

**MINISTRY OF FOREIGN AFFAIRS AND TRADE
PURCHASE ORDER TERMS AND CONDITIONS**

1. OPERATION OF THESE TERMS

- 1.1 By accepting an Order from MFAT or Delivering any Good or Service that is the subject of an Order, the Supplier agrees it has entered an agreement with MFAT that is governed by these Terms.
- 1.2 These Terms will apply to every Order unless MFAT agrees otherwise in writing. If MFAT and the Supplier have entered into another agreement in writing governing the supply of Goods and/or Services, then the terms of that agreement will govern the supply of those Goods and/or Services and those terms will prevail over these Terms to the extent of any inconsistency.
- 1.3 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, including any Supplier terms provided with the Goods or Services, listed on a website or otherwise attached or included in any documentation communicated to MFAT.

2. PERFORMANCE

- 2.1 The Supplier must Deliver the Goods and/or Services in accordance with these Terms.
- 2.2 The Supplier must have a valid PO Number before it supplies any Goods and/or Services.
- 2.3 The Supplier must Deliver all Goods and/or Services on or before the applicable date specified on the Order. Where no date is specified, the Supplier must Deliver the Goods and/or Services promptly.
- 2.4 Without limiting MFAT's rights, the Supplier must:
- immediately notify MFAT in writing if it becomes aware that it will, or that it is likely to be late in Delivering any Goods or Services; and
 - take all steps reasonably required by MFAT to minimise that delay or likely delay.

3. DELIVERY OF GOODS

- 3.1 In relation to the Delivery of Goods under any Order, the Supplier must (at its cost):
- adequately pack and protect the Goods against damage and deterioration during Delivery;
 - deliver the Goods to the delivery address provided by MFAT;
 - provide detailed advice notes and packing slips with the Goods;
 - mark the valid PO Number, and Goods' numbers and the name of the MFAT buyer on all invoices, packing slips, advice notes and correspondence; and
 - otherwise satisfy MFAT's delivery requirements set out in the Order or otherwise advised by MFAT in writing.
- 3.2 Where any Goods are supplied in breach of clause 3.1, MFAT may (at its reasonable discretion) reject those Goods in which case clause 3.6 will apply.
- 3.3 The signing of any delivery receipt or similar document by a MFAT representative does not indicate MFAT's acceptance of the Goods.
- 3.4 If, following its inspection of any delivered Good, MFAT considers that that Good, or the Delivery of that Good, breaches these Terms, then MFAT may (without limiting any other right or remedy):

a) require that the Supplier repair or replace the Good, in which case the Supplier must immediately do so, at its cost; or

b) reject the Good in which case clause 3.6 will apply.

3.5 If MFAT is not satisfied with the Supplier's progress within a reasonable time in repairing or replacing any Good under clause 3.4(a), MFAT may:

a) reject that Good, in which case clause 3.6 will apply; or

b) arrange for the Good to be repaired by someone else, in which case the Supplier will reimburse all costs and expenses incurred by MFAT in doing so.

3.6 If MFAT rejects any Good in accordance with these Terms, the Supplier must immediately:

a) remove the rejected Good from MFAT's premises at its own risk and expense. If the Supplier does not remove the rejected Goods within 15 Business Days, MFAT may return the Goods and recover from the Supplier any cost or expense incurred; and

b) provide a full refund of any amount paid (or credit for any amount payable) for the rejected Good.

4. TITLE AND RISK

4.1 Title to the Goods will pass to MFAT free of any security interest, lien or other encumbrance upon the earlier of payment for the Goods or Delivery to MFAT.

4.2 Risk in any Good will pass to MFAT upon Delivery of that Good to MFAT.

5. DELIVERY OF SERVICES

5.1 In relation to the Delivery of Services under any Order, in addition to any performance and/or quality standards set out in the Order or otherwise specified by MFAT, the Supplier must Deliver the Services:

a) 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) in accordance with all applicable laws, regulations and standards.

5.2 The Supplier must ensure that its applicable employees and contractors have the necessary skills, experience and resources to deliver the Services in accordance with these Terms.

5.3 The Supplier must ensure its employees and contractors comply with the obligations set out in clause 13.

5.4 If the Supplier breaches these Terms in relation to the Delivery of any Service then MFAT may (without limiting any other right or remedy):

a) require the Supplier to perform the Services again to the required standard at the Supplier's expense; or

b) have the Services re-supplied by another provider and recover the cost of doing so from the Supplier.

