

HNZ PURCHASE ORDER TERMS AND CONDITIONS

1. OPERATION OF THESE TERMS

- 1.1 These Terms govern the supply of Goods and Services to HNZ except as expressly stated otherwise in these Terms.
- 1.2 The Supplier agrees to these Terms when it accepts any Order or otherwise Delivers any Goods or Services to HNZ.
- 1.3 These Terms will apply to every Order unless HNZ agrees otherwise in writing.
- 1.4 In no event will the Supplier's terms of supply or sale apply to the supply of Goods or Services. These Terms will in all cases prevail over the Supplier's terms of supply and sale, including any Supplier terms provided with the Goods or Services, listed on a website or otherwise attached or included in any documentation communicated to HNZ.
- 1.5 This Agreement continues from the date of the Order until:
 - (a) the Services are completed; or
 - (b) the Goods are delivered; or
 - (c) it is terminated in accordance with the Terms,
 whichever is earlier. The Parties may agree to extend the term of this Agreement.

2. PRICE AND PAYMENT

- 2.1 The price for the Goods and Services will be the price set out in the Order or otherwise agreed by the parties in writing, and may not be varied without the prior written approval of both parties.
- 2.2 The Supplier must:
 - (a) ensure detailed advice notes accompany the Goods to the Delivery Location;
 - (b) ensure its invoices are valid invoices for GST purposes and are sent to the Delivery Location;
 - (c) procure in favour of HNZ any product warranties and guarantees in connection with the Goods that are obtainable in the ordinary course of business; and
 - (d) mark the Order Number and the name of the HNZ buyer on all invoices, advice notes and correspondence, as a pre-requisite to HNZ accepting Delivery and making payment.
- 2.3 Subject to the Supplier's compliance with these Terms, HNZ will pay for the Goods and Services Delivered at the time and in the manner set out in this Agreement. Payment will be made by direct credit or other payment method agreed by the parties.
- 2.4 If HNZ genuinely disputes all or part of any invoice, HNZ may withhold payment for the amount in dispute until the dispute is resolved.
- 2.5 In making payment for the Goods or Services, HNZ may withhold, deduct or set off the amount of any overpayment or any other amount recoverable by HNZ from the Supplier under these Terms or otherwise.

3. DELIVERY

- 3.1 Unless otherwise agreed by HNZ, the Supplier must have a valid Order Number before it supplies Goods or Services.
- 3.2 Goods supplied against an invalid Order Number may be returned at the Supplier's expense, including the cost of packing, transportation, insurance and handling the rejected Goods.
- 3.3 The Supplier must adequately pack and protect the Goods against damage and deterioration, at the Supplier's expense.
- 3.4 The Supplier must Deliver the:
 - (a) Goods on or, with HNZ's approval, before the delivery date specified in the Order and to Delivery Location; and
 - (b) Services in accordance with the Order or as otherwise required by HNZ, and if the Order specifies a term, delivery date or programme for the Services, the Supplier will provide the Services for that term, by the delivery date or in accordance with that programme (as applicable), and time will be of the essence.
- 3.5 Without limiting HNZ's rights and remedies, if the Supplier is, or is likely to be, late in Delivering any Goods or Services, it must notify HNZ of the delay or likely delay in writing as soon as the Supplier becomes aware of it, and the Supplier must take all steps reasonably required by HNZ to minimise the delay or likely delay.

4. TITLE AND RISK

- 4.1 Title to the Goods will pass to HNZ free of any security interest, lien or other encumbrance upon the earlier of payment for the Goods and Delivery to HNZ.
- 4.2 Risk in the Goods will pass to HNZ upon Delivery of the Goods to HNZ.

5. OBLIGATIONS

- 5.1 Both parties agree to:
 - (a) act in good faith and demonstrate, honest, integrity, openness and accountability in their dealing with each other;
 - (b) notify each other immediately of any actual or anticipated issues that could significantly impact the Goods or Services or receive media attention;
 - (c) comply with all applicable laws and regulations.

