4 **"Goods"** means all Goods or Services supplied by OPTC to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 **"Price"** means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between OPTC and the Customer in accordance with clause 8 below.
- 1.6 **"OPTC"** means North Harbour Powertools Limited T/A Onehunga Powertools Centre, its successors and assigns.

2. Acceptance

- 2.1 The parties acknowledge and agree that:
- (a) they have read and understood the terms and conditions contained in this Contract; and
 - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges and accepts that:
- (a) the supply of Goods on credit shall not take effect until the Customer has completed a credit application with OPTC and it has been approved with a credit limit established for the account;
 - (b) in the event that the supply of Goods requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, OPTC reserves the right to refuse delivery;
 - (c) Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, OPTC reserves the right to substitute comparable Goods (or components of the Goods) and vary the Price as per clause 8.2. In all such cases OPTC will notify the Customer in advance of any such substitution, and also reserves the right to place the Customer's order and/or Goods on hold, until such time as OPTC and the Customer agree to such changes; and
 - (d) lead times may apply to the Goods selected (subject to current production levels). The lead time shall commence after a final measure and upon receipt of this signed Contract.
- 2.5 Any advice, recommendation, information, assistance or service provided by OPTC in relation to the Goods or Services supplied is given in good faith to the Customer, or the Customer's agent and is based on OPTC's own knowledge and experience and shall be accepted without liability on the part of OPTC. Where such advice or recommendations are not acted upon then OPTC shall require the Customer or their agent to authorise commencement of the Services in writing. OPTC shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services. Accordingly, OPTC offers no warranty in regard to the aforementioned.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Use of OPTC's Website(s)

- 3.1 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on OPTC's website(s). The information contained on OPTC's website(s) are protected by applicable copyright and trademark law.
- 3.2 The Customer acknowledges and accepts that:
- (a) OPTC does not guarantee the website's performance;
 - (b) access to OPTC's website(s) may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;
 - (c) the Goods displayed on OPTC's website(s) could include technical, typographical, or photographic errors. OPTC does not warrant that any of the Goods on the website(s) are accurate, complete or current. OPTC may make changes to the Goods contained on the website(s) at any time without notice. However, OPTC does not make any commitment to update the Goods;
 - (d) colours of items displayed on the website(s) may not reflect the true and actual colour of such items as this may be affected by external influences such as the quality of images supplied to OPTC for use, or the quality, age or settings on the Customer's monitor. If colour is a major factor in the Customer's decision making OPTC recommends the Customer contacts OPTC before purchase;
 - (e) OPTC has not reviewed all of the sites linked to the website(s) and is not responsible for the contents of any such linked site. The

- inclusion of any link does not imply endorsement by OPTC of the site. Use of any such linked website is at the Customer's own risk.
- 3.3 The Customer acknowledges and agrees that the:
- (a) Goods displayed on OPTC's website(s) are provided on an 'as is' basis. OPTC makes no warranties, expressed or implied, and hereby disclaims and negates all other warranties including, but not limited to, implied warranties or conditions of merchantability or non-infringement of intellectual property or violation of rights;
 - (b) OPTC does not warrant or make any representations concerning the accuracy, likely results, or reliability of the use of the Goods on the website(s) or otherwise relating to such Goods or on any sites linked to this site; and
 - (c) OPTC may revise the terms of service for its website at any time without notice. By using this website the Customer agrees to be bound by the then current version of these terms and conditions.
- 3.4 OPTC may provide the Customer with access to third-party tools over which OPTC neither monitor nor have any control or input.
- 3.5 The Customer acknowledges and agrees that OPTC provides access to such tools "as is" and "as available" without any warranties, representations or conditions of any kind and without any endorsement. OPTC shall have no liability whatsoever arising from or relating to the Customer's use of optional third-party tools.
- 3.6 Any use by the Customer of the optional tools offered through the site is entirely at the Customer's own risk and discretion, and the Customer should ensure that the Customer is familiar with and approve of the terms on which tools are provided by the relevant third-party provider(s).

