

Contract for the Purchase of Equipment



Contract Agreement

[Short title for Contract] [Add Contract Reference number if applicable]

Brief Description of Equipment

Contract Price in \$NZ [Insert unit price and quantity and total Contract Price]

The Parties

Pan Pac Forest Products Ltd

(Pan Pac)

1161 State Highway 2, Wairoa Road, Napier 4182, New Zealand

Private Bag 6203, Hawke's Bay Mail Centre, Napier 4142, New Zealand

and

[Insert the legal name of the Supplier]

(Supplier)

[Insert address] For a company use the registered office. For others use physical address.

[Insert address]

The Contract

Contract

The Supplier agrees to sell, and Pan Pac agrees to purchase the Equipment described in this Contract on the terms and conditions set out in this Contract.

The documents forming this Contract are:

1. This Contract Agreement
2. Schedule 1 - Contract Details
3. Schedule 2 - Standard Terms and Conditions for the Purchase of Equipment
4. Schedule 3 – Contract Price and Invoicing
5. Schedule 4 – Equipment Specifications
6. Schedule 5 - Performance Guarantee
7. Schedule 6 - Spare Parts
8. Schedule 7 – Delivery Schedule and Delay Damages
9. [List any other document intended to form part of the contract]

Each item higher in the list will prevail over any item appearing lower in the list where any conflict or ambiguity between them arises.

Acceptance

In signing this Contract each Party acknowledges that it has read and agrees to be bound by it and the signatory is duly authorised to commit the Party to the Contract

For and on behalf of **Pan Pac Forest Products Ltd:**

For and on behalf of the **Supplier:**

(signature)

(signature)

Name:

Name:

Position:

Position:

Date:

Date:

Schedule 1

Contract Details

Start Date		Reference Schedule 2 clause 1	
Completion Date			
Type of contract	One-off purchase. OR Ongoing supply. [delete the one which is not appropriate]		
Contract Managers	Pan Pac's Contract Manager		
	Supplier's Contract Manager		
	Name:		
	Title / position:		
	Address:		
	Phone:		
	Fax:		
Email:			
Addresses for Notices	Pan Pac's address		
	Supplier's address		
	For the attention of:	[Contract Mgr or senior mgr]	[Contract Mgr or senior mgr]
	c.c.	[cc if senior manager above]	[cc if senior manager above]
	Delivery address:	1161 SH 2, Wairoa Road, Napier 4182	
	Postal address:	Private Bag 6203, Napier 4142	
	Fax:	+ 64 6 836 6443 Attention: Company Secretary	
Email:	addeaddress@panpac.co.nz		
Delivery Schedule	See Schedule 7.		
Delivery terms	Incoterms or other as specified		
Delivery Point Reference Schedule 2 clause 1	[insert physical delivery address or addresses if more than one]		
Addresses for invoices	Pan Pac's address		
	For the attention of:	Pan Pac Accounts Payable	
	Physical address:	1161 State Highway 2, Wairoa Road, Napier 4182, New Zealand	
	Postal address:	Private Bag 6203, Hawke's Bay Mail Centre, Napier 4142, New Zealand	
	Email:	panpacaccounts@panpac.co.nz	
Insurance Reference Schedule 2 clause 7	<p>INSURANCE: Pan Pac does not require any insurance other than that nominated in clause 7 Schedule 2 of this Contract. [and delete the wording below]</p> <p>OR</p> <p>The Contractor must have the following additional insurances:</p> <p style="margin-left: 20px;">a. Insert type insurance to the value of \$[insert figure] OR WHATEVER HAS BEEN NEGOTIATED AND APPROVED BY COMPANY SECRETARY AND/OR CFO</p>		

Schedule 2

Standard Terms and Conditions for the Purchase of Equipment

1. Definitions

- 1.1 The following definitions shall have effect throughout this Contract except where the context otherwise requires:

Business Day A day when most businesses are open for business in Hawke's Bay New Zealand. It excludes Saturday, Sunday and public holidays. A Business Day starts at 8.00am and ends at 4.30pm New Zealand time.

Completion Date means the date set forth in Schedule 1.

Confidential Information means information that:

- a. is by its nature confidential
- b. is marked by either Party as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence'
- c. is provided by either Party or a third party 'in confidence'
- d. either Party knows or ought to know is confidential, or
- e. is of a sensitive nature or commercially sensitive to either Party.

Contract Price means the total amount payable by Pan Pac to the Supplier for the Supply of Equipment as stated in the Contract Agreement and Schedule 3.

Delivery Date means the dates specified for delivery in the Delivery Schedule.

Delivery Point means that place at which the Equipment is to be delivered by the Supplier, to be specified in Schedule 1 of this Contract.

Delivery Schedule means the schedule attached as Schedule 7.

Electronic Transmission means using e-mail or facsimile.