6. WARRANTIES

- 6.1 In addition to all other warranties, conditions or terms expressed or implied by law or otherwise, the Supplier warrants to HNZ that:
 - (a) at the time of Delivery, the Goods will be new and free of defects;
 - (b) the Goods and Services shall be Fit for Purpose;
 - (c) at the date of this Agreement it has no conflicts of interest in providing the Services or entering into this Agreement and it will do its best to ensure that no conflicts of interest arise and it will notify HNZ immediately in writing if a potential conflict of interest does arise;
 - (d) where HNZ has supplied specifications and/or requirements in relation to the Goods or Services, or specifications or requirements have otherwise been agreed, the Goods and Services will comply with those specifications and/or requirements;
 - (e) in providing Services, it shall use the degree of skill, care and diligence reasonably expected of a competent professional supplier providing services similar to the Services;
 - (f) the Goods and Services comply with all regulatory and legislative requirements that are applicable to those Goods and Services;
 - (g) it has obtained all necessary rights, licences and consents to supply the Goods and Services to HNZ;
 - (h) at the time of Delivery, the Goods will be free of any security interest, lien or other encumbrance; and
 - (i) it is the sole owner or duly authorised licensee of all Intellectual Property in the Goods and Services and neither the Goods or Services, nor their use by HNZ, breaches any Intellectual Property rights of any third party.

7. LIABILITY

- 7.1 If the Supplier breaches any of the warranties contained in clause 6.1 in relation to Goods then, without limiting any other right or remedy it may have, HNZ may:
 - (a) reject the Goods in whole or in part and return the Goods to the Supplier at the Supplier's risk and expense, including the cost of packing, transportation, insurance and handling the rejected Goods, and the Supplier must immediately refund to HNZ any monies paid in respect of the returned Goods;
 - (b) require the Supplier to replace, repair, reinstate or re-supply the Goods at the Supplier's expense;
 - (c) have the Goods replaced, repaired or re-supplied by another person and recover the cost of doing so from the Supplier; or
 - (d) suspend payment for the Goods until the breach has been remedied.
- 7.2 If the Supplier breaches any of the warranties contained in clause 6.1 in relation to Services then, without limiting any other right or remedy it may have, HNZ may:
 - (a) require the Supplier to perform the Services again to the required standard at the Supplier's expense;
 - (b) have the Services re-supplied by another person and recover the cost of doing so from the Supplier; or
 - (c) suspend payment for the Services until the breach has been remedied.
- 7.3 Where the Supplier is negligent or breaches the terms of this Agreement, the Supplier is liable to HNZ for reasonably

foreseeable claims, damages, liabilities, losses and expenses caused directly by the breach.

- 7.4 Neither HNZ or the Supplier are liable to the other under this Agreement for any indirect, consequential or special loss, loss of opportunity or loss of profit, however arising, whether under contract, in tort or otherwise.

8. CANCELLATION

- 8.1 HNZ may cancel this Agreement immediately if the Supplier:
- (a) has breached any of these Terms and has failed to remedy the breach within 5 Working Days after the Notice has been given to the Supplier specifying the breach and requiring it to be remedied; or
 - (b) becomes bankrupt, ceases to carry on business, goes into liquidation, becomes insolvent, appoints a receiver or enters into a formal proposal for a compromise with its creditors under the Companies Act 1993.
- 8.2 HNZ may terminate any Services at any time by giving the Supplier at least 5 Working Days' Notice.
- 8.3 HNZ's rights to cancel this Agreement are in addition to any other rights or remedies it may have.
- 8.4 On termination or expiry of this Agreement:
- (a) HNZ may recover any fees paid in advance to the Supplier in respect of a period following termination or expiry; and
 - (b) clauses 7, 8, 9, 10, 11 and any other terms that are intended to survive termination or expiry will survive termination or expiry.

9. INSURANCE

- 9.1 The Supplier must insure any Goods for their full value (including insurance during transportation) until Delivery to HNZ. The Supplier must also maintain insurance coverage in amounts and against risks that are normal for businesses similar to that of the Supplier, including, where applicable, product liability insurance and insurance against public liability and property damage and provide evidence of such insurance to HNZ if requested.
- 9.2 The Supplier must maintain the insurance coverage referred to in clause 9.1 during the term of this Agreement and any Order.
- 9.3 If providing Services, the Supplier must maintain professional indemnity insurance coverage in an amount not less than either \$1,000,000 or five times the Price (whichever is the greater) during the term of this Agreement and any Order and for 6 years following completion of the relevant Services.

