

**PURCHASE ORDER – GENERAL PURCHASING TERMS AND CONDITIONS (NEW ZEALAND)**

**1. INTERPRETATIONS AND GENERAL MATTERS**

**1.1 Definitions**

- 1.1.1 "Agreement" means these general Purchasing Terms and Conditions which will apply to all Purchase Orders issued to the Supplier.
- 1.1.2 "Background Supplier Material" means all Material owned by, or licensed to, the Supplier, that arose independently of this Agreement or any Purchase Order.
- 1.1.3 "Contract Material" means all Material developed by the Supplier for the purpose of providing the Goods and/or Services.
- 1.1.4 "Customer" means Transdev Wellington Limited (Company Number 5164521) or its related companies.
- 1.1.5 "day" means a calendar day.
- 1.1.6 "DDP" means, in relation to delivery of the Goods, Delivery Duty Paid (Incoterms 2010) and includes the responsibility (and associated costs) for packing, loading, transportation, delivery and insurance (for the full replacement value of the Goods) to the nominated delivery point for the Goods.
- 1.1.7 "Environment" means ecosystems and their constituent parts, including people and communities:
- (a) all natural and physical resources;
  - (b) the qualities and characteristics of locations, places and areas, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, harmony and sense of community; and
  - (c) the social, economic, aesthetic and cultural conditions that affect or are affected by things mentioned in paragraphs (a), (b) and (c).
- 1.1.8 "Force Majeure Event" means any occurrence as a direct result of which the party relying on it is prevented from or delayed in performing any of its obligations (other than a payment obligation) under this Agreement and that is beyond the reasonable control of that party, including forces of nature and action or inaction by a government agency and labour disputes not solely involving a party's personnel, but excluding actions or omissions of a subcontractor.
- 1.1.9 "Goods" means all goods, equipment, materials, articles, or any other property or parts to be provided to the Customer by the Supplier under the Purchase Order and includes, without limitation, all ancillary activities such as design, manufacture, inspection, testing, quality assurance and control, painting, packing and delivery as specified or required hereunder or by a Purchase Order.
- 1.1.10 "Intellectual Property Rights" means all rights in copyright, trade marks (including service marks), trade and service names, designs, circuit layouts, patents, inventions, discoveries and rights of confidence; and
- (d) all other rights or forms of protection of a similar nature or having similar or equivalent effect to any of them, whether under international convention or otherwise,
  - (e) that may subsist anywhere in the world, whether current or future or registered (including applications for any of the above) or unregistered.
- 1.1.11 "Losses" means all direct loss, damage, liability, cost or expense arising naturally from the performance or non performance (including any negligent or wilful act or omission), any breach or default of parties' obligations under this Agreement or any Purchase Order and includes any direct loss, damage, liability, cost or expense agreed to be paid by way of settlement or compromise.
- 1.1.12 "Material" includes any data, information and other documents (including electronic documents) and software.
- 1.1.13 "Prohibited Act" means:
- (a) offering, giving, authorising or agreeing to give any gift, commission, consideration or other benefit of any kind to, or at the direction of, any third party (including any government official, company or other person) as an improper inducement to make, or an improper reward for making, any decision favourable to the interests of either party to this Agreement;
  - (b) committing any offence under any applicable law, rule or regulation in any relevant jurisdiction creating offences in respect of fraudulent acts, prohibiting bribery and other forms of corruption; or
  - (c) defrauding or attempting to defraud or conspiring to defraud any third party including any governmental, administrative, regulatory or other official body.
- 1.1.14 "Purchase Order" means the purchase order and/or service order issued by the Customer to the Supplier as evidenced by the documents listed in the Purchase Order Form.

- 1.1.15 "Purchase Order Form" means the Purchase Order document to be completed by the Customer and issued to the Supplier, which identifies the Supplier and includes but is not limited to a brief description of the Services and/or Goods and a list of the documents comprising the Purchase Order.
- 1.1.16 "related company" has the meaning given in the *Companies Act 1993*.
- 1.1.17 "Supplier" means the person performing the Services and/or providing the Goods, as identified in the Purchase Order Form.
- 1.1.18 "Services" means the services as set out and further detailed in the Purchase Order Form.
- 1.1.19 "Warranty Period" means:
- (a) in relation to Services, the period commencing on the date of completion of the Services and lasting for a period of one (1) year thereafter unless otherwise agreed with the Customer in writing;
  - (b) in relation to Goods, the period commencing on the date of delivery and lasting for the greater of the warranty period offered by the original equipment manufacturer, or a period of one (1) year following delivery.

