

# Purchase Order Standard Terms and Conditions

## 1. Definitions

- 1.1. "Agreement" means these standard terms and conditions.
- 1.2. "AT" means Auckland Transport.
- 1.3. "AT Contract" means any separate contract entered into by AT and the Supplier for the purchase of Deliverables as referenced in the Purchase Order.
- 1.4. "Deliverables" means the Goods and/or Services to be supplied by the Supplier to AT as identified in the Purchase Order.
- 1.5. "Delivery" means in the case of Goods, the delivery of the Goods in good order and condition at AT's premises or such other location specified in the Purchase Order, and in the case of Services, means the provision of the Services to AT's satisfaction at AT's premises or such other location specified in the Purchase Order.
- 1.6. "Goods" means all goods, materials, equipment, parts and any other ancillary activity provided by the Supplier to AT identified in the Purchase Order.
- 1.7. "GST" means the goods and services tax in terms of the Goods and Services Tax Act 1985, at the rate prevailing from time to time.
- 1.8. "Purchase Order" means the Purchase Order submitted by AT to the Supplier to purchase Deliverables.
- 1.9. "Services" means all the services provided by the Supplier to AT identified in the Purchase Order.
- 1.10. "Supplier" means the person supplying the Goods or performing the Services as identified in the Purchase Order.
- 1.11. "Worker" means any person who carries out work for the Supplier in any capacity, including work as an employee, contractor or subcontractor, an employee of a contractor or subcontractor, or a volunteer. It also includes anyone else directed or influenced by the Supplier in the exercise of their work.
- 1.12. "Working Days" means any day other than a Saturday, Sunday or a Public Holiday (as that term is defined in the Holiday Act 2003) in Auckland, and/or any day in the period commencing on the 21<sup>st</sup> day of December in any year and ending on the 7<sup>th</sup> day of January in the following year.

## 2. Entire Agreement

- 2.1. The AT Contract (if any), the Purchase Order, and these terms and conditions, comprises the entire agreement between AT and the Supplier and supersedes all prior agreements, undertakings, representations, warranties or arrangements.

## 3. Precedence of Documents

- 3.1. Unless otherwise stated, in the event of inconsistency the order of precedence of the following documents shall apply:
  - a). the AT Contract, if any;
  - b). the Purchase Order;
  - c). these terms and conditions; and
  - d). any other attached drawings or documents.
- 3.2. The Purchase Order, and/or AT Contract (if any) take precedence over the provisions of any terms of supply or sale of the Supplier.

## 4. Alterations/Variations

- 4.1. Alterations or variations to the Purchase Order, these terms and conditions or any other attached drawings or documents shall not be legally binding upon AT or the Supplier unless agreed in writing by the parties.

## 5. Price and Payment

### 5.1. Price

- a). The price of the Deliverables shall be specified in the Purchase Order and cannot be varied without written agreement of AT and the Supplier.
- b). Unless otherwise stated in the Purchase Order, the price is fixed and not subject to variation and includes all expenses incurred by the Supplier in relation to provision of the Deliverables.
- c). The price is exclusive of any applicable GST. The parties expressly acknowledge to each other that they are registered for GST purposes where required.

### 5.2. Payment

- a). Payment terms are stated on the Purchase Order.
- b). Subject to this clause 5.2, payment will be made after the receipt of a Supplier's correctly rendered tax invoice by AT, and the receipt and acceptance of the Deliverables by AT.
- c). A correctly rendered invoice that is a valid tax invoice for GST purposes must include, as a minimum, the Purchase Order number and any other information necessary to enable AT to identify the Deliverables subject to the invoice.
- d). AT reserves the right to return to the Supplier any invoices not deemed by AT to be correctly rendered and retains the right to set off any moneys payable to the Supplier against any sums owed by the Supplier to AT.
- e). If AT disputes an amount in an invoice, the amount disputed will not become due and payable by AT until the dispute is resolved. AT may suspend payment in the event that the Supplier is in breach of its obligations.

