

# INLAND REVENUE PURCHASE ORDER TERMS AND CONDITIONS

DATED 1 MAY 2016

## 1. OPERATION OF THESE TERMS

- 1.1 These Terms govern the supply of Goods and Services to IR 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 IR.
- 1.3 These Terms will apply to every Order unless IR agrees otherwise in writing. If IR 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.
- 1.4 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 IR.

## 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 and packing slips accompany the Goods to the delivery address;
  - (b) ensure its invoices are valid invoices for GST purposes and are sent to the address set out in the Order or otherwise notified by IR;
  - (c) mark the Purchase Order Number, any Goods numbers and the name of the Inland Revenue buyer on all invoices, packing slips, advice notes and correspondence, as a pre-requisite to IR accepting Delivery and making payment; and
  - (d) mark bar codes and other identifying information on the Goods and packaging for the Goods, if required by IR.
- 2.3 Subject to the Supplier's compliance with these Terms, IR will pay for the Goods and Services Delivered in accordance with these Terms on the 20th day of the month following the month in which the invoice is received or earlier if possible. Payment will be made by direct credit or other payment method agreed by the parties.
- 2.4 If IR genuinely disputes all or part of any invoice, IR may withhold payment for the amount in dispute until the dispute is resolved.
- 2.5 In making payment for the Goods or Services, IR may withhold, deduct or set off the amount of any overpayment or any other amount recoverable by IR from the Supplier under these Terms or otherwise.

## 3. DELIVERY

- 3.1 Unless otherwise agreed by IR, the Supplier must have a valid Purchase Order Number before it supplies Goods or Services.
- 3.2 Goods supplied against an invalid Purchase Order Number or without packing slips marked with the valid Purchase 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 IR's approval, before the delivery date specified in the Order and to the delivery address specified in the Order; and
  - (b) Services in accordance with the Order or as otherwise required by IR, and if the Order specifies a term for the Services, the Supplier will provide the Services for that term, and time will be of the essence.
- 3.5 Without limiting IR's rights and remedies, if the Supplier is, or is likely to be, late in Delivering any Goods or Services, it must notify IR 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 IR to minimise the delay or likely delay.

## 4. TITLE AND RISK

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

## 5. WARRANTIES

- 5.1 In addition to all other warranties, conditions or terms expressed or implied by law or otherwise, the Supplier warrants to IR that:
  - (a) at the time of Delivery, the Goods will be new and unused (unless otherwise agreed by IR in writing) and free of defects;
  - (b) the Goods and Services are fit for any purpose for which the Goods and Services are commonly used and for any purpose that IR otherwise makes known to the Supplier;
  - (c) where IR 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;

- (d) the Services will be carried out with reasonable care, diligence and skill and performed by persons with the requisite skill and experience;
  - (e) the Goods and Services comply with all regulatory and legislative requirements that are applicable to those Goods and Services;
  - (f) it has obtained all necessary rights, licences and consents to supply the Goods and Services to IR;
  - (g) at the time of Delivery, the Goods will be free of any security interest, lien or other encumbrance; and
  - (h) 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 IR, breaches any Intellectual Property rights of any third party.
- 5.2 If the Supplier breaches any of the warranties contained in clause 5.1 in relation to Goods then, without limiting any other right or remedy it may have, IR 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 IR 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.
  - 5.3 If the Supplier breaches any of the warranties contained in clauses 5.1 in relation to Services then, without limiting any other right or remedy it may have, IR 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.
  - 5.4 The Supplier warrants that it has and will continue to meet all its tax obligations whether in New Zealand or outside of New Zealand, and has and will continue to comply with all tax law in New Zealand and outside of New Zealand. Where the Supplier breaches this warranty IR may, without limiting any of its other rights or remedies, immediately terminate these Terms by giving Notice to the Supplier.

## 6. CANCELLATION

- 6.1 IR may cancel an Order by Notice to the Supplier if it is not accepted by the Supplier's written acknowledgement within 5 Working Days of the date of the Order.
- 6.2 IR may cancel any Order 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.
- 6.3 IR may terminate any Services at any time by giving the Supplier at least 5 Working Days' Notice.
- 6.4 IR's rights to cancel any Order are in addition to any other rights or remedies it may have.
- 6.5 On termination or expiry of any Order:
  - (a) IR may recover any fees paid in advance to the Supplier under that Order; and
  - (b) clauses 4, 5, 6.5, 7, 8, 9, 11, 13 and any other terms that are intended to survive termination or expiry of any Order will survive termination or expiry.