**1.2 Interpretations**

In this Agreement and each Purchase Order (unless the context otherwise requires):

- 1.2.1 Words importing the singular are deemed to include the plural and vice versa. Headings and subheadings are inserted for convenience only and must not be used to interpret the text. Words denoting a natural person shall include a corporation and vice versa.
- 1.2.2 Rights and remedies under this Agreement and any Purchase Order are in addition to rights or remedies available at law (including under statute).
- 1.2.3 All references to persons include their successors, transferees and permitted assignees.
- 1.2.4 A reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time.
- 1.2.5 Wherever "include" or any form of that word is used it must be construed as if it were followed by "(without being limited to)".
- 1.2.6 A reference to "\$" or "dollars" is a reference to New Zealand currency.

**1.3 Order of Precedence**

- 1.3.1 Unless otherwise stated, the order of precedence of any of the following documents listed in the Purchase Order Form, will be as follows:
- (a) the Purchase Order Form;
  - (b) this Agreement;
  - (c) Specification(s); and
  - (d) Drawing(s).

**1.4 Application of this Agreement to Transdev Entities**

- 1.4.1 This Agreement is intended to permit each related entity or subsidiary of the Customer to issue Purchase Orders to the Supplier in order to achieve the objective of consistent purchasing practices and common terms and conditions.
- 1.4.2 The Supplier acknowledges that, notwithstanding anything else in this Agreement and to the extent permitted by law, each related entity of the Customer is solely responsible to the Supplier for any Purchase Orders issued by that entity to the Supplier.
- 1.4.3 Neither the Customer nor any related entity will be liable for the acts or omissions of any other related entity of the Customer under or in connection with a Purchase Order, including for money owing to the Supplier.

**1.5 No exclusivity or volume commitment**

- 1.5.1 The Supplier acknowledges and agrees that:
- (a) it is not, and will not be, the exclusive contractor to the Customer for the performance of any or all of the Services and/or the supply of the Goods;
  - (b) the Customer is not under any obligation to issue to, or direct the Supplier to perform any minimum volume of Services or supply a minimum quantity of Goods under this Agreement;
  - (c) no representation has been made by the Customer as to the number, volume or value of Services or Goods that it may direct or require the Supplier to perform or supply under this Agreement or otherwise.
- 1.5.2 Where required by the Customer, this Agreement may be amended or replaced by an alternative agreement resulting from the Customer's procurement process (including request for tender). The Customer may require an amendment to this Agreement or a Purchase Order where the parties agree pricing arrangements (such as a price/parts list) or performance specifications to apply to this Agreement or a Purchase Order.