6.1 The Customer acknowledges and agrees that:

- (a) display on the website(s) does not guarantee the availability of any particular Goods; therefore, all orders placed through the website(s) shall be subject to confirmation of acceptance by OPTC;
 - (b) there are inherent hazards in electronic distribution, and as such OPTC cannot warrant against delays or errors in transmitting data between the Customer and OPTC including orders, and the Customer agrees that to the maximum extent permitted by law, OPTC will not be liable for any losses which the Customer suffers as a result of online-ordering not being available or for delays or errors in transmitting orders;
 - (c) when making a transaction through the website(s), the Customer's information will pass through a secure server using SSL (secure sockets layer) encryption technology or any other similar technology as disclosed by OPTC and/or displayed on the website(s). The encryption process ensures that the Customer's information cannot be read by or altered by outside influences; and
 - (d) if the Customer is not the cardholder for any credit card being used to pay for the Goods, OPTC shall be entitled to reasonably assume that the Customer has received permission from the cardholder for use of the credit card for the transaction.
- 6.2 OPTC reserves the right to terminate the Customer's order if it learns that the Customer has provided false or misleading information, interfered with other users or the administration of OPTC's business, or violated these terms and conditions.

7. Credit Card Information

- 7.1 OPTC will:
- (a) keep the Customer's personal details, including credit card details for only as long as is deemed necessary by OPTC;
 - (b) not disclose the Customer's credit card details to any third party; and
 - (c) not unnecessarily disclose any of the Customer's personal information, except in accordance with the Privacy Act (clause 22) or where required by law.
- 7.2 The Customer expressly agrees that, if pursuant to this Contract, there are any unpaid charges, other amounts due and outstanding by the Customer, OPTC is entitled to immediately charge the Customer's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Customer pursuant to the terms of this Contract.

8. Price and Payment

- 8.1 At OPTC's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by OPTC to the Customer; or
 - (b) the Price as at the date of Delivery of the Goods according to OPTC's current price list; or
 - (c) OPTC's quoted Price (subject to clause 8.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 8.2 OPTC reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if during the course of the Services, the Goods are not or cease to be available from OPTC's third party suppliers, then OPTC reserves the right to provide alternative Goods; or
 - (c) if a variation to the Services originally scheduled (including any applicable plans or specifications, or changes in details, sizes and quantities, delivery instructions or any other item or matter) is requested; or
 - (d) where additional Services are required due to the discovery of hidden or unidentifiable difficulties which are only discovered on commencement of the Services; or
 - (e) in the event of increases to OPTC in the cost of labour or materials (including, but not limited to, overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond OPTC's control.
- 8.3 Variations will be charged for on the basis of OPTC's quotation, and will be detailed in writing, and shown as variations on OPTC's invoice. The Customer shall be required to respond to any variation submitted by OPTC within ten (10) working days. Failure to do so will entitle OPTC to

- add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 8.4 At OPTC's sole discretion, a reasonable non-refundable deposit may be required.
- 8.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by OPTC, which may be:
- (a) on or before delivery of the Goods;
 - (b) by way of instalments/progress payments in accordance with OPTC's payment schedule;
 - (c) for certain approved Customers, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by OPTC.
- 8.6 Payment may be made by electronic/on-line banking, credit card (a surcharge per transaction may apply), laybuy, or by any other method as agreed to between the Customer and OPTC.
- 8.7 OPTC may in its discretion allocate any payment received from the Customer towards any invoice that OPTC determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer OPTC may re-allocate any payments previously received and allocated. In the absence of any payment allocation by OPTC, payment will be deemed to be allocated in such manner as preserves the maximum value of OPTC's Purchase Money Security Interest (as defined in the PPSPA) in the Goods.
- 8.8 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by OPTC nor to withhold payment of any invoice because part of that invoice is in dispute.
- 8.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to OPTC an amount equal to any GST OPTC must pay for any supply by OPTC under this or any other contract for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

9. Delivery of Goods

- 9.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at OPTC's address; or
 - (b) OPTC (or OPTC's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 9.2 The cost of Delivery is either included in the Price or is in addition to the Price as agreed between the parties. The Customer acknowledges and accepts that where the freight charge option has been selected for online sales, this may not reflect the true cost of the freight, and OPTC shall be entitled to adjust the freight cost, which shall be shown as a variation in accordance with clause 8.2.
- 9.3 OPTC may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 9.4 Any time specified by OPTC for Delivery of the Goods is an estimate only. The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. OPTC will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. In the event that the Customer is unable to take Delivery of the Goods as arranged then OPTC shall be entitled to charge a reasonable fee for redelivery and/or storage.