## 7. INSURANCE

- 7.1 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.
- 7.2 The Supplier must maintain the insurance coverage referred to in clause 7.1 during the term of any Order and for 3 years after Delivery of the relevant Goods and/or Services.

## 8. CONFIDENTIALITY AND RECORDS

- 8.1 The Supplier will not use IR's name to advertise or promote its business or goods or services without the prior written consent of IR.
- 8.2 All Confidential Information is, and will remain, the property of IR, 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 IR;
- (c) not transfer, access, store or publish any Confidential Information outside New Zealand without IR's prior written consent; and
- (d) return the Confidential Information to IR upon IR'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 8.

- 8.3 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 IR may require the Supplier to provide to IR a copy of any such record at any time.

## 9. INTELLECTUAL PROPERTY

- 9.1 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.
- 9.2 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 owned by IR.
- 9.3 The Supplier must indemnify, and keep indemnified, IR and its officers, employees, contractors and agents against all claims, demands, proceedings, liabilities, costs, charges and expenses suffered or incurred by IR and/or its officers, employees, contractors and agents arising from any claim that the Goods or Services, or IR's use of them, infringe the Intellectual Property rights of any person.

## 10. COMPLIANCE WITH IR POLICIES

- 10.1 The Supplier must comply with IR's security and health and safety policies and requirements where the Supplier is providing any of the Goods or Services on IR's premises.
- 10.2 Without limiting clause 10.1, the Supplier must comply with all applicable laws, regulations, rules, current professional codes of conduct or practice and IR policies in performing its obligations under these Terms and the relevant Order.

## 11. TAX SECRECY

- 11.1 For the purposes of protecting the integrity of the tax system, IR may conduct tax compliance checks and criminal checks in relation to the Supplier and any of its employees, contractors and agents at any time and the Supplier must obtain all necessary consents for such purpose.
- 11.2 If required by IR, the Supplier must, and must ensure that all of its employees, contractors and agents, sign and deliver to IR a 'certificate of secrecy' as required by section 87 of the Tax Administration Act 1994, in the form prescribed by IR.
- 11.3 IR may immediately terminate any Order without any obligation to make any payment to the Supplier by giving written notice to the Supplier if IR is not satisfied, acting reasonably, with the results of any checks carried out under clause 11.1.

## 12. NOTICES

- 12.1 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.
- 12.2 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.

## 13. GENERAL

- 13.1 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 act of God 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 act of God and continues to comply with any unaffected obligations.

- 13.2 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 IR.
- 13.3 Nothing in these Terms is to be interpreted as constituting either IR 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.
- 13.4 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.
- 13.5 The Supplier's provision of Goods and Services is non-exclusive and IR may appoint any other person to provide goods and services identical or similar to the Goods and Services.
- 13.6 No failure or delay on the part of IR in exercising any of its rights under the Order or these Terms shall be construed as constituting a waiver of any such rights.
- 13.7 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.
- 13.8 The United Nations Convention on Contracts for the International Sale of Goods, signed in Vienna on 11 April 1980 and adopted in New Zealand by the Sale of Goods (United Nations Convention) Act 1994, will not apply to any Order.

## 14. INTERPRETATION

"Confidential Information" means information about IR, its business, operations, technologies, taxpayers, suppliers or affairs and includes the terms of each Order and any information highlighted by IR to the Supplier as confidential or that would reasonably be considered to be confidential to IR, 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 a location nominated by IR and in the case of Services means the provision of the Services to IR's satisfaction at a location nominated by IR 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 IR.

"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" 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.

"IR" means Her Majesty the Queen in right of New Zealand acting by and through the Commissioner of Inland Revenue or his or her duly authorised delegate.

"Order" means an IR purchase order which may be placed with the Supplier from time to time containing a reference to these Terms.

"Purchase Order Number" means the 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.

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

"Terms" means these Purchase Order Terms and Conditions.

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