- 1.6 Ambiguities**
- 1.6.1 If the Supplier discovers any ambiguity in this Agreement or a Purchase Order it shall immediately notify the Customer in writing. The Customer will then determine the correct interpretation of this Agreement. The determination by the Customer will be final and binding on the Supplier and have no effect on the Purchase Order price.
- 1.7 Construction Contracts Act 2002**
- 1.7.1 If this Agreement or any Purchase Order is deemed to constitute a construction contract to which the *Construction Contracts Act 2002* applies then the Supplier must serve on the Customer a payment claim showing the estimated value of the Goods/Services completed by the last day of the month. Any such payment claim shall not constitute a tax invoice. The Customer will, within 20 Business Days from the last date for submission of the payment claim, provide a payment schedule to the Supplier. If the scheduled amount is less than the payment claim submitted the Customer will indicate the manner in which the scheduled amount was calculated and the reason for the difference. If the difference is because the Customer is withholding payment on any basis then the Customer will set out its reasons for withholding such payment. The payment schedule will not constitute a buyer created invoice. A tax invoice must be issued by the Supplier for the equal value of the payment schedule before payment will be made in accordance with the timeframes set out in this Agreement.
- 2. SUPPLIER OBLIGATIONS**
- 2.1 Supplier to Inform Itself**
- 2.1.1 The Supplier shall be deemed to have carefully examined all documents furnished by the Customer and fully satisfied itself regarding all the conditions, risks, contingencies and other circumstances which might affect the performance of the Services and/or the supply of the Goods. No increase in the Purchase Order price will be allowed for the Supplier's failure to ensure that it is fully informed regarding such circumstances.
- 2.2 Purchase Order Process**
- 2.2.1 The Customer may issue from time to time a written Purchase Order Form to the Supplier signed by an authorised representative of the Customer.
- 2.2.2 Upon receipt of an authorised Purchase Order Form, the Supplier will undertake the performance of the Services and/or supply of the Goods requested within the Purchase Order unless the Supplier notifies the Customer in writing within 24 hours from receipt of the Purchase Order Form that the Supplier is unable to perform the Services and/or supply the Goods.
- 2.3 Use of Documentation and Customer's Equipment**
- 2.3.1 Documents prepared in relation to, or ancillary to the Purchase Order, must not be copied or used for any other purpose than the performance of the Services and/or supply of the Goods by the Supplier to the Customer, without the prior written approval of the Customer.
- 2.3.2 The Customer may (at its discretion) provide access to the assets or equipment of the Customer for use by the Supplier. The Supplier must keep such assets or equipment safe and return them to the Customer in their original state on expiry or termination of the Purchase Order (fair wear and tear excepted), failing which the Supplier will pay the cost of repair or replacement (at the Customer's option).
- 2.4 Confidentiality**
- 2.4.1 The Supplier must not disclose any information about, or documentation provided by, the Customer to any other party without the prior written consent of the Customer. The obligations under this Clause shall be continuing obligations and shall survive the completion or termination of the Purchase Order for a period of five (5) years from the completion or termination of the Purchase Order.
- 2.4.2 Unless where required by law, the Supplier must not issue any information which includes details about this Agreement, the Services and/or the Goods and/or the Purchase Order, for publication in any news or communication media, without the prior written approval of the Customer.
- 2.5 Waiver**
- 2.5.1 No failure or delay on the part of the Customer in exercising any of its rights under this Agreement or a Purchase Order shall be construed as constituting a waiver of any such rights.
- 2.6 Subcontracting and Assignment**
- 2.6.1 The Supplier must not subcontract nor assign all or any part of the Purchase Order without the prior written approval of the Customer (in its absolute discretion). The Supplier must provide for the approval of the Customer full particulars of any work to be subcontracted together with details of the proposed subcontractor prior to entering into any subcontract.
- 2.6.2 Approval of the Customer to any subcontract will in no way relieve the Supplier of any of its obligations under the Purchase Order.
- 2.6.3 The Customer may assign this Agreement or a Purchase Order to any related entity or any successor operator of the Customer's relevant business activities.
- 2.7 Entire Agreement**
- 2.7.1 This Agreement and the Purchase Order constitutes the entire agreement between the Customer and the Supplier. The parties shall not be bound by or liable for any statement, representation, promise or understanding not set forth herein. Nothing contained in proposals, correspondence, discussions or negotiations prior to the date of the Purchase Order has any effect on the Purchase Order unless specifically incorporated herein.
- 2.7.2 Without limitation, no quotation or Supplier standard terms and conditions of supply shall form part of this Agreement or any Purchase Order unless otherwise agreed in writing by an authorised representative of the Customer.
- 2.8 Communications**
- 2.8.1 Any notice or other communication required under the Purchase Order shall be delivered in writing. Verbal instructions or directions from the Customer shall be confirmed in writing to the Supplier within a reasonable time. The notice shall take effect from the time when it is delivered to or received at the nominated address of the parties (being the address specified on the Purchase Order Form).
- 2.9 Licences and Laws**
- 2.9.1 The Supplier shall comply with all applicable laws, by-laws, ordinances, regulations, proclamations, reasonable directions received from the Customer, orders and rules and with the lawful requirements of public authorities and other authorities in any way related to the supply of the Goods and/or the performance of Services, including without limitation all occupational health and safety laws. No change in licenses or laws will affect the Purchase Order price.
- 3. PERFORMANCE AND QUALITY**
- 3.1 Materials and Workmanship**
- 3.1.1 All Services and/or Goods shall be fit for purpose. The Supplier must use new and undamaged materials, unless otherwise specified in the Purchase Order and the workmanship must be of a high quality and standard. The work must be carried out in accordance with good engineering practice and comply with all applicable New Zealand (or equivalent international) standards and/or other referenced codes, the requirements of the relevant statutory authorities and all applicable laws, including without limitation all statutory obligations in relation to occupational health and safety. Goods supplied must meet all applicable New Zealand (or equivalent international) standards and/or other referenced codes, the requirements of the relevant statutory authorities and all applicable laws, including without limitation all statutory obligations in relation to occupational health and safety.
- 3.1.2 Without prejudice to any other right or remedy the Customer may have, the Customer reserves the right to reject the whole or any part of the Goods if the Goods are not in conformity with the description in any Purchase Order or not in accordance with the drawings, specifications or designs which relate to such Goods. Any rejected Goods may be returned at the Supplier's cost, with any moneys paid by the Customer for such Goods being immediately repaid by the Supplier.
- 3.2 Supplier Qualifications and Personnel**
- 3.2.1 The Supplier represents and warrants to the Customer that it has the necessary skills, resources and experience and all applicable licences to successfully perform the Services (including the provision of any equipment necessary to perform the Services) and/or supply the Goods in accordance with the requirements of the Purchase Order. The Supplier must ensure that its personnel are fit for duty (including compliance with the Customers drug and alcohol and fatigue management policies) when performing Services in accordance with a Purchase Order.
- 3.2.2 The Supplier must promptly remove from the Customer's site any employee or agent of the Supplier (or employee of any subcontractor of the Supplier), performing the Services, as the Customer may in its sole discretion but acting reasonably designate. The Supplier hereby releases and forever discharges and holds harmless the Customer from any costs, claims, losses, and damages of any kind whatsoever, based on negligence, defamation, wrongful discharge/dismissal or otherwise, which the Supplier may suffer, sustain, pay or incur as the result of any such removal.