## 6. Supply of Goods

- 6.1. When Goods are being supplied by the Supplier as part of the Services the Supplier must:
  - a). ensure that the Goods are without risks to the health and safety of those persons who will install, use, maintain, or repair them, or who may at any time be in the vicinity of and exposed to the Goods.
  - b). carry out any necessary analysis, testing, calculations, or examination to verify the safety and suitability of the Goods being supplied.
  - c). provide AT with all relevant information regarding the purpose for which the Goods were manufactured, the results of any testing or examination, and any conditions necessary to ensure that the Goods are without risks to health and safety.

## 7. Packaging and Preservation

- 7.1. All Goods supplied by the Supplier shall be packed as specified in the Purchase Order and if not specified shall be packed so as to avoid damage or deterioration to the Goods during transportation, loading and unloading.
- 7.2. Except as agreed in writing by AT, all Goods supplied by the Supplier shall comply with all manufacturers' specifications.

## 8. Inspection and Testing

- 8.1. AT is entitled to expedite, inspect and witness tests on the Goods at the Supplier's and any subcontractor's premises.
- 8.2. The Supplier must allow AT access at any time to the Supplier's and any subcontractor's premises for this purpose. The Supplier must make this a condition of any subcontract.

## 9. Delivery, Risk and Title

- 9.1. The Supplier is responsible for the Delivery and all costs (including insurance) associated with the Delivery of the Deliverables. On Delivery, all Goods must be clearly marked or identified as the property of AT.
- 9.2. Subject to AT's right to reject or return any Goods, title to and property in the Goods free from any encumbrances or security interests immediately passes to AT on the earlier of payment in accordance with clause 5.2 and Delivery.
- 9.3. Risk in the Goods remains with the Supplier until Delivery to AT.

## 10. Delays

- 10.1. Time is of the essence in the Supplier's performance under the Purchase Order. If it ever appears that the provision of Deliverables will not be met within the time specified in the Purchase Order, the Supplier must immediately notify AT of any anticipated delay, with complete information regarding the cause and the earliest possible delivery date. In such event, AT may (without prejudice to any other rights) do whatever is necessary to expedite the provision of the Deliverables at the Supplier's expense, including terminating the Purchase Order (without compensation to the Supplier).

## 11. Co-ordination of Services

- 11.1. In undertaking the Services the Supplier will consult, cooperate and coordinate activities with AT and any other relevant party to ensure that the Supplier and AT understand the nature of the Services, the risks arising from the Services, and the controls to be implemented to mitigate those risks, and to provide ongoing verification that the risks are being controlled and the Services are being performed in accordance with this Agreement.

## 12. Warranty

- 12.1. The Supplier warrants (as a continuing representation and warranty) that the Deliverables:
  - a). will be complete and free from any defect, whether through faulty design, or inferior workmanship;
  - b). are suitable and fit for the purpose intended;
  - c). in respect of Services, that they will be executed in a timely fashion using all due care and skill to be expected of a reputable Supplier in the relevant industry or sector; and
  - d). conform to the Purchase Order requirements and any specifications and all applicable laws and regulations. The Supplier further warrants that the Goods are new and are of merchantable quality or such quality as specified in the Purchase Order.
- 12.2. These warranties are in addition to any statutory warranties applicable to the Deliverables.
- 12.3. If any part or aspect of the Goods fail or becomes defective within 12 months from the date the Goods were Delivered to AT, the Supplier must without delay and at no cost to AT do all things necessary to remedy the defect or failure in the Goods. This can be by way of replacement, modification, repair or other means acceptable to AT. If the Supplier does not do so, within a reasonable period following notice of the defect from AT, then AT will have the right to remedy the defect and recover costs so incurred (including any professional fees) from the Supplier.
- 12.4. If, during the term of the Purchase Order, and a further term of 12 months following completion of Services, AT is of the view that the Services do not comply with the requirements of the Purchase Order then AT may require the Supplier to re-perform the Services at the Supplier's cost within such time as AT reasonably may request.