10. CONFIDENTIALITY AND RECORDS

- 10.1 The Supplier will not use HNZ's name to advertise or promote its business or goods or services without the prior written consent of HNZ.
- 10.2 All Confidential Information is, and will remain, the property of HNZ, and the Supplier must:
- (a) keep all Confidential Information confidential and use the Confidential Information only for the purpose of supplying the Goods and/or Services;
 - (b) not disclose any Confidential Information to any person without the prior written consent of HNZ;
 - (c) not transfer, access, store or publish any Confidential Information outside New Zealand without HNZ's prior written consent; and
 - (d) return the Confidential Information to HNZ upon HNZ's request at any time or if no request is made, upon completion of supply of the Goods and/or Services.

The Supplier will ensure that its employees, contractors and agents keep the Confidential Information strictly confidential on the same terms as those set out in this clause 10.

- 10.3 Without limiting its other obligations, the Supplier must create and maintain full, accurate and accessible records relating to the provision of the Goods and Services, to the standards required under the Public Records Act 2005 and HNZ may require the Supplier to provide to HNZ a copy of any such record at any time.

11. INTELLECTUAL PROPERTY

- 11.1 All Intellectual Property rights owned by either party or their licensors prior to the commencement of the supply of Goods and Services will remain the exclusive property of that party and its licensors and Intellectual Property created by a party independently of this supply of Goods and Services, remains the

property of that party.

- 11.2 The Supplier agrees that all Intellectual Property rights created by the Supplier or any of the Supplier's employees, contractors or agents in the course of supplying the Goods or Services will be jointly owned by HNZ and the Supplier ("New Intellectual Property").
- 11.3 The Supplier and HNZ hereby grant to the other an unrestricted royalty-free license in perpetuity to copy or use New Intellectual Property and (to the extent necessary to use or alter the Services) any pre-existing intellectual property within the Services. The ownership of data and factual information collected by the Supplier and paid for by HNZ shall, after payment by HNZ, lie with HNZ. The Supplier does not warrant the suitability of New Intellectual Property for any purpose other than the Services or any other use stated in, or reasonably inferred from, the Terms.

12. COMPLIANCE WITH HNZ HEALTH AND SAFETY POLICIES

- 12.1 The Supplier must:
- (a) comply with the requirements of, and its obligations under the Health and Safety at Work Act 2015;
 - (b) have in place a health and safety management plan that is appropriate for the Services; and
 - (c) comply with any health and safety plan of HNZ and all other persons who conduct a business or undertaking who have a duty in relation to the same matter.

13. NOTICES

- 13.1 Each notice or other communication to be given under these Terms must be in writing (the **Notice**) and must be sent by post, facsimile, email (confirmed by post) or personal delivery to the addressee at the postal address, facsimile number, email address or physical address, and marked for the attention of the person or office holder (if any), set out in the Order. No Notice will be effective until received.
- 13.2 Any party to whom a Notice is sent will be deemed to have received the Notice:
- (a) in the case of posting, on the third Working Day following the date of posting;
 - (b) in the case of personal delivery, when received;
 - (c) in the case of a facsimile, following receipt of a report from the machine on which the facsimile was sent confirming that all pages were successfully transmitted; and
 - (d) in the case of email, on the day on which it was sent (unless it is sent on a day other than a Working Day, in which case it will be deemed to be received on the next Working Day), provided that the sender does not receive any error message relating to the sending of the email at the time of sending, provided that any Notice personally delivered or sent by facsimile or email either after 5pm on a Working Day or on any day that is not a Working Day will be deemed to have been received on the next Working Day.

14. GENERAL

- 14.1 Neither party will be liable to the other for any failure to perform its obligations under any Order to the extent the failure is caused by an Extraordinary Event that is beyond the reasonable control of that party, provided that party notifies the other party, uses its best endeavours to comply with its obligations under the Order notwithstanding the Extraordinary Event and continues to comply with any unaffected obligations.
- 14.2 The Supplier must not assign or otherwise transfer any of its rights, benefits or obligations, and must not subcontract any of its obligations, without the prior written consent of HNZ, which may be refused without giving reasons. Any approved assignment or subcontracting of rights and obligations will not relieve the Supplier from any liability or obligations under these Terms.
- 14.3 Nothing in these Terms is to be interpreted as constituting either HNZ or the Supplier as agent, partner or employee of the other and neither party will have the authority to act for or to incur any obligation on behalf of the other party.
- 14.4 If any provision of these Terms is held invalid, unenforceable or illegal for any reason, these Terms will remain otherwise in full force apart from such provisions, which will be deemed deleted.
- 14.5 The Supplier's provision of Goods and Services is non-exclusive and HNZ may appoint any other person to provide

goods and services identical or similar to the Goods and Services.