10. Risk

- 10.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 10.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, OPTC is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by OPTC is sufficient evidence of OPTC's rights to receive the insurance proceeds without the need for any person dealing with OPTC to make further enquiries.
- 10.3 If the Customer requests OPTC to leave Goods outside OPTC's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 10.4 In the event that the Customer provides OPTC with any information and/or measurements relating to the supply of the Goods, OPTC shall be entitled to rely on the accuracy of any such information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, OPTC accepts no responsibility for any loss, damages, or costs however resulting from the supply of inaccurate measurements or other information.
- 10.5 The Customer acknowledges that variations of colour and shade are inherent in dye lots. While every effort will be taken by OPTC to match colour and shade of the Goods, OPTC shall not be liable for any loss, damage, or costs, howsoever arising resulting from any variation in colour and shading between batches of the Goods or sale samples and the final Goods supplied.

12. Compliance with Laws

- 12.1 The Customer and OPTC shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods and Services, including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Goods and Services.

13. Title

- 13.1 OPTC and the Customer agree that ownership of the Goods shall not pass until:

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- (a) the Customer has paid OPTC all amounts owing to OPTC; and
(b) the Customer has met all of its other obligations to OPTC.
- 13.2 Receipt by OPTC of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 13.3 It is further agreed that until ownership of the Goods passes to the Customer in accordance with clause 13.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to OPTC on request;
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for OPTC and must pay to OPTC the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for OPTC and must pay or deliver the proceeds to OPTC on demand;
- (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of OPTC and must sell, dispose of or return the resulting product to OPTC as it so directs;
- (e) the Customer irrevocably authorises OPTC to enter any premises where OPTC believes the Goods are kept and recover possession of the Goods;
- (f) OPTC may recover possession of any Goods in transit whether or not Delivery has occurred;
- (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of OPTC; and
- (h) OPTC may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 16. Defects**
- 16.1 The Customer shall inspect the Goods on Delivery and shall within forty-eight (48) hours of Delivery (time being of the essence) notify OPTC of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford OPTC an opportunity to inspect the Goods within a reasonable time following Delivery if the Customer believes the Goods are defective in any way. If the Customer fails to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which OPTC has agreed in writing that the Customer is entitled to reject, OPTC's liability is limited to either (at OPTC's discretion) replacing the Goods or repairing the Goods.
- 16.2 Goods will not be accepted for return other than in accordance with 16.1 above, and provided that:
- (a) OPTC has agreed in writing to accept the return of the Goods; and
(b) the Goods are returned at the Customer's cost within ten (10) days of the Delivery date; and
(c) OPTC will not be liable for Goods which have not been stored or used in a proper manner; and
(d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 16.3 If OPTC accepts that the Customer is entitled to reject the Goods following their return pursuant to clause 16.2(b) OPTC will reimburse the Customer's actual and reasonable costs of return Delivery.
- 16.4 At OPTC's sole discretion, returned Goods may be accepted for credit only, which may have limited quantities, and may be subject to OPTC's Refund Policy: <https://loptc.co.nz/pages/returns>.
- 16.5 OPTC may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of fifteen percent (15%) of the value of the returned Goods plus any freight.
- 16.6 Subject to clause 16.1, non-stocklist items or Goods made to the Customer's specifications are not acceptable for credit or return.
- 17. Warranty**
- 17.1 For Goods not manufactured by OPTC, the warranty shall be the current warranty provided by the manufacturer of the Goods. OPTC shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 18. Consumer Guarantees Act 1993 and the Fair Trading Act 1986**
- 18.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Goods by OPTC to the Customer.
- 18.2 OPTC agrees to abide by the provisions of the Fair Trading Act 1986 ("FTA").
- 20. Default and Consequences of Default**
- 20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at OPTC's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Customer owes OPTC any money the Customer shall indemnify OPTC from and against all costs and disbursements incurred by OPTC in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, OPTC's collection agency costs, and bank dishonour fees).
- 20.3 Further to any other rights or remedies OPTC may have under this Contract, if a Customer has made payment to OPTC, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by OPTC under this clause 20 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 20.4 Without prejudice to OPTC's other remedies at law OPTC shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to OPTC shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to OPTC becomes overdue, or in OPTC's opinion the Customer will be unable to make a payment when it falls due;