### 3.3 Reporting

- 3.3.1 The Supplier must attend, and must ensure that representatives of its subcontractors attend, any meetings specified in a Purchase Order or reasonably required by the Customer.
- 3.3.2 Upon request from the Customer, the Supplier shall provide within 7 days a report detailing the Goods and/or Services provided in the previous 12 month period to the Customer (showing which entity procured such Goods/Services and the value of such Goods/Services).
- 3.3.3 Upon request from the Customer, the Supplier shall provide within 7 days a report to the Customer outlining the progress against any project schedule or delivery schedule, any issues arising out of this Agreement or any Purchase Order, availability of the Goods (including any planned obsolescence issues or expected limited or no availability for future orders), any problems or outstanding issues identified in relation to the performance of the Supplier's obligations under this Agreement or a Purchase Order, and any other matters reasonably required by the Customer.

### 3.4 Testing and Inspection

- 3.4.1 The Goods and/or Services must be tested in accordance with the requirements of the Purchase Order, including any Specification. Unless otherwise stated in the Purchase Order, any tests and the costs thereof will be the responsibility of the Supplier. The results of tests shall be promptly supplied to the Customer in writing.
- 3.4.2 The Customer will have the right to inspect and monitor performance of the Services and/or the delivery of the Goods and the Supplier must give the Customer access to the Supplier's premises for such purpose during its normal working hours. The Services and/or Goods will not be accepted by the Customer until inspected and approved in writing by the Customer. Any inspection by the Customer will not relieve the Supplier from its obligations to comply with the requirements of this Agreement and any Purchase Order and will in no way impair the Customer's right to require subsequent correction or re-performance of non-conforming Services and/or Goods.

### 3.5 Quality Standards

- 3.5.1 The Supplier must comply with the standards of quality specified in this Agreement and any Purchase Order. If no standards are specified the Supplier must comply with the best practice industry standards applicable to the Services and/or Goods concerned.

### 3.6 Defects and Warranty

- 3.6.1 The Supplier warrants that the Goods:
- (a) unless otherwise agreed with the Customer, shall be new;
  - (b) are free from liens, charges, encumbrances, mortgages or other defects in title;
  - (c) are prepared or manufactured with due care and skill and using high quality materials, techniques and standards and in accordance with all applicable laws;
  - (d) are fit for the stated purpose or purposes reasonably inferred from this Agreement or the Purchase Order;
  - (e) comply in all material respects with the specifications or product description for the Goods published by the Supplier from time to time or otherwise agreed with the Customer and specified in the Purchase Order. If no specifications have been published or agreed, the Goods shall be of the best quality appropriate for their intended purpose.
- 3.6.2 The Supplier warrants that the Services shall:
- (a) be free from defects in design, materials and workmanship and shall be fit for the stated purpose or purposes reasonably inferred from this Agreement or the Purchase Order;
  - (b) conform to the conditions and specifications of the Purchase Order;
  - (c) conform to all applicable laws and regulations to which the Services are subject; and
  - (d) be performed in accordance with any performance standard specified in the Purchase Order (or included in related specifications or drawing agreed with the Customer).
- 3.6.3 The Supplier warrants that it will comply with any of the Customer's policies (including drug and alcohol policies) notified by the Customer to the Supplier from time to time, including without limitation any of the Customer's privacy or occupational health and safety policies.
- 3.6.4 The warranties noted in this clause 3.6 are in addition to any statutory warranties applicable to the Services and/or Goods.
- 3.6.5 During the Warranty Period, the Customer may give written notice to the Supplier of any failure or defect in the Services and/or Goods. The Supplier must without delay and at no cost to the Customer:
- (a) correct any defect in the Services covered by the warranty, by way of re-performance of the Services in a manner acceptable to the Customer; or