## 13. Liability and Indemnity

- 13.1. The Supplier must fully indemnify, and keep indemnified, AT and its officers, employees, contractors and agents against all claims, demands, proceedings, liabilities, costs, charges and expenses, whether direct or indirect, suffered by AT or its officers, employees contractors and agents arising from any act, omission, neglect or fault (including any negligence) of the Supplier, its officers, employees contractors and agents related to its obligations under this Agreement.
- 13.2. Except for liability arising under clause 13.1, the Supplier's liability under this Agreement, whether in contract, tort or otherwise, in relation to claims, damages, liabilities, losses or expenses, shall be limited to five times the price paid or payable under this Agreement (exclusive of GST and disbursements) with a minimum limit of \$25,000.
- 13.3. AT will not be liable to the Supplier for any indirect or consequential loss or damage suffered by the Supplier as a result of any breach by AT of its obligations under the Purchase Order.
- 13.4. AT's liability to the Supplier arising under the Purchase Order, is limited to the price payable for the Deliverables.

## 14. Insurances

- 14.1. In relation to Services, the Supplier shall take out and maintain with a New Zealand insurer of good repute:
  - a). comprehensive public liability insurance with a limit of not less than \$2,000,000 per claim;
  - b). insurance covering the Suppliers own property, equipment, materials owned, hired leased or used by the Supplier for the purpose of this Purchase Order;
  - c). statutory liability insurance cover with a limit of not less than \$2,000,000 per claim; and
  - d). any additional insurance required by any applicable law.
- 14.2. In relation to professional Services, in addition to clause 14.1 above, the Supplier shall hold and maintain with a reputable insurer professional indemnity insurance with a limit of not less than the limit of liability under clause 13.2.
- 14.3. In relation to Goods, the Supplier shall take out and maintain any policies of insurance specified in the Purchase Order or required by law.