Equipment means the equipment to be purchased by Pan Pac under this Contract as more particularly described in Schedule 4 of this Contract.

Force Majeure Event means an event that is beyond the reasonable control of the Party immediately affected by the event. A Force Majeure Event does not include any risk or event that the Party claiming could have prevented or overcome by taking reasonable care. Examples include:

- (a) acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires, pandemics and any natural disaster
- (b) acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilisation, requisition or embargo
- (c) acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war, or
- (d) contamination by radioactivity from nuclear substances or germ warfare or any other such hazardous properties.

Incoterms means the international trade terms called "Incoterms" published by the International Chamber of Commerce.

Losses means any liabilities, losses, compensation, penalties, outgoings, costs and expenses (including reasonable legal costs on a solicitor-client basis) of whatever description incurred in relation to a Triangular Employment Claim.

Party means Pan Pac and the Supplier and together the Parties.

Scope has the meaning given to it in clause 10.1.

Specifications means the specifications, drawings, data and performance criteria for the Equipment as detailed in Schedule 4 to this Contract.

Start Date means the date when the obligations of the Supplier shall commence under this Contract as stated in Schedule 1.

Triangular Employment Claim means a claim that is brought, or is intended to be brought, or any situation that may give rise to a claim, against Pan Pac pursuant to section 103(3) and 103B of the Employment Relations Act 2000, whether Pan Pac has been formally notified of the claim pursuant to section 115A of the Employment Relations Act 2000, or whether the Supplier has informally notified Pan Pac that such a claim is intended to be brought against Pan Pac.

Warranty Period means a (12) twelve-month period beginning on the date the final notice is issued under clause 2.5.

1.2 Interpretation

- (a) Section, clause and other headings are for ease of reference only and shall not affect the interpretation of this Contract.
- (b) Words importing the singular number shall include the plural and vice versa.
- (c) Any schedules and annexures to this Contract and the provisions and conditions contained in such schedules and annexures have the same effect as if set out in the body of this Contract.
- (d) Expressions defined in the main body of this Contract bear the defined meaning in the whole of this Contract including the background, schedules and appendices.
- (e) References to Sections, Clauses, Schedules and Annexures are references to sections, clauses, schedules and annexures of this Contract.
- (f) Any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done.

Delivery and Completion and Acceptance

1.3 By the Completion Date, the Supplier shall have:

- (a) manufactured, procured or otherwise obtained all of the Equipment together with any documents referred to in this Contract (including any installation, operation and maintenance manuals);
- (b) delivered all of the Equipment and any documents referred to in this Contract to Pan Pac at the Delivery Point in accordance with the delivery terms set out on the Contract Agreement and in accordance with this Contract; and
- (c) performed any other services required to be performed under this Contract,

and shall be no later than the date set forth in Schedule 1. The Completion Date shall be without prejudice to any interim milestones to be achieved by the Supplier pursuant to the Delivery Schedule.

1.4 If it is stated in Schedule 1 that Incoterms are to apply, the 2010 version shall apply. If any specific provision of this Contract conflicts with the terms contained in Incoterms 2010, then the specific provisions of this Contract shall prevail.

1.5 The Supplier shall provide the Equipment in accordance with Delivery Schedule and the documents specified herein and the Specifications. Any Equipment that does not comply with such descriptions, documents and Specifications may, at Pan Pac's sole discretion, be returned to the Supplier at the Supplier's sole cost, risk and expense. Pan Pac shall have no obligation to pay for any Equipment so returned and shall be entitled to a refund for any amounts paid to the Supplier in respect of such Equipment.

1.6 Where any items are delivered in error (including items in excess of the quantity ordered by Pan Pac), Pan Pac may return such items at the Supplier's sole cost, risk and expense. Pan Pac shall have no obligation to pay for any items so returned and shall be entitled to a refund for any amounts paid to the Supplier in respect of such items.

- 1.7 When Pan Pac (acting reasonably, and following any applicable inspections or testing) is satisfied that the requirements of the Contract have been met and the Equipment is not otherwise damaged or defective in any way, Pan Pac shall promptly issue to the Supplier a notice confirming that the Equipment has met the requirements of this Contract.
- 1.8 No certificate given, inspection or test performed, authorisation or comments provided or payment made by Pan Pac shall be construed as: (i) evidence of satisfaction of the Supplier's obligations under this Contract; (ii) approval or acceptance of defective Equipment; or (iii) otherwise relieving the Supplier from any of its obligations under this Contract, and shall be without prejudice to any rights and remedies of Pan Pac pursuant to the terms of this Contract or at law.