- (b) correct any defect or failure in the Goods covered by the warranty, by way of repair, replacement, modification or other means acceptable to the Customer.

- 3.6.6 If the Supplier fails to correct any defects and failures, of which it has been notified by the Customer, within the time specified in the notice (which must not be less than two (2) Business Days), the Customer will have the right to rectify the Services and/or Goods itself or have the rectification undertaken by a third party. All costs so incurred will be a debt due and payable by the Supplier to the Customer which may be deducted from moneys otherwise owing to the Supplier by the Customer.
- 3.6.7 Any Services re-performed or rectified and/or any Goods repaired under warranty may be subject to a further full Warranty Period, if required by the Customer, commencing on the date of completion of any such re-performance, rectification or repair.
- 3.6.8 Where the Supplier is not the original equipment manufacturer of the Goods, the Supplier must obtain for the Customer's benefit such standard warranties, indemnities and rights as those outlined in this Agreement and any Purchase Order and where more are offered, then the Supplier must provide such additional warranties, indemnities and rights to the Customer at no additional cost.
- 3.6.9 The Goods shall be at the Supplier's risk until delivery has been accepted by the Customer notwithstanding that payment may have already been made and title passed to the Customer.

## 4. DELIVERY/DELAY

- 4.1 Unless otherwise specified in the Purchase Order, Goods must be delivered DDP (adequately packaged and protected to ensure safe delivery) to the delivery point and by the delivery date(s) specified in the Purchase Order Form.
- 4.2 Customs invoices, bills of lading and shipping specifications, all in quadruplicate, which are to be properly completed and certified in accordance with New Zealand customs regulations are to be forwarded to the Customer (via registered airmail or couriered) on the day of shipment.
- 4.3 The Supplier will be required to comply with all occupational health and safety requirements of the Customer (including completion of site induction processes) prior to it, its agents or contractors delivering the Goods in accordance with this Agreement.
- 4.4 The Supplier will, at all material times, comply with the *Health and Safety in Employment Act 1992*. The Supplier will provide evidence of such compliance to the Customer upon request including a Hazard (as that term is defined in the Act) identification schedule and emergency action plan (where relevant to the Goods/Services).
- 4.5 Title in the Goods will transfer to the Customer upon receipt of the Goods. Such receipt is not, and will not be deemed to be, an acknowledgement of the acceptability of the Goods. Notwithstanding that the Customer has taken delivery of the Goods, the Supplier will remain responsible for any defect, loss or damage to the Goods, which may have occurred prior to delivery, and for any non-compliance of the Goods with the requirements of this Agreement and any Purchase Order.
- 4.6 The Supplier must take all reasonable steps to minimise or prevent any delay in the performance of the Services or the delivery of the Goods. The Customer may grant an extension of time to the nominated delivery date provided or in the performance of the Services provided:
- (a) the delay is caused by any breach or act of prevention by the Customer, (without fault of the Supplier); and
  - (b) the Supplier has notified the Customer in writing within seven (7) days of the delay occurring (or such other time as may be specified in the Purchase Order) of its claim for an extension of time. The Customer shall not be liable for any extension of time claim that is not lodged in writing with the Customer within seven (7) days of the delay occurring.
- 4.7 The Customer may in its absolute discretion (and with no obligation to do so) extend the time for performance or delivery for any other reason at any time.
- 4.8 If the Supplier fails to perform the Services in a timely fashion or fails to deliver the Goods by the specified delivery date(s) (except where the Supplier is granted an extension of time in accordance with this Agreement), the Customer may:
- (a) terminate the Purchase Order either in whole or in part for default, in accordance with the provisions of clause 6.2; or
  - (b) claim from the Supplier liquidated damages and the Supplier will be immediately liable to pay the Customer such liquidated damages at the applicable rate specified in the Purchase Order (and if no such rate is specified, 0.5% of the Purchase Order price per day for each day of delay beyond the stated delivery date

detailed within the Purchase Order Form). The Supplier will not be liable for liquidated damages to the extent that the delay is due to a breach of this Agreement or a Purchase Order by the Customer or due to a suspension of the Services at the request of the Customer; and