6. PRICE AND PAYMENT

6.1 The Price for any Goods and Services may not be changed without the prior written approval of both parties.

6.2 The Supplier will provide MFAT a valid GST invoice to the address notified by MFAT. All invoices must be marked with the relevant PO Number to enable MFAT to make payment. MFAT will require independent evidence of bank details for initial payment.

6.3 Subject to the Supplier's compliance with these Terms, MFAT will pay the Price on the 20th day of the month

following the month in which a valid GST invoice is received. Payment will be made by direct credit.

- 6.4 If MFAT disputes all or part of any invoice, MFAT may withhold payment for the amount in dispute until the dispute is resolved.
- 6.5 In making payment for the Goods or Services, MFAT may withhold, deduct or set off any amount recoverable by MFAT from the Supplier under these Terms or otherwise.

7. WARRANTIES

- 7.1 In addition to all other warranties, conditions or terms expressed or implied by law or otherwise, the Supplier warrants to MFAT that:
- at the time of Delivery, the Goods will be new and unused and free of defects;
 - the Goods and Services are fit for any purpose for which the Goods and Services are commonly used and for any purpose that MFAT otherwise makes known to the Supplier;
 - the Goods and Services comply with any specifications and/or requirements supplied or agreed by MFAT in relation to the Goods or Services;
 - the Services will be carried out with reasonable care, diligence and skill and performed by persons with the requisite skill and experience;
 - the Goods and Services comply with all applicable regulatory and legislative requirements;
 - it has obtained all necessary rights, licences and consents to supply the Goods and Services to MFAT;
 - at the time of Delivery, the Goods will be free of any security interest, lien or other encumbrance; and
 - it is the sole owner or duly authorised licensee of all Intellectual Property Rights in the Goods and Services and neither the Delivery of Goods or Services, nor their use by MFAT, breaches any Intellectual Property Rights of any third party.

8. CANCELLATION

- 8.1 MFAT may cancel any Order immediately if the Supplier:
- has breached any of these Terms and has failed to remedy the breach within 5 Business Days after the Notice has been given to the Supplier specifying the breach and requiring it to be remedied; or
 - 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.
- 8.3 MFAT may cancel any Order at any time by giving the Supplier at least 15 Business Days' Notice.
- 8.4 MFAT's rights to cancel any Order are in addition to any other rights or remedies it may have.
- 8.5 On termination or expiry of any Order:
- MFAT may recover any fees paid in advance to the Supplier under that Order; and
 - Clauses 4, 6.4, 6.5, 7, 8, 9, 11, 12 and 15 any other terms that are intended to survive termination or expiry of any Order will survive termination or expiry.

9. INSURANCE

- 9.1 From the date these Terms are accepted by the Supplier under clause 1.1 or otherwise until at least 3 years after

Delivery of the relevant Goods and/or Services, the Supplier must maintain insurance coverage in amounts and against risks that are normal for businesses similar to that of the Supplier, including where applicable, professional indemnity insurance and insurance against public liability and property damage.

10. CONFIDENTIALITY AND RECORDS

- 10.1 The Supplier will not use MFAT's name to advertise or promote itself or its business in any way without the prior written consent of MFAT.
- 10.2 Each party will keep the other party's Confidential Information confidential.
- 10.2 All MFAT Confidential Information is, and will remain the property of MFAT, and the Supplier must:
- use MFAT Confidential Information only for the purpose of supplying the Goods and/or Services;
 - not disclose any MFAT Confidential Information to any person without the prior written consent of MFAT;
 - not transfer, access, store or publish any MFAT Confidential Information outside New Zealand without MFAT's prior written consent;
 - return all MFAT Confidential Information to MFAT upon MFAT's request at any time or if no request is made, upon completion of the supply of the Goods and/or Services.
- 10.3 The Supplier will ensure that its employees, contractors and agents keep MFAT Confidential Information strictly confidential on the same terms as those set out in this clause 10.