Contract Price

- 1.9 The Supplier is deemed to have satisfied itself as to the correctness of the documents, specifications and descriptions, quantity, unit price and sufficiency of the Contract Price as set forth in this Contract.
- 1.10 Subject to clause 10 only, the Contract Price shall cover all of the Supplier's obligations under this Contract and all things necessary for the proper execution and completion of this Contract and the remedying of any defects or errors in the Equipment.
- 1.11 The Contract Price is inclusive of all materials, labour, licenses, packaging, other rates, costs and taxes and includes (if applicable) shipping and delivery costs to the Delivery Point as well as (if applicable) New Zealand import taxes and tariffs. The Supplier declares that it has taken into account in establishing the Contract Price all taxes, duties, etc. for which it is liable with no exception whatsoever.

Late Delivery and Delay Damages

- 1.12 The Equipment shall be deemed to have been delivered to Pan Pac at the time when the Equipment has been delivered to the Delivery Point in accordance with the Delivery Schedule.
- 1.13 The Supplier shall promptly advise Pan Pac if there is likely to be any delay in the manufacture or delivery of the Equipment which may delay the dates specified in the Delivery Schedule.
- 1.14 Subject to clause 4.7, if the Supplier fails to deliver any of the Equipment in accordance with the Delivery Schedule, the Supplier shall pay Pan Pac by way of delay damages, such delay damages at the rate specified in Schedule 7 with an aggregate cap on delay damages of 10% of the Contract Price.
- 1.15 The Parties agree that the level of delay damages specified in this clause 4 represents a reasonable pre-estimate of the losses likely to be suffered by Pan Pac if the Equipment is not delivered in accordance with the Delivery Schedule and such delay damages are not in the nature of a penalty.
- 1.16 Delay damages payable under this Contract shall be payable within fifteen (15) Business Days of notification that such payments are due by Pan Pac.
- 1.17 If all or any of the obligations of the Supplier under this Contract to pay delay damages are held to be unenforceable, the Supplier agrees to pay Pan Pac damages in respect of all actual damages suffered by Pan Pac due to the circumstances in respect of which delay damages would have been payable, and the limitations on liability set forth in clause 4.3 shall not apply in respect of any such damages.
- 1.18 The Supplier shall be entitled to an adjustment to the Delivery Schedule to the extent the Supplier's critical path for the performance of its obligations hereunder is delayed as a result of:
- (a) Force Majeure Event or a suspension necessitated by Force Majeure Event;
 - (b) any change to the Delivery Schedule as a result of a change in Scope by Pan Pac;
 - (c) suspension this Contract by Pan Pac, where such suspension is not the result of an act or omission of the Supplier; or
 - (d) any act of prevention or delay by Pan Pac.
- 1.19 To be entitled to an adjustment, the Supplier must notify Pan Pac in writing within ten (10) Business Days of the commencement of the event or circumstance causing the delay and use its reasonable endeavours to mitigate the effects of such event or circumstance on its performance. If the Supplier fails to notify Pan Pac or to mitigate as required by this clause 4.8, then it shall cease to be entitled to an adjustment to the Delivery Schedule. The Supplier shall be required to perform a critical path analysis to justify any modification to the Delivery Schedule. For the avoidance of doubt, the Supplier shall not be entitled to any

amendment to the Delivery Schedule to the extent the delay was caused by any act, omission or negligence by the Supplier or anyone for whom it is responsible.

Invoicing and Payment

- 1.20 The Supplier shall provide valid invoices to Pan Pac at the times set out in Schedule 3 being either commercial invoices or valid tax invoices for Suppliers registered for GST in New Zealand.
- 1.21 Pan Pac shall have no obligation to make any payment to the Supplier unless and until invoices (and supporting documentation, as applicable) are received in accordance with the requirements of this Contract.
- 1.22 Invoices shall be sent to the address set forth in Schedule 1.
- 1.23 Undisputed invoices will be paid by the 25th of the month following the receipt of such invoice, unless the 25th falls on a weekend or is a statutory holiday, in which case, payment will be made on the next Business Day following the 25th. Payment is conditional upon receipt of the original invoice, together with the bill of lading documents and other supporting documents as may be required to evidence the Supplier's performance under the Contract.
- 1.24 The currency of all payments pursuant to this Contract shall be as specified in Schedule 3.
- 1.25 Pan Pac shall be entitled to offset and deduct any amounts owing by the Supplier to Pan Pac hereunder from and against amounts owing by Pan Pac to the Supplier hereunder.
- 1.26 [If the Supplier requires any advance payment under this Contract, the Supplier shall at its cost, 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 approved by Pan Pac.]

Packaging

- 1.27 The Supplier shall ensure that all cases, crates and packages to be used in packaging the Equipment shall be protected against corrosion, weather damage, condensation, distortion, damage by vermin and the ingress of foreign matter.
- 1.28 The Supplier shall take all necessary steps to ensure that the packing materials comply with all New Zealand's legal requirements including but not limited to the requirements of the Ministry for Primary Industries (see www.biosecurity.govt.nz/regs/cont-carg for information).
- 1.29 The Supplier shall indemnify Pan Pac against all losses, claims or expenses suffered or incurred by it as a result of packing material not so complying.