- (c) the parties agree (which is acknowledged by the acceptance by the Supplier of the Purchase Order) that the amount of liquidated damages referred to this Agreement and any Purchase Order constitutes a reasonable and good faith pre-estimate of the anticipated or actual loss or damage that will be incurred by the Customer as a result of the Supplier's failure to complete a Purchase Order by the delivery dates required by such Purchase Order and are reasonable and do not constitute and are not intended to be a penalty.

## 5. VARIATIONS

- 5.1 The Customer may vary the work under the Purchase Order or any condition thereof and the Supplier must carry out any such variation as directed by the Customer in writing. In the event of any such variation, the Supplier's price (addition or reduction) will be varied together with the delivery date(s) for the Services and/or Goods. Any variation to the price will be consistent with prices charged by the Supplier in accordance with the Purchase Order. If agreement cannot be reached in relation to a revised price or delivery date(s), the parties will seek to resolve the dispute in accordance with clause 10.
- 5.2 The Supplier must not vary the work under the Purchase Order or any condition thereof, without the prior written consent of the Customer which must specifically refer to the variation to this Agreement or a Purchase Order.

## 6. SUSPENSION/TERMINATION

### 6.1 Suspension

- 6.1.1 The Customer may, at any time by written notice, suspend all or part of the Purchase Order for any reason whatsoever. Upon receipt of a notice of suspension, the Supplier will cease work in accordance with the directions of the notice. The Supplier must recommence the work under the Purchase Order within forty eight (48) hours of being directed to do so by the Customer.

### 6.2 Termination by Default

- 6.2.1 Without limiting any other rights it may have, a party (the "notifying party") may give a written notice stating its intention to terminate this Agreement or Purchase Order pursuant to this clause 6.2 to the other party (the "defaulting party") in the event that the defaulting party:
- (a) abandons or repudiates the Purchase Order;
  - (b) suspends performance of this Agreement or a Purchase Order for a significant time, or fails to pay monies due under the Purchase Order, without reasonable cause;
  - (c) breaches any of the terms and conditions of this Agreement or a Purchase Order which is not remedied within seven (7) days of notice to do so; or
  - (d) appears likely to become subject to an Insolvency Event described in clause 6.3.

### 6.3 Termination for Insolvency

- 6.3.1 If either party becomes bankrupt or insolvent or makes any agreement with its creditors compounding debts or if, being an incorporated entity, any proceedings are begun in respect of it applying for the appointment of a liquidator, administrator, receiver or similar official for it or all or any substantial part of its assets or seeking an order of relief against it as debtor or under any law relating to insolvency, readjustment of debt, reorganisation, administration or liquidation (each such event or process referred to in this Agreement as an "Insolvency Event"), the other party may at any time by written notice terminate this Agreement forthwith.

### 6.4 Termination at Customer's Convenience

- 6.4.1 Notwithstanding any other provisions of this Agreement or a Purchase Order, the Customer may terminate the Purchase Order by giving seven (7) days written notice to the Supplier.

### 6.5 Supplier's Rights and Obligations on Suspension /Termination

- 6.5.1 In the event of suspension of the Purchase Order, the Supplier will not be entitled to payment by the Customer for any costs it may incur as a result of any such suspension.
- 6.5.2 In the event of insolvency of the Supplier or its default under clause 6.2, the Customer shall be entitled to immediately suspend any further payment to the Supplier. Any additional monies required by the Supplier to complete the Purchase Order in excess of what the Customer would have paid under the Purchase Order shall be a debt due and payable by the Supplier to the Customer.

- 6.5.3 In the event of termination by the Customer under clause 6.4, and provided the Supplier is not in default, the Customer shall pay the Supplier for work carried out prior to termination and all direct costs incurred and associated directly with the cancellation of any orders placed by the Customer prior to termination. The Customer shall not otherwise be liable for any other costs, losses, damages or expenses of any kind whatsoever of the Supplier in respect of the termination (including any loss or revenue or profit).