11. PROTECTION OF PERSONAL INFORMATION

- 11.1 *Personal Information* has the same meaning as defined in the Privacy Act 2020.
- 11.2 The Supplier agrees:
- to use or disclose Personal Information obtained only for the purposes of delivering Goods/Services and complying with this Agreement, including the reporting requirements;
 - not to do anything that would breach an information privacy principle contained in the Privacy Act, which if done or engaged in by an agency under the Privacy Act, would be a breach of that information privacy principle;
 - to otherwise comply with the Privacy Act and any code established under the Privacy Act;
 - to immediately notify MFAT if the Supplier becomes aware of any breach or possible breach of the Privacy Act whether by it or any of its subcontractors;
 - to ensure that any of the Supplier's Personnel who are required to deal with Personal Information for the purposes of this Agreement are made aware of and comply with the obligations set out in this clause 11; and
 - This clause 11 survives the expiration or earlier termination of this Agreement.

12. INTELLECTUAL PROPERTY

- 12.1 All Intellectual Property rights owned by a party prior to, or independently of, an Order will remain owned by that party.
- 12.2 All Intellectual Property rights created during the course of supplying the Goods or Services will be owned by MFAT. The Supplier must execute all documents and take

all other actions reasonably required by MFAT to give effect to this clause 12.2.

- 12.3 The Supplier must indemnify MFAT against all claims, demands, proceedings, liabilities, costs, charges and expenses suffered or incurred by MFAT and/or its officers, employees, contractors and agents arising from any claim that the Goods or Services, or MFAT's use of them, infringe the Intellectual Property Rights of any person.

13 COMPLIANCE WITH MFAT POLICIES

- 13.1 The Supplier must comply with MFAT's Supplier and Delivery Partner Code of Conduct found at [Procurement | New Zealand Ministry of Foreign Affairs and Trade](#) and with any other policies and procedures notified to the Supplier including MFAT's reasonable directions relating to health, safety and security.
- 13.2 Without limiting clause 13.1 the Supplier must comply with all applicable laws, regulations, rules and current professional codes of conduct or practice in performing its obligations under these Terms and the relevant Order.

14 FORCE MAJEURE

- 14.1 Neither Party will be liable for failure to fulfil its obligations due to an event beyond its reasonable control, which for clarity does not include strikes nor any form of labour dispute. The Party suffering from the event will exercise all reasonable endeavours to avoid the event or remove its cause and perform its obligations.

15 GENERAL

- 15.1 The Supplier must not assign or subcontract or otherwise transfer any of its rights or obligations under these Terms without MFAT's prior written consent.
- 15.2 The Supplier warrants that as at the date of the Order, it has no conflict of interest in providing the Goods and/or Services. The Supplier must do its best to avoid situations that may lead to a conflict of interest and must immediately notify MFAT in writing if a conflict of interest arises in relation to the Goods or Services.
- 15.3 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.
- 15.4 The parties will use their best endeavours to resolve any dispute or difference that may arise under this Agreement through direct negotiation. If the parties cannot resolve a dispute by negotiation, either party may refer the matter to mediation. The Party requesting mediation must notify the other party in writing. Each party will meet their own costs of resolving the dispute.
- 15.5 Nothing in these Terms is to be interpreted as constituting either MFAT 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 except as expressly provided for in these Terms.

- 15.6 The Supplier's provision of Goods and Services is non-exclusive and MFAT may appoint any other person to provide goods and services identical or similar to the Goods and Services.
- 15.7 No failure or delay on the part of MFAT in exercising any of its rights under the Order or these Terms shall be construed as constituting a waiver of any such rights.
- 15.8 These Terms will be governed and interpreted in accordance with New Zealand law. New Zealand courts have exclusive jurisdiction.

16 INTERPRETATION

Business Day means any day other than a Saturday, Sunday or Public Holiday in Wellington, New Zealand.

Confidential Information means information which is confidential in nature, is designated by a party as confidential, or which the recipient ought reasonably to know is confidential. It includes information relating to the affairs of a party and its clients, business, operations, technologies, and suppliers, but excludes 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 a location nominated by MFAT and in the case of Services means the provision of the Services to MFAT's satisfaction at a location nominated by MFAT and "Deliver" has a corresponding meaning.

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

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

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

MFAT means the Sovereign in right of New Zealand acting by and through the Secretary of Foreign Affairs and Trade or his or her duly authorised delegate.

Order means a MFAT purchase order which may be placed with the Supplier from time to time containing a reference to these Terms and not being a purchase order made under any master or other written agreement between the Supplier and MFAT that is valid at the date that order is made.

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

Price means the price payable by MFAT for the Goods and/or Services as set out in the applicable Order or otherwise agreed in writing.

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

Supplier means the person, firm, company or corporate entity to whom MFAT issues an Order.

Terms means these Purchase Order Terms and Conditions.