- 14.4. Supplier will at the request of AT provide copies of all certificates of currency in respect of the insurances required to be taken out by Supplier under this clause 14.
- 15. Force Majeure**
- 15.1. Neither AT nor the Supplier shall be liable to the other for default or delay in performing its obligations in respect of the Purchase Order caused by any occurrence beyond its reasonable control including, without limitation, fire, strike (except where it involves a party's own labour force), disturbance, riot, war, act of god and government order or regulation, provided that the party affected by such occurrence notifies the other party in writing within five (5) Working Days of the commencement of that occurrence. When the party ceases to be affected by the force majeure event it must immediately recommence performing its obligations under the Purchase Order and notify the other party accordingly. However, if as a result of any such force majeure event, supply of all or part of the Deliverables is delayed more than thirty (30) days after the Delivery date specified in the Purchase Order AT may, without penalty and compensation to the Supplier, cancel the Purchase Order.
- 16. Disputes**
- 16.1. AT and the Supplier shall attempt to quickly and amicably settle any disputes or differences that may arise. In the event that any such disputes or differences cannot be negotiated and amicably resolved between the parties within fifteen (15) Working Days after the dispute was first raised, then either party may refer it for final determination by the courts.
- 16.2. In the event of and during any unresolved dispute the Supplier must ensure the continued progress of achieving the Deliverables.
- 17. Termination**
- 17.1. If Goods are standard or stock items (or have been offered by the Supplier as such) AT can, by notice to the Supplier, at any time up to Delivery cancel the commitment to buy them. Any other commitment of AT to receive and pay for Deliverables that are not standard or stock items may be cancelled by AT and in such instances AT will reimburse the Supplier for all reasonable irrecoverable costs directly incurred by the Supplier up to the point of cancellation.
- 17.2. AT may suspend performance of, or cancel, or suspend and then at any subsequent time cancel, the Purchase Order without any liability to the Supplier if the Supplier breaches the terms of the Purchase Order, or if the Supplier's business fails. The Supplier's business will be treated for this purpose as having failed if:
- the Supplier makes any voluntary arrangement with its creditors;
  - (being an individual or firm) Supplier become bankrupt;
  - (being a company) Supplier becomes subject to an administration order or goes into liquidation;
  - any third party takes possession of, or enforces rights over, any of the Supplier's property or assets under any form of security;
  - the Supplier stops or threatens to stop carrying on business;
  - the Supplier suffers any process equivalent to any of these, in any jurisdiction; or
  - AT reasonably believes that any of the events mentioned above is likely to occur and AT notifies the Supplier accordingly.
- 17.3. A party (affected party) may immediately terminate this Agreement where the other party breaches any material obligation, term or condition of this Purchase Order and fails to remedy that default within ten (10) Working Days of receiving a notice (from the affected party) requesting it remedy the breach.
- 17.4. Any right of cancellation or suspension under this section is additional to any rights available to AT under the law of any relevant jurisdiction.
- 18. Confidentiality**
- 18.1. Any information provided by AT to the Supplier which is marked as confidential, or the Supplier ought reasonably to know is confidential, must not be disclosed to any third party by the Supplier without the prior written consent of AT or used by the Supplier other than for the purpose of satisfying the Supplier's obligations under the Purchase Order. The parties agree that this obligation shall survive termination or expiration of the Purchase Order.
- 19. Intellectual Property**
- 19.1. AT and the Supplier agree that all intellectual property rights owned by either party and existing prior to commencement of the supply of the Deliverables will remain the exclusive property of that party.
- 19.2. The Supplier agrees that all intellectual property rights created by the Supplier or its employees, subcontractors or agents in the course of supplying the Deliverables will be the exclusive property of AT.
- 19.3. The Supplier grants to AT, or agrees to procure the grant to AT of, an unrestricted royalty-free licence to use and copy pre-existing intellectual property to the extent reasonably required to enable AT to use the Deliverables.
- 19.4. AT grants to the Supplier, an unrestricted royalty-free licence to use and copy AT's intellectual property provided to the Supplier to the extent reasonably required to enable the Supplier to provide the Deliverables.
- 20. Branding**
- 20.1. The Supplier will not use any AT trade mark, service mark, logo or other brand identifier (each an AT brand) without the prior written approval of AT.
- 20.2. The Supplier will, if required by AT, use AT brands in any signage, correspondence or other documentation relating to the Deliverables. Any use of an AT brand will be for the purposes of the Purchase Order Deliverables only, and is to be in accordance with the branding requirements notified by AT to the Supplier or as otherwise available on AT's website.
- 21. Records, Provision of Information, and Reporting**
- 21.1. The Supplier must keep full records and documentation in relation to the Goods and Services and this Agreement and comply with any directions, instructions or policies relating to records provided by AT. On request by AT, the Supplier must immediately provide to AT all documents and records relating to the Goods and Services and this Agreement within the Supplier's possession or control.