## 6.6 Force Majeure Events

- 6.6.1 Neither party will be liable for any delay or failure to perform its obligations pursuant to this Agreement to the extent such delay or failure is directly due to a Force Majeure Event.
- 6.6.2 If a party is affected by a Force Majeure Event, it must promptly notify the other party providing full details of the Force Majeure Event, its likely duration and impact on the affected party's performance under this Agreement and/or Purchase Orders and its plans or proposals for overcoming or minimising the impact of the Force Majeure Event on its performance.
- 6.6.3 If a delay or failure of a party to perform any of its obligations is directly due to a Force Majeure Event, the performance by that party of those obligations will be suspended during the period in which the party is actually delayed or prevented from performing due to the Force Majeure Event.
- 6.6.4 If the performance of either party is delayed by a Force Majeure Event longer than three (3) months, either party may terminate this Agreement by providing written notice to the other party.

## 7. PRICE AND PAYMENT

- 7.1 Unless otherwise stated in the Purchase Order, prices shall be fixed and not subject to any variation, including but not limited to variations in the cost of labour, materials or exchange rates.
- 7.2 The Supplier shall be responsible for the payment of all relevant New Zealand and overseas taxes, goods and services taxes, PAYG taxes applicable to the Supplier, duties and charges payable with respect to the Goods and/or Services. The Purchase Order price will be deemed to be inclusive of all such taxes, duties and charges.
- 7.3 Unless otherwise specified in the Purchase Order, invoices for payment must be submitted to the Customer for payment following delivery and acceptance by the Customer of the Goods or following performance of the Services, and payment of the approved amount will be made by the Customer no later than thirty (30) days from the end of month during which the invoice was received.
- 7.4 All claims for payment made by the Supplier must specify:
- (a) the purchase order number to which the invoice relates;
  - (b) the Goods (including quantity and description) which have been delivered and accepted by the Customer or description of the Services which have been completed;
  - (c) provide evidence of the amount due to the Supplier;
  - (d) attach a statutory declaration in the relevant form required by the Customer (if requested) confirming payment of employees and subcontractors; and
  - (e) include such other information as the Customer may reasonably require.
- 7.5 Where an invoice submitted by the Supplier relates to two or more Purchase Orders, the Supplier shall provide the information required by this clause 7 for each separate Purchase Order on such invoice.
- 7.6 Without limiting the Customer's rights under any other provision of this Agreement, any debt due under this Agreement or a Purchase Order from the Supplier to the Customer may be deducted by the Customer from any moneys which may be or subsequently become payable to the Supplier by the Customer.
- 7.7 To the extent that any Taxable Supply occurs under the Purchase Order then:
- (a) the party who is the supplier will, be entitled to increase the consideration for the Taxable Supply identified in the Purchase Order ("net consideration") by the amount of any applicable GST calculated in accordance with the Act;
  - (b) the recipient shall pay such increased consideration;
  - (c) the supplier must in a situation such as described in clause 7.7, issue to the recipient at the time of claiming payment a valid tax invoice (in accordance with Act) for the purpose of obtaining an input tax credit for any GST so paid;
  - (d) in clauses 7.7(a) and (b), "Act" means *Goods and Services Tax Act 1985* and its associated legislation and regulations, "GST" means the goods and services tax imposed by the Act and "Taxable Supply" means a taxable supply under the Act.

**8. RELATIONSHIP**

8.1 In relation to the performance of Services, the Supplier will provide the Services as an independent contractor and nothing in the Purchase Order will be construed so as to constitute the Supplier as an employee of the Customer or constitute a partnership between the parties or so as to constitute either party as the agent or legal representative of the other party.

**9. INTELLECTUAL PROPERTY**

9.1 The Supplier assigns to the Customer all Intellectual Property Rights in all Contract Material on creation other than in respect of Intellectual Property owned by third parties. This does not prevent the Supplier from using the Contract Material to provide the Goods and/or Services. This use is on a non-exclusive, non-transferable, royalty-free basis for the term of the Purchase Order and does not allow any further distribution or exploitation by the Supplier unless the Customer agrees otherwise.

9.2 The Supplier grants the Customer a perpetual, irrevocable, non-exclusive, royalty-free licence to use, copy, modify and create derivative works from all Background Supplier Material incorporated into the Contract Material for the purpose of exercising its rights in relation to the Contract Material.

