

PURCHASE ORDER TERMS OF PURCHASE

The parties agree that the Purchase Order and the following terms will govern the provision of the Goods and/or Services unless the Ministry of Business Innovation and Employment (**MBIE**) and the Supplier have specifically entered into a separate written agreement for the supply of the Goods and Services, in which case the terms of that particular agreement will apply.

1 Supplier obligations:

- 1.1 Supplier Code of Conduct:** The Supplier must comply with the Supplier Code of Conduct issued by the Procurement System Leader (see www.procurement.govt.nz).
- 1.2 Comply with law and other obligations:** The Supplier must comply with all its obligations under law and maintain all licences, approvals and consents required to provide the Goods and/or Services and perform its other obligations under this Agreement.
- 1.3 Health & Safety:** Without limiting its other obligations under this Agreement, the Supplier will consult, cooperate and coordinate with MBIE to the extent required by MBIE to ensure that MBIE and the Supplier will each comply with their respective obligations under the Health and Safety at Work Act 2015 as they relate to this Agreement.
- 1.4 Transfer of rights or obligations:** The Supplier must not transfer any of its rights or obligations under this Agreement.
- 1.5 Subcontracting:** The Supplier must not subcontract any of its obligations under this Agreement without MBIE's prior written approval. Where MBIE approves any subcontracting under this clause, the Supplier: (i) must ensure that each Subcontractor is suitably qualified and resourced to provide the Services (ii) must ensure each Subcontractor is fully aware of the Supplier's obligations under this Agreement and any subcontract it enters into with the Subcontractor for the provision of the Services is on terms that are consistent with this Agreement (including, without limitation, payment obligations); (iii) is responsible for delivering the Services even if aspects of the Services are subcontracted; and (iv) is responsible for the acts and omission of any Subcontractor as if they were the acts and omissions of the Supplier.

2 MBIE obligations:

- 2.1 MBIE to pay the Charges:** MBIE must pay the Supplier the Charges in accordance with this Agreement.

3 Termination:

- 3.1 Rights of termination:** This Agreement can be terminated as follows:
 - a. *Termination for convenience:* MBIE may terminate this Agreement at any time by giving not less than 20 business days' written notice to the Supplier. If MBIE terminates this Agreement under this clause then, subject to all other clauses of this Agreement, MBIE will pay the Supplier for all Goods and Services supplied up to the date this Agreement is terminated.

- b. *MBIE's termination for cause:* MBIE may terminate this Agreement immediately, by written notice to the Supplier, if the Supplier: (i) becomes bankrupt or insolvent; (ii) has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed; (iii) becomes subject to any form of external administration; (iv) ceases for any reason to continue in business or does something or fails to do something that, in MBIE's opinion, results in damage to the Supplier's or the Crown's reputation or business; (v) has a Conflict of Interest that in MBIE's opinion is so material as to impact adversely on the supply of the Goods and/or Services, MBIE or the Crown; or (vi) provides information to MBIE that is misleading or inaccurate in any material respect.
- c. *Termination for breach:* (i) If a party breaches this Agreement (**defaulting party**), the non-defaulting party may give written notice to the defaulting party (**default notice**). (ii) A default notice must state the nature of the breach and the time and date by which it must be remedied. (iii) The period allowed to remedy the breach must be reasonable given the nature of the breach. (iv) The non-defaulting party may terminate this Agreement immediately by giving a further written notice to the defaulting party if the defaulting party does not remedy the breach as required by the default Notice. (v) If MBIE gives a default notice to the Supplier, MBIE may also withhold any payment of Charges due until the breach is remedied as required by the default notice, and/or if the breach is not remedied as required by the default notice, deduct a reasonable amount from any Charges due to reflect the reduced value of the Goods and/or Services to MBIE.

3.2 Effect of Termination:

- a. *Supplier's obligations:* (i) On giving or receiving a notice of termination, the Supplier must comply with any conditions contained in the notice, and immediately do everything reasonably possible to reduce its losses, costs and expenses arising from the termination of this Agreement. (ii) On termination or expiry of this Agreement, the Supplier must, if requested by MBIE, promptly return or securely destroy all Confidential Information and other material or property belonging to MBIE.
- b. *Accrued rights:* The termination or expiry of this Agreement does not affect any rights of each party

which arose or relate to any breach of this Agreement prior to the End Date.

- c. **MBIE's rights:** Subject to clause 3.1a., if this Agreement is terminated MBIE: (i) will only be liable to pay Charges that were due for Goods and/or Services delivered before the effective date of termination, and (ii) may recover from the Supplier or set off against sums due to the Supplier, any Charges paid in advance for Goods and/or Services that have not been provided.