Risk and Insurance

- 1.30 Risk of loss, damage or deterioration of or to the Equipment shall be borne by the Supplier and shall not pass to Pan Pac until the Equipment is delivered to the Delivery Point.
- 1.31 The Supplier shall, at its own expense keep all of the Equipment insured to its full insurable value against all normal and usual insurable risks until such time as risk passes to Pan Pac. The Supplier shall ensure that Pan Pac is named as joint loss payee in respect of any insurance policies of the kind referred to in this clause 7.2 to the extent of its interest therein.
- 1.32 Pan Pac shall be entitled from time to time upon demand to inspect the Supplier's policies of insurance and have produced to it satisfactory evidence that the Supplier's policies of insurance are in full force and effect and also to require the Supplier to deliver to it copies of the policies of insurance and of any related insurance certificates.

Title

- 1.33 Title to the Equipment shall pass to Pan Pac upon the earlier of: (i) payment for the Equipment; and (ii) delivery of the Equipment to the Delivery Point in accordance with the terms of this Contract.

Warranty

- 1.34 The Supplier represents and warrants that: (i) it possesses the necessary skill, competence, materials and qualified staff to either manufacture, procure or otherwise obtain the Equipment required by Pan Pac; (ii) the Equipment will (A) be free from defects in title, design, materials or workmanship, (B) be designed and fit for the purposes specified by Pan Pac (including all relevant Specifications), (C) be in strict accordance with the Contract documents, drawings and Specifications and otherwise conform in all respects to the terms and conditions of this Contract, (D) comply with applicable laws and all applicable codes and standards, (E) be new and of recent manufacture, and (F) be of good quality.
- 1.35 The warranties contained in this clause 9 shall remain in full force and effect notwithstanding any inspection, testing or the giving of any final certificate by Pan Pac of the Equipment and such warranties shall be in addition to any other warranties given by the Supplier to Pan Pac.
- 1.36 The Supplier agrees that if, at any time prior to the expiry of the Warranty Period, any of the Equipment provided by the Supplier hereunder, are found to be not in compliance with this Contract (including the warranties set out in herein), the Supplier shall, at its sole cost and expense (including all relevant transportation, dismantling and re-installation costs), re-perform, remedy, replace and/or re-procure (at the election of Pan Pac) such defective Equipment. Any Equipment remedied, replaced and/or re-procured in accordance with this clause shall be re-warranted until the later of: (a) the end of the Warranty Period; or (b) a further twelve (12) months from the date of completion of such repair, replacement, re-performance and/or re-procurement.
- 1.37 If the Supplier fails to comply with clause 9.3 within a reasonable time, Pan Pac may carry out, or engage other contractors to carry out, the relevant repair, replacement, re-performance and/or re-procurement of the Equipment and the Supplier shall reimburse Pan Pac for the cost of so doing.

Variations

- 1.38 Pan Pac may, in its absolute discretion and for any reason, including where Pan Pac opts to procure the Equipment (or items similar to the Equipment) from an alternative supplier, increase or decrease the number of Equipment to be supplied by the Supplier and the scope (which includes the time of performance) of this Contract (the "**Scope**").
- 1.39 In the event that Pan Pac makes a material change in the Scope, Pan Pac shall issue to the Supplier a variation order prior to the enactment of such modified Contract describing the changes to this Contract. The Parties shall discuss and negotiate in good faith any adjustments to the Contract Price (based, to the extent applicable, upon the prices set forth in Schedule 3) or the Delivery Schedule (based upon a critical path analysis) arising from such variation order. In the event that the Parties cannot agree to schedule and cost adjustments to this Contract, Pan Pac may nevertheless at any time instruct the Supplier to immediately comply with the variation order including Pan Pac's determination of the schedule and cost adjustments. The Supplier shall comply with such variation order and any disputed adjustments arising out of such variation order shall be addressed in accordance with clause 17 hereof.
- 1.40 If the Supplier claims that any instructions received from Pan Pac justify additions to the Contract Price, the Supplier shall give Pan Pac written notice within ten (10) Business Days after receipt of such instructions, and in any event, before proceeding to execute such instructions. No such additions shall be allowed or form the basis of any claim for compensation in addition to the Contract Price, unless a detailed estimate of the cost is approved and agreed by Pan Pac by way of variation order.
- 1.41 In the event that any change or alteration results in a decrease in the Scope, the Contract Price shall be reduced accordingly, and no allowance shall be made to the Supplier for loss of anticipated profit on the Scope deleted which shall be confirmed by way of variation order.
- 1.42 Notwithstanding any disagreement or dispute between the Parties as to any of the provisions set out in this clause, there shall be no interruption of the performance of this Contract pending settlement or resolution of such dispute or disagreement.