- (b) the Customer has exceeded any applicable credit limit provided by OPTC;
- (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 21. Cancellation**
- 21.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions the other party may suspend or terminate the supply of Services or purchase of Goods to the other party. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 21.2 If OPTC, due to reasons beyond OPTC's reasonable control, is unable to deliver any Goods and/or Services to the Customer, OPTC may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods and/or Services at any time before the Goods and/or Services are delivered by giving written notice to the Customer. On giving such notice OPTC shall repay to the Customer any money paid by the Customer for the Goods and/or Services. OPTC shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.3 Notwithstanding clause 21.2, OPTC reserves the right to refuse any order the Customer places with OPTC. At OPTC's sole discretion, OPTC may limit or cancel quantities purchased per person, per household or per order. These restrictions may include orders placed by or under the same customer account, the same credit card, and/or orders that use the same billing and/or shipping address. In the event that OPTC makes a change to, or cancels an order, OPTC may attempt to notify the Customer by contacting the e-mail and/or billing address/phone number provided at the time the order was made. OPTC reserves the right to limit or prohibit orders that, in OPTC's discretion, appear to be placed by dealers, resellers or distributors.
- 21.4 The Customer may cancel Delivery of the Goods and/or Services by written notice served within twenty-four (24) hours of placement of the order. Failure by the Customer to otherwise accept Delivery of the Goods and/or Services shall place the Customer in breach of this Contract.
- 21.5 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 22. Privacy Policy**
- 22.1 All emails, documents, images or other recorded information held or used by OPTC is "Personal Information" as defined and referred to in clause 22.3 and therefore considered confidential. OPTC acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines as set out in the Act. OPTC acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by OPTC that may result in serious harm to the Customer, OPTC will notify the Customer in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Customer by written consent, unless subject to an operation of law.
- 22.2 Notwithstanding clause 22.1, privacy limitations will extend to OPTC in respect of Cookies where the Customer utilises OPTC's website to make enquiries. OPTC agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to OPTC when OPTC sends an email to the Customer, so OPTC may collect and review that information ("collectively Personal Information").
- If the Customer consents to OPTC's use of Cookies on OPTC's website and later wishes to withdraw that consent, the Customer may manage and control OPTC's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 22.3 The Customer authorises OPTC or OPTC's agent to:
- (a) access, collect, retain and use any information about the Customer;
- (i) including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice for the purpose of assessing the Customer's creditworthiness; or
- (ii) for the purpose of marketing products and services to the Customer.
- (b) disclose information about the Customer, whether collected by OPTC from the Customer directly or obtained by OPTC from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 22.4 Where the Customer is an individual the authorities under clause 22.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 22.5 The Customer shall have the right to request (by e-mail) from OPTC, a copy of the Personal Information about the Customer retained by OPTC
- and the right to request that OPTC correct any incorrect Personal Information.
- 22.6 OPTC will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 22.7 The Customer can make a privacy complaint by contacting OPTC via e-mail. OPTC will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.
- 23. Service of Notices**
- 23.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Contract;
- (c) by sending it by registered post to the address of the other party as stated in this Contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.
- 23.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 25. General**
- 25.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.2 These terms and conditions and any Contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Auckland, New Zealand.
- 25.3 Subject to the CGA, the liability of OPTC and the Customer under this Contract shall be limited to the Price.
- 25.4 OPTC may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent provided the assignment does not cause detriment to the Customer.
- 25.5 The Customer cannot licence or assign without the written approval of OPTC.
- 25.6 OPTC may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of OPTC's sub-contractors without the authority of OPTC.
- 25.7 The Customer agrees that OPTC may amend their general terms and conditions for subsequent future Contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for OPTC to provide Goods and/or Services to the Customer.
- 25.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc., ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make any payment due to OPTC, following cessation of a Force Majeure.
- 25.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.

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