4 Confidentiality & Privacy:

- 4.1 Use of confidential information:** Each party agrees they will not use and will keep confidential the other party's Confidential Information other than: (i) to the extent that use or disclosure is necessary for the purposes of providing the Goods and/or Services, or in the case of MBIE, using the Goods or having the full benefit of the Services; (ii) if the other party gives prior written approval to the use or disclosure; (iii) if the use or disclosure is required by law (including under the Official Information Act 1982), Ministers, parliamentary convention or any other regulation, rules or policy that is binding on that Party; or (iv) if the information has already become public, other than through a breach of the obligation of confidentiality by one of the parties.
- 4.2 Security:** Each party will: (i) put in place and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use by third parties; (ii) notify the other party if it becomes aware of any suspected or actual unauthorised use, copying or disclosure of the other party's Confidential Information; and (iii) comply with any reasonable direction of the other party in relation to any suspected or actual breach of the confidentiality obligations in this Agreement as the other party reasonably requests.
- 4.3 Protection of Personal Information:** Where the Supplier has access to Personal Information under or in connection with this Agreement, the Supplier must: (i) only use, access, store, process or transmit that Personal Information to the extent necessary to supply the Goods and/or Services; (ii) ensure that the Personal Information is protected against loss, access, use, modification, or disclosure that is not authorised by MBIE; (iii) provide all information and assistance reasonably required by MBIE to comply with its obligations under the Privacy Act 2020 in relation to this Agreement; and (iv) comply with the Privacy Act and not do anything under this Agreement that would cause MBIE to breach the Privacy Act.
- 4.4 Privacy Breaches:** If the Supplier becomes aware of any Privacy Breach in relation to this Agreement, it will notify MBIE as soon as possible and take all reasonable steps: (i) to identify the person or persons affected; (ii) required by MBIE to undertake its own investigation; and (iii) to stop, and/or mitigate the impact of, any Privacy Breach and prevent its reoccurrence. In addition, the Supplier shall not notify any person of the Privacy Breach without MBIE's prior written approval.
- 4.5 Interplay between Personal Information and confidentiality obligations:** The Supplier's obligations in relation to Personal Information in this Agreement are

not limited by and do not limit either party's other obligations as regards the protection or security of Confidential Information under this Agreement, provided that any disclosure of Confidential Information under sub-clauses 4.1 and 4.2 shall be subject to sub-clauses 4.3 and 4.4.

5 Invoicing:

- 5.1 Invoicing:** The Supplier must provide a valid invoice for all Charges once the Goods and/or Services have been delivered to MBIE in accordance with the terms of this Agreement. To be a valid invoice, it must:
 - a. be a single document that includes all taxable supply information for the purposes of the Goods and Services Tax Act 1985;
 - b. in accordance with MBIE's preference, be sent to MBIE through an agreed eInvoicing service. If that is not practicable, the invoice must be sent directly to MBIE in PDF format (or such other format as reasonably required by MBIE) via email to mbie.invoices@mbie.govt.nz; and
 - c. include all information reasonably required to enable MBIE to validate the claim for payment including: (i) reference to this Agreement; (ii) the Charges for and description of each Good and/or Service being invoiced; (iii) in respect of any Charges on a time and rates basis, the relevant times and rates on which the Charge is based; and (iv) being addressed to MBIE and clearly and legibly marked to the attention of the full name of the relevant MBIE contact.
- 5.2 MBIE's payment:** MBIE will make payment in respect of the valid invoice promptly and by no later than the 20th day of the month following the month in which the particular valid invoice was received by MBIE.
- 5.3 Withholding tax:** The Charges are inclusive of all taxation except goods and services tax (such tax being within the meaning of the Goods and Services Tax Act 1985). MBIE is entitled to deduct any withholding tax required to be withheld by law from payments made to the Supplier and will not be required to gross-up or increase any such payments in respect of such amounts withheld.

6 Supply of Goods:

- 6.1 Supplier's obligations:** Where Goods are to be supplied, the Supplier must:
 - a. supply the Goods in accordance with this Agreement;
 - b. deliver the Goods to the Delivery Address or as otherwise agreed in writing with MBIE, on time (which is essential); and
 - c. notify MBIE promptly in writing if the Supplier becomes aware of any actual or possible delay in delivery of the Goods.
- 6.2 Warranties, maintenance:** The Supplier must ensure that MBIE is passed the benefit of any warranty or maintenance obligation (including a warranty from a manufacturer or any other person) that applies in relation to the Goods or any part of the Goods.
- 6.3 Goods must satisfy criteria:** The Goods must:
 - a. be of merchantable quality and free from defects in design, materials or construction;
 - b. be fit for the purposes for which they are intended to be used as