Default and Termination

- 1.43 If either the Supplier or Pan Pac fails to fulfil their respective obligations under this Contract, the other Party is entitled to notify the defaulting Party in writing of the default giving that Party twenty (20) Business Days to remedy the default. If after twenty (20) Business Days the default has not been remedied the Party that notified the default may notify in writing the termination of this Contract.

- 1.44 Notwithstanding the provisions of Clause 11.1, either Party may notify the other Party in writing that this Contract is terminated immediately if the other Party: (a) becomes bankrupt; (b) compounds with creditors; (c) makes an assignment for the benefit of creditors; (d) goes into liquidation; or (e) has a receiver appointed or similar process in any jurisdiction provided that the same is not frivolous or vexatious.
- 1.45 If Pan Pac terminates this Contract due to the Supplier's default, Pan Pac may procure, upon such terms and in such manner as Pan Pac may deem appropriate to reasonably meet the requirements of Pan Pac under the circumstances, equipment similar to the Equipment and the Supplier shall pay Pan Pac: (i) the difference between the price paid for all such similar works and the Contract Price; and (ii) all other reasonable costs incurred by Pan Pac as a result of remedying any Supplier default, including the remedy of any defect.
- 1.46 The Supplier shall assist Pan Pac if reprocurement action is necessary as a result of its default.
- 1.47 The Supplier shall be entitled to payment for Equipment delivered and accepted by Pan Pac prior to the effective date of such termination and shall pay Pan Pac any amounts paid in advance to the Supplier for work not done by the Supplier.
- 1.48 Upon termination, the Supplier must: (i) stop the carrying out the manufacture or delivery of Equipment; (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; and (v) promptly deliver to Pan Pac any Equipment and related documents and items for which the Supplier has been paid in accordance with this Contract.
- 1.49 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.

Liability for Loss

- 1.50 At no time, including upon any termination, shall Pan Pac have any liability to the Supplier for any punitive, special, indirect, remote or consequential losses, or for any loss of profit, loss of revenue, loss of contract, loss of opportunity, loss of goodwill, loss of production or down time costs or related losses.

Confidentiality

- 1.51 The Supplier shall not without the prior written consent of Pan Pac: (i) disclose or make available to any person, other than Pan Pac, or use, directly or indirectly, except for the performance and implementation of this Contract or to the extent required by applicable law, the terms of this Contract or any information acquired from Pan Pac in connection with the performance of this Contract whether acquired before or after the date of this Contract; or (ii) announce, declare, communicate, publish or issue any statement mentioning Pan Pac or information relating to this Contract.

Intellectual Property

- 1.52 The Supplier, in the furnishing of the Equipment 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 Equipment or documents necessary to allow Pan Pac to use the Equipment or documents for their intended use. The Supplier hereby grants Pan Pac a non-exclusive, irrevocable, royalty-free licence to any and all such Intellectual Property Rights that may subsist in the Equipment and documents supplied by the Supplier, to allow Pan Pac to use the Equipment and documents for their intended use.
- 1.53 The Supplier 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 Equipment or other documents provided hereunder, constitutes an infringement of any Intellectual Property Rights of any third party. In case any of the Equipment and/or documents provided hereunder, are in such suit or action held to constitute infringement and/or their use is enjoined, the Supplier shall, at its own expense, either procure for Pan Pac

an irrevocable, royalty-free licence to continue using such Equipment and/or documents or with Pan Pac's prior written approval, replace the same with substantially equal but non-infringing Equipment and/or documents, provided that no such replacement shall in any way relieve the Supplier of its warranty obligations hereunder.

Indemnity

- 1.54 The Supplier agrees to indemnify and hold harmless Pan Pac from and against:
- (a) 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 Supplier.
 - (a) 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 Supplier's performance of the Contract.

Force Majeure

- 1.55 Neither Party will be liable to the other for any failure to perform its obligations under this Contract where the failure is due to a Force Majeure Event.
- 1.56 It is specifically understood that none of the following conditions shall constitute a Force Majeure Event:
- (a) reasonably foreseeable weather conditions including high ambient temperatures and rain;
 - (b) 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;
 - (c) general economic conditions and exchange rate fluctuations;
 - (d) the financial condition of the Supplier or any subcontractor;
 - (e) the financial condition of Pan Pac; and
 - (f) any matter, thing or circumstance that the Supplier takes risk in pursuant to this Contract.
- 1.57 A Party who wishes to claim suspension of its obligations due to Force Majeure Event must notify the other Party as soon as reasonably possible. The notice must state:
- (a) the nature of the circumstances giving rise to the Force Majeure Event;
 - (b) the extent of that Party's inability to perform under this Contract;
 - (c) the likely duration of that non-performance; and
 - (d) what steps are being taken to minimise the impact of the Force Majeure Event.
- 1.58 If Pan Pac, acting reasonably, requires the Equipment to be supplied during the period affected by a Force Majeure Event, then despite clause 16.5, Pan Pac may terminate this Contract immediately by giving notice.
- 1.59 If a Party is unable to perform any obligations under this Contract for twenty (20) Business Days or more due to a Force Majeure Event, the other Party may terminate this Contract immediately by giving notice.