9.3 Where the Contract Material or Background Supplier Material contains Intellectual Property owned by, or licensed from, a third party, the Supplier will obtain the best available commercial terms from such third party to permit the Customer to exercise its rights in a manner consistent with this Agreement

9.4 The Supplier shall indemnify the Customer against all damages and costs awarded against the Customer for infringement of any Intellectual Property Rights granted or registered at the date of Purchase Order in the country of destination of the goods or services specified in the Purchase Order (or, if none be specified, in New Zealand) and resulting from the use, sale or supply of the Goods or Services but this indemnity shall not apply to any infringement which is due to the association or combination of the Goods with any other article, apparatus or device or to any goods or parts thereof made to designs supplied by the Customer.

9.5 The indemnity in clause 9.3 is conditional on the Customer giving the Supplier prompt written notice of any claim for infringement and consulting with the Supplier prior to settling or compromising any such claim.

**10. DISPUTES**

10.1 Disputes or differences arising between the Customer and the Supplier must be settled quickly and by negotiation.

10.2 In the event of any unresolved dispute between the Customer and the Supplier, the Supplier must ensure that the progress of the work under this Agreement and the Purchase Order is continued without any effect on the specified delivery dates.

10.3 The preferred method of determination of unresolved disputes will be by amicable agreement at the senior management level of the Customer and the Supplier.

10.4 If the parties cannot resolve a dispute within 21 days the dispute is first raised in writing between the parties, the parties agree that the dispute must then be referred to mediation by a single mediator appointed by the President of the Auckland District Law Society. The dispute must be heard within thirty (30) days after it is referred.

10.5 Neither party may litigate until the procedures in clauses 10.1 to 10.4 above have first been complied with.

**11. INSURANCE AND INDEMNITIES**

11.1 The Supplier must maintain the insurances specified below from the commencement of this Agreement until no less than seven (7) years after the completion of the delivery of the Goods and/or Services in each Purchase Order issued pursuant to this Agreement the Supplier must:

- (a) maintain Public and Product Liability insurance for an amount of not less than \$10,000,000, Professional Indemnity Insurance for an amount of not less than \$5,000,000 (where the Purchase Order involves the provision of Services) and where applicable Goods in Transit/Marine Cargo insurance (for the total replacement value of the Goods);
- (b) maintain worker's compensation insurance to the statutory limit;
- (c) not reduce the level of insurance required by this Agreement without the written consent of the Customer; and
- (d) give evidence of the insurances, and their currency, acceptable to the Customer on request.

11.2 The Supplier indemnifies the Customer in respect of all Losses arising out of the Supplier's performance or non performance (including any negligent or wilful act or omission), or any breach or default of its obligations under this Agreement to an amount equal to the amounts paid or payable by the Customer to the Supplier during the previous 12 month period, except for:

- (a) liability which is offset by insurance proceeds recoverable by the Supplier under a policy of insurance maintained by the Supplier; or
- (b) Losses arising from personal injury or death (including disease or illness), third party property damage, breach of a third party's Intellectual Property Rights, breach of confidence and Loss arising from fraud or unlawful act where no limitation applies.

11.3 The Supplier must comply with all requirements of Law and this Agreement for protection of the Environment. The Supplier indemnifies the Customer for all Losses arising from damage to the Environment caused by the Supplier arising from, or in connection with, this Agreement

**12. APPLICABLE LAW**

12.1 Unless otherwise specified, the Purchase Order will be governed and construed in accordance with the laws in New Zealand. The Customer and the Supplier submit to the non-exclusive jurisdiction of the courts of New Zealand.

12.2 The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Purchase Order.

12.3 The Customer and the Supplier agree to conduct themselves (including under this Agreement and all Purchase Orders as the case may be) in accordance with high ethical standards and in compliance with all applicable laws, including without limitation local and international laws prohibiting bribery and other forms of corruption. Each party warrants neither it nor any of its officers, employees, directors or agents has in relation to this Agreement committed or will in performing its obligations under this Agreement, commit any Prohibited Act.

12.4 Clauses 9, 10, 11, and 12 survive the termination or expiry of this Agreement and all Purchase Orders as do any other provisions that by implication from their nature are intended to survive the termination or expiry, and any rights and remedies accrued prior to termination.

12.5 All written documents to be supplied by the Supplier and all communications between the parties will be in the English language.

12.6 This Agreement may only be varied, supplemented or replaced by a document executed by the parties.

12.7 All terms and conditions of this Agreement are incorporated into and govern each Purchase Order except where expressly agreed in writing by an authorised representative of the Customer.

Executed by: .....
Co No.....
Date: .....
Signature of Authorized Representative: .....
Full Name of Authorized Representative: .....