- communicated to, or that are or ought to be known by, the Supplier;
- b. comply with the description of Goods stated in the Purchase Order;
 - c. e. be new and unused; and
 - d. be packaged so as to protect the contents and keep them clean, dry and in a new condition until they are first used, if appropriate.
- 6.4 Supplier warranties:** The Supplier warrants that:
- a. the Goods do not breach any law or standard;
 - b. the supply and use of the Goods will not infringe the rights of any person;
 - c. full ownership of the Goods will pass to MBIE in accordance with this Agreement, and no-one else has any rights in the Goods;
 - d. all Goods supplied to MBIE comply with all the criteria stated in this Agreement;
 - e. any documentation supplied with the Goods is adequate to enable MBIE to use and maintain the Goods in the manner intended by MBIE; and
 - f. all information provided by the Supplier to MBIE is accurate.
- 6.5 Ownership of Goods:** Ownership in the Goods passes to MBIE on the earlier of:
- a. the date MBIE has paid the Charges for those Goods; and
 - b. the date those Goods have been delivered.
- 6.6 Risk in Goods:** Risk in the Goods passes to MBIE on the date those Goods have been delivered to the Delivery Address.
- 7 Services:**
- 7.1 Supplier's obligations:** Where Services are to be supplied, the Supplier must:
- a. deliver the Services: (i) on time (which is essential); (ii) to any required performance standards and quality as set out in this Agreement; and (iii) with due care, skill and diligence, and to the appropriate professional standard or in accordance with good industry practice as would be expected from a leading supplier in the relevant industry; and
 - b. ensure that its personnel have the necessary skills, experience, training and resources to deliver the Services.
- 8 General:**
- 8.1 Entire contract:** This Agreement records everything agreed between the Supplier and MBIE relating to the supply of the Goods and the Services. Any Supplier terms and conditions do not apply.
- 8.2 Independent contractor:** Nothing in this Agreement constitutes a legal relationship between the parties of partnership, joint venture, agency, or employment.
- 8.3 No representing:** Neither party has authority to bind or represent the other party in any way.
- 8.4 Conflict of Interest:** The Supplier warrants that it (and any Subcontractors) has no Conflict of Interest at the Order Date or if it (or any Subcontractors) has, it has advised MBIE of such Conflict of Interest. Should a Conflict of Interest arise during the term of this Agreement, the Supplier shall advise MBIE without delay. Where a Conflict of Interest is identified, the Supplier shall (at its own cost) (i) comply; and/or require its Subcontractor(s) to comply, with all requirements of MBIE in terms of managing that Conflict of Interest.
- 8.5 Governing law:** This Agreement will be governed and interpreted in accordance with the laws of New Zealand.
- 9 Definitions:**
- In this Agreement, the following terms have the stated meanings:
- Agreement:** together the Purchase Order and these Purchase Order Terms.
- Charges:** the total amount payable by MBIE to the Supplier for the Goods and/or Services as stated in the Purchase Order.
- Confidential Information:** all information, including data and Personal Information that: (i) is by its nature confidential; (ii) is marked by either party as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence'; (iii) is provided by either party or a third party 'in confidence'; or (iv) either party knows or ought to know is confidential.
- Conflict of Interest:** where the Supplier or its personnel's (including any Subcontractors) personal or business interests or obligations do or could conflict, or be perceived to conflict, with its obligations under this Agreement, such that the Supplier or its personnel's independence, objectivity or impartiality can be called into question.
- Delivery Address:** the address for delivery set out on the Purchase Order.
- End Date:** the date when all the Goods and/or Services have been delivered or performed to MBIE's satisfaction, unless otherwise agreed in writing by the parties or terminated earlier in accordance with clause 3.
- Goods:** the goods as set out in the "Description" on the Purchase Order.
- Order Date:** is the order date set out on the Purchase Order.
- Personal Information:** has the meaning given to that term in the Privacy Act 2020.
- Privacy Breach:** unauthorised or accidental access to or use of, or disclosure, alteration, loss, or destruction of any Personal Information; and any action that prevents any Supplier from accessing Personal Information on either a temporary or permanent basis, whether or not it is: (i) caused by a person inside or outside of the Supplier; (ii) attributable in whole or in part to any action by the Supplier; or ongoing.
- Purchase Order:** the purchase order form issued by MBIE setting out the details of the Charges and Goods and/or Services.
- Services:** the services as set out in the "Description" on the Purchase Order.
- Start Date:** the "Order Date" set out on the Purchase Order.
- Subcontractor** A person, business, company or organisation contracted by the Supplier to deliver or perform part of the Supplier's obligations under this Agreement.
- Supplier:** the supplier that will supply the Goods and/or Services as set out on the Purchase Order.

Details of MBIE's invoicing requirements are available on MBIE's website.