- 14.6 No failure or delay on the part of HNZ in exercising any of its rights under the Order or these Terms shall be construed as constituting a waiver of any such rights.
- 14.7 Notwithstanding anything else in these Terms that may suggest to the contrary, nothing in this Agreement shall be construed as a delegation of HNZ's functions or powers to the Supplier, whether under the Crown Entities Act 2004 or otherwise and, in relation to any such matters, the Supplier's role is recommendatory only.
- 14.8 The parties will attempt in good faith in the first instance to settle any dispute by themselves. If they are unable to resolve the dispute themselves within a reasonable time they will attempt in good faith to resolve it by mediation. If the dispute is not resolved within a reasonable time then either Party may refer the dispute to arbitration by a sole arbitrator under the Arbitration Act 1996. The parties will agree on the arbitrator to be appointed within 10 Working Days of the referral and if they cannot agree the arbitrator will be appointed by the President of the New Zealand Law Society. No dispute allows the Party to suspend their obligations except for any disputed payment where HNZ can withhold payment in accordance with clause 2.4.
- 14.9 Where there is reference to any payment under these Terms, applicable GST is to be added to the amount of that payment (subject to the provision of a valid GST invoice and to anything to the contrary in these Terms).
- 14.10 These Terms will be governed and construed in accordance with the laws of New Zealand and the parties submit to the exclusive jurisdiction of the courts of New Zealand.

15. INTERPRETATION

- 15.1 Words or phrases defined in the Order have a corresponding meaning in these Terms.
- 15.2 In this Agreement, the singular shall include the plural, the masculine shall include the feminine, and vice versa when the context requires.
- 15.3 Business Day means a calendar day other than a Saturday, Sunday, statutory or other public holiday.
- 15.4 In these Terms, except where the contrary intention is expressed, the following definitions apply:

"Confidential Information" means all information about HNZ, its business, operations, technologies, taxpayers, suppliers or affairs and includes the terms of each Order and any information highlighted by HNZ to the Supplier as confidential or that would reasonably be considered to be confidential to HNZ, but excluding information that is required by law to be disclosed.

"Delivery" means, in the case of Goods, the delivery of the Goods in good order and condition to the Delivery Location and in the case of Services means the completion of the Services to HNZ's satisfaction and "Deliver" has a corresponding meaning.

"Delivery Location" means the location as stated in the Order or as otherwise notified by HNZ.

"Extraordinary Event" means an event that is beyond the reasonable control of the party immediately affected by the event (including where HNZ has failed to make a due payment because of an event beyond its reasonable control). Examples of an Extraordinary Event include:

- (a) acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fire, pandemics and any natural disaster;
- (b) act of war (whether declared or not), invasion, actions of foreign enemies, military mobilization, 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.

For the avoidance of doubt an Extraordinary Event does not include any risk or event that the party claiming could have prevented or overcome.

"Fit For Purpose" means the Goods and Services are fit for the purposes stated or reasonably inferred from this Agreement or

for which similar goods, services or materials are commonly used.

"Goods" means the goods specified in the Order and all parts or components of those goods to be supplied by the Supplier to HNZ.

"GST" means goods and services tax at the rate prevailing from time to time, as contemplated by the Goods and Services Tax Act 1985.

"HNZ" means Housing New Zealand Corporation, and where the context requires, its executors, administrators and successors, and its wholly owned subsidiary Housing New Zealand Limited.

"Intellectual Property" means all industrial and intellectual property rights whether conferred by statute, at common law or in equity, including all copyright, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs, rights in relation to trade marks, business names and domain names.

"Order" means an HNZ purchase order which may be placed with the Supplier from time to time containing a reference to these Terms including any HNZ requirements or specifications provided by HNZ to the Supplier in relation to the Order (or previously issued to the Supplier).

"Order Number" means the purchase order number supplied to the Supplier at the time of the Order for that particular purchase and listed on the Order.

"Services" means the services specified in the Order to be provided or performed by the Supplier.

"Terms" means these Purchase Order Terms and Conditions.

"Working Day" means any day other than a Saturday, Sunday or public holiday in the Delivery Location.