Disputes

- 1.60 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.
- 1.61 Save for in respect of a Triangular Employment Claim, if the dispute is not resolved within twenty (20) Business 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.
- 1.62 The arbitration shall be held in Napier, New Zealand.

Subcontracting

- 1.63 The Supplier shall not subcontract any elements of this Contract or replace any sub-contractor previously approved by Pan Pac without the prior written consent of Pan Pac. Such consent shall not relieve the Supplier of any of its obligations hereunder or create any contractual relationship between Pan Pac and such sub-suppliers.

Pan Pac's Monitoring Rights and Factory tests

- 1.64 Pan Pac shall have the right, but not the obligation, to audit and inspect the progress of this Contract. The Supplier shall allow Pan Pac's auditors and inspectors free access to the Supplier's and its sub-vendor's workshops and the Supplier shall provide all assistance to facilitate such access during all phases of this Contract.
- 1.65 The Supplier shall carry out such inspection and tests of the Equipment at the place of manufacture as is deemed necessary by Pan Pac for compliance with this Contract and for compliance with all applicable codes and standards. The Supplier shall at its own expense provide such assistance, labour, material, electricity, fuel, stores, apparatus and instruments required to carry out such shop tests efficiently.
- 1.66 The Supplier shall give Pan Pac written notice of the date and place at which the Equipment 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.
- 1.67 The fact that the Equipment is been inspected by Pan Pac shall not release the Supplier from the responsibility of making good any defects discovered after such inspection or relieve the Supplier of liability for, or modify, any of Supplier's duties, obligations or responsibilities under this Contract.
- 1.68 If any defects become apparent during inspection and/or testing, the Supplier shall promptly at its own expense make good the defects.
- 1.69 Upon completion of fabrication and testing of the Equipment, the Supplier shall provide Pan Pac with inspection and test certificates that the Equipment has been furnished in accordance with this Contract and have satisfactorily passed all required quality assurance inspections and/or tests.

Performance Guarantees

- 1.70 The Supplier guarantees that the Equipment and all parts of them shall achieve the performance guarantees specified in Schedule 5. The Supplier's performance in respect of the performance guarantees shall be demonstrated by the performance tests carried out pursuant to Schedule 5.
- 1.71 If the Equipment or a part of them fails to achieve the performance guarantees as demonstrated by the performance tests, Pan Pac may (at its sole option):
- (a) order the Supplier to: (i) undertake all necessary remedial action to cause the Equipment (or part of the Equipment) to achieve the performance guarantees; and (ii) repeat the performance tests in respect of all or part of such Equipment under the same terms and conditions;
 - (b) if the failure deprives Pan Pac of substantially the whole of the benefit of the Equipment or a part of them, reject the Equipment or such part (as the case may be), in which event the Supplier shall remedy such Equipment or part (as the case may be) in accordance with Clause 9.3; or
 - (c) deem the Equipment or part of them (as the case may be) to have successfully passed the performance tests and achieved the performance guarantees, in which case the Supplier shall proceed in accordance with all other obligations under this Contract and the Supplier shall, upon demand by Pan Pac, pay the liquidated damages specified in Schedule 5 or, if no such liquidated damages have been defined, Pan Pac may require a reduction in the Contract Price to cover the reduced value to Pan Pac as a result of the failure to achieve the performance guarantees. 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.

Entire Contract

1.72 This Contract is the entire agreement between Pan Pac and the Supplier with respect to the supply of Equipment. To the extent permitted by applicable laws, the Parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth in this Contract.

Assignment

1.73 The Supplier 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 Supplier 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.

Enforceability

1.74 If any term, condition or provision of this Contract is held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Contract.

No Waiver

1.75 No term, condition, right, obligation or breach of this Contract shall be waived or be deemed to have been waived unless such waiver is in writing and addressed to the other Party. No such waiver shall be a waiver of any past or future default, breach or modification of any of the terms or condition of this Contract unless expressly stipulated in such waiver.

Governing Law, Currency and Time

1.76 This Contract will be governed and interpreted in accordance with the laws of New Zealand.

1.77 All money is in New Zealand dollars, unless Schedule 3 specifies a different currency. Dates and times are New Zealand time.

Counterparts

1.78 This Contract may be executed by the Parties in one or more counterparts. Such counterparts may be exchanged by Electronic Transmission. The Parties shall co-operate after execution of the Contract and Electronic Transmission to ensure that each Party obtains an original executed copy of this Contract.