- 21.2. The Supplier agrees to immediately pass on any request for information that it receives from a regulator or third party (including requests under the Local Government Official Information and Meetings Act 1987 or the Health and Safety in Employment Act 1992 (or any amending legislation i.e. the Health and Safety at Work Act 2015)) to AT for instruction and/or action.
- 21.3. The Supplier will immediately notify AT of any accident, injury or illness, near miss, or exposure the Supplier becomes aware of in the course of providing the Services and provide AT with such assistance as AT may require to conduct an investigation into any such incident (including, without limitation, using reasonable endeavours to procure all Workers to provide any information requested by AT).
- 21.4. The Supplier will immediately notify AT of any visits or inspections by WorkSafe New Zealand in relation to the activities of the Supplier, its Workers, or conditions at any workplace where Services have been, are, or will be undertaken. The Supplier must provide details (and copies of any relevant documentation) to AT in respect of any engagement with WorkSafe New Zealand as a consequence of a visit or inspection.
- 21.5. The Supplier shall provide regular reports on the performance of the Services and its other obligations under this Agreement, as reasonably required by AT. This will include health and safety reporting via the Auckland Transport Health, Safety and Wellbeing Management System (HSWMS), the frequency and level of detail required to be specified by AT. Such reporting must provide a true and accurate report of the preceding period's health and safety activities. The Supplier shall also report all incidents in accordance with the Auckland Transport Incident reporting, recording and management procedure as listed under <https://at.govt.nz/health-safety>
- 22. Waiver**
- 22.1. No failure or delay on the part of AT in exercising any of its rights under the Purchase Order shall be construed as constituting a waiver of any such rights.
- 23. Governing Law**
- 23.1. Unless otherwise specified, the Purchase Order will be governed and construed in accordance with the law of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
- 24. Subcontracting and Assignment**
- 24.1. The Supplier is not permitted to assign or subcontract all or any part of its obligations under the Purchase Order without the prior written consent of AT.
- 24.2. Any sub-contractor engaged by the Supplier shall be obliged by the Supplier to comply with the terms of this Agreement as if the subcontractor was a party to it. The Supplier shall be liable to AT for the acts, defaults, and negligence of such subcontractor in providing the Goods or Services as fully as if they were the acts, defaults or negligence of the Supplier.
- 24.3. If the Supplier engages any subcontractor the Supplier shall arrange for AT, the Supplier and the subcontractor to consult, cooperate and coordinate activities in the provision of Services by the subcontractor to ensure that the Supplier, the subcontractor, and AT understand the nature of the Services, the risks arising from the Services, and the controls to be implemented to control and mitigate those risks, and to provide ongoing verification that the risks are being controlled and the Services are being performed in accordance with this Agreement.
- 25. Compliance with Laws**
- 25.1. When undertaking any activity pursuant to or for the purposes of providing the Deliverables under this Agreement the Supplier will ensure that it and its Workers at all times comply with:
- all applicable legislation and regulations in force including, but not limited to, the Health and Safety in Employment Act 1992 (including any replacement legislation (e.g. the Health and Safety at Work Act)), the Hazardous Substances and New Organisms Act 1996, the Resource Management Act 1991, the Building Act 2004, and the Human Rights Act 1993; and
  - all relevant Approved Codes of Practice, New Zealand Standards and guidance material, and/or other international standards and guidance material regarding good practice requirements for dealing with Goods and/or providing the Services.
- 25.2. When providing the Services, the Supplier must comply, and ensure that its Workers comply, with AT's Health and Safety Management Policy Statement and all related policies, standards, guidelines and procedures, and all reasonable directions given by AT (to the extent to which such directions are not contrary to any express provision of this Agreement).
- 25.3. If, at any time, an issue is raised by AT regarding health and safety the Supplier shall take all reasonable practicable steps to rectify the situation so far as practicable.
- 25.4. Where applicable health and safety legislation or the Supplier's own health and safety policies establish a lower standard than the requirements prescribed by AT, the Supplier shall comply with the latter.
- 26. GST**
- 26.1. All monetary amounts in the Purchase Order are stated exclusive of GST and in New Zealand dollars, unless provided otherwise.
- 27. Non-exclusivity**
- 27.1. The Purchase Order, or these terms and conditions, do not confer on the Supplier any right to be a sole or exclusive supplier of the Deliverables to AT.
- 28. Independent Contractor**
- 28.1. The Supplier is an independent contractor and must exercise independent control, management and supervision in the performance of the Purchase Order. The Supplier is not AT's agent, partner or employee. The Suppliers' personnel will not under any circumstances be considered employees of AT for any purpose.
- 28.2. The Supplier acknowledges that where AT acquires Deliverables as a consumer (as that term is defined in the Consumer Guarantees Act 1993), then that Act applies to the acquisition of the Deliverables.
- 29. Notices**
- 29.1. A notice under the Purchase Order is treated as having been duly given and received when:
- if in writing, delivered to the other party's address;
  - if sent by facsimile, on its receipt as to which a confirmation slip will be prima facie evidence of receipt; or
  - if sent by email, on the day following transmission of the email. 29.2 The addresses of the parties are as stipulated in the Purchase Order.