Independent Contractor

1.79 Nothing in this Contract constitutes a legal relationship between the Parties of partnership, joint venture, agency, or employment.

1.80 Neither Party has authority to bind or represent the other Party in any way or for any purpose.

Triangular Employment Claims

1.81 In the event that Pan Pac is required to respond to, joined to, or incurs any Losses in connection with a Triangular Employment Claim Pan Pac may by written notice to the Supplier, require the Supplier to indemnify Pan Pac against all Losses actually suffered or incurred by Pan Pac in connection with the Triangular Employment Claim and the Supplier agrees to indemnify Pan Pac in respect of any such Losses notified to it.

1.82 Pursuant to clause 1.81 the Supplier agrees to reimburse Pan Pac for such Losses within [30] days of

notification of such Losses. Pan Pac will promptly provide all such documentation that the Supplier requires in order to make payment.

- 1.83 In the event that Pan Pac is joined to a Triangular Employment Claim, Pan Pac shall be entitled to take all necessary steps to respond to, dispute, or otherwise engage in respect of the Triangular Employment Claim, including but not limited to instructing independent legal counsel (of Pan Pac's choosing) and participating in any informal or formal dispute resolution process (including mediation directed by the Employment Relations Authority), Employment Relations Authority proceeding, or court proceeding.
- 1.84 Save as agreed under this Agreement, Pan Pac will not be responsible for the management of any employment relationship or other relationship as between the Supplier and its employees or contractors.
- 1.85 Pan Pac will use reasonable endeavours to comply with its obligations at law in its conduct with any of the Supplier's employees or contractors who undertake work for Pan Pac under this Agreement.
- 1.86 Pan Pac will notify the Supplier as soon as reasonably practicable of any concerns with any of the Supplier's employees or contractors that arise while the employees or contractors are undertaking services pursuant to this Agreement.
- 1.87 The Supplier agrees and acknowledges that it is solely responsible for the employment or independent contractor relationship between the Supplier and its employees and/or contractors, and that the Supplier will abide by its obligations at law in respect of such relationships and/or agreements.
- 1.88 The Supplier will promptly notify Pan Pac of any Triangular Employment Claim. In any case such notification will be no later than five Business Days after the Supplier is notified of any such Triangular Employment Claim.

Cumulative Rights and Remedies

- 1.89 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.

Schedule 3

Contract Price and Invoicing

1. Nature of Contract Price

The Contract Price shall include consideration for items such as:

- (a) the performance of all work in relation to the Contract;
- (b) any increase in the price of the Equipment including without limitation to any forecast increase in the price of labour;
- (c) all wages, fringe benefits, contributions to social programs and other costs of a similar nature;
- (d) all costs incurred in the preparation of the quality control program and its application;
- (e) all insurance coverage required by the Supplier pursuant to the provisions of this Contract;
- (f) all overhead costs directly or indirectly related to the execution of the Works; and
- (g) all other direct and indirect charges, fixed costs, variable costs, overhead, profit or loss.

Cost	<p>The Contract Price will be calculated as follows:</p> <p>[Choose one option, insert relevant details and delete remainder.]</p> <p>[If Pan Pac is to pay Expenses for delivery state these in 'Expenses' below.]</p> <p>[Specify any discount for early payment.]</p> <p>[If the currency is not NZD clearly state the agreed currency.]</p> <p>List</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr style="background-color: #cccccc;"> <th style="text-align: left; padding: 5px;">Item / model / product number</th> <th style="text-align: left; padding: 5px;">Unit cost (excluding GST)</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;">[Insert description of item or model number]</td> <td style="padding: 5px;">[insert price]</td> </tr> <tr> <td style="padding: 5px;">[Insert description of item or model number]</td> <td style="padding: 5px;">[insert price]</td> </tr> <tr> <td style="text-align: right; padding: 5px;">Total Cost (excluding GST)</td> <td style="padding: 5px;">[insert total]</td> </tr> </tbody> </table>	Item / model / product number	Unit cost (excluding GST)	[Insert description of item or model number]	[insert price]	[Insert description of item or model number]	[insert price]	Total Cost (excluding GST)	[insert total]
Item / model / product number	Unit cost (excluding GST)								
[Insert description of item or model number]	[insert price]								
[Insert description of item or model number]	[insert price]								
Total Cost (excluding GST)	[insert total]								
	<p>OR</p> <p>Fixed Cost</p> <p>A fixed Cost of \$[] excluding GST. The calculation is based on [].</p>								
	<p>OR</p> <p>Variable Cost</p> <p>A variable Cost of \$[] excluding GST per [unit of measure]. The calculation is based on [].</p>								
Expenses	<p>[Choose one option, insert relevant details and delete remainder.]</p> <p>[If the currency is not NZD clearly state the agreed currency.]</p> <p>No Expenses are payable.</p> <p>OR</p> <p>Specific items and agreed cost per item - specified Expenses</p>								

	Item of Expense	Cost or rate (excluding GST)	Total max cost (excluding GST)
	e.g. freight/courier/insurance	[insert cost per item]	[insert total cost]
	e.g. packaging costs	[insert cost per item]	[insert total cost]
	e.g. storage	[insert cost per item]	[insert total cost]
	Total Expenses (excluding GST)		[insert total]
Exchange rate OPTIONAL Delete if n/a	<p>[Use this where you want to fix the exchange rate at time of letting the contract.]</p> <p>Where the Supplier is to be paid in a currency other than NZD the Parties agree that the following exchange rate shall apply when calculating the amount due.</p> <p>[insert one unit of foreign currency] = NZD [insert amount]</p>		
Invoices	<p>The Supplier must send Pan Pac an invoice at the following times:</p> <p>[Choose one option, insert relevant details and delete remainder.]</p> <p>[If the currency is not NZD clearly state the agreed currency.]</p> <p>On supply of the Equipment.</p> <p>OR</p> <p>At the end of the month, for Equipment delivered during that month.</p>		

Schedule 4

Equipment Specifications

Copy and Paste from final agreed specifications in detail

Description of Equipment

COPY AND PASTE FROM ANY RFQ/P DOCS

Context [optional]

[Describe the background to the purchase of the Equipment.]

[What are the overarching goals, objectives and outcomes you want to achieve?]

Description of Equipment

Provide a very brief description.

Performance Standards

Specific code of conduct / health & safety / legislative requirement/s [optional]

[Reference any specific code of conduct, health & safety or legislative requirement/s the Supplier must be aware of in supplying the Equipment. Attach a copy and/or provide a web address where the document/s can be located. e.g. All wiring to meet New Zealand Electrical standard AS/NZS 3000.]

Transfer of Records [optional]

[If appropriate – include details of the Records that the Supplier must transfer to Pan Pac during the term of the Contract, or at the end of the Contract. Make this a specific deliverable under the Contract.]

[Note to Pan Pac: Insert here any other items and requirements/deliverables that Supplier needs to satisfy/provide including:

- ***Programme of manufacture, fabrication, inspections, shipment, delivery, commissioning etc***
- ***Supply of design documents, as built and O&M Manuals***
- ***Monthly reports if required]***

Schedule 5

Performance Guarantee

Add a performance guarantee

1. Performance Specifications [add detail]
2. Performance Test Requirements (at the successful completion of the performance test an Acceptance Certificate will be issued by Pan Pac) [add detail]
3. Performance Bond Requirements (if required could be linked to final payment) [add detail]

Example

For the sole purpose of acceptance testing, a fourteen-day period without interruption to production caused by any fault in the equipment or mains connection of the equipment is required.

All documentation as listed in the quotation has been supplied to Pan Pac, including Commissioning Documentation, Safety Documentation and Certificates of Compliance.

Sign-off by Pan Pac Lumber Electrical Co-ordinator that all equipment has been supplied to Pan Pac specification as provided by Pan Pac in the document titled "Pan Pac Forest Products Ltd Lumber Division Electrical Standard Revision B".

[Note to Pan Pac - Specify LD's payable for not achieving performance guarantees if relevant – see clause 20 of Schedule 2]

Schedule 6 Spare Parts

Supplier Part Number	Description	Quantity	Price Each (NZ\$ excluding GST)	Total (NZ\$ excluding GST)
Total				\$

Note: NZD can be replaced with the relevant currency

Note to Supplier:

The Contract Price does not include the pricing for spare parts set out above. The above prices shall be fixed for a period of 24 months from the date of the Contract (“Options Period”). At any time during the Options Period, Pan Pac may at its sole discretion elect to place orders for the spare parts at the prices set out above and the Parties shall enter into a variation that reflects Pan Pac’s order, the pricing and delivery schedule for such option.

[Note to Pan Pac: Delete the above language if spares are to be ordered with the Equipment. In that case, the spares should also be described in detail in Schedule 4 Specifications]

Schedule 7

Delivery Schedule and Delay Damages

[PAN PAC TO COMPLETE TABLE BELOW BASED ON FINAL DELIVERY DATES AGREED WITH THE SUPPLIER]

1. The Supplier shall provide sequencing of the works, as required by Pan Pac, and maintain delivery of the Equipment in such a manner as to allow Pan Pac the ability to track and manage the Supplier’s performance under the Contract.

2. The Delivery Schedule shall be as follows:

No.	Milestones	Delivery Dates	Delay Damages payable (per week)
1		Enter Date (YYYY-MM-DD)	Enter 1% of Contract Price
2		Enter Date (YYYY-MM-DD)	Enter 1% of Contract Price
3		Enter Date (YYYY-MM-DD)	Enter 1% of Contract Price
4		Enter Date (YYYY-MM-DD)	Enter 1% of Contract Price