

1. DEFINITIONS

Address means the address specified in the Order to which Goods are to be delivered or Services performed.

Business Day means any day other than a Saturday, Sunday or public holiday in Hamilton, New Zealand.

Confidential Information means information about Waipā Networks, its business, operations, technologies, clients, suppliers or affairs and all information relating to third parties held by Waipā Networks or in relation to which Waipā Networks has any responsibility and includes the terms of each Order and any information highlighted by Waipā Networks to the Supplier as confidential or that would reasonably be considered to be confidential to Waipā Networks, 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 Address and in the case of Services means the provision of the Services to Waipā Networks' satisfaction at the Address and "Deliver" has a corresponding meaning.

Delivery Date means the relevant date(s) or period for Delivery stated in the Order.

Waipā Networks means Waipā Networks Limited.

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

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 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 a Waipā Networks 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 Waipā Networks 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 Waipā Networks 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 Waipā Networks issues an Order.

Terms means these Purchase Order Terms and Conditions and includes the relevant Order.

2. OPERATION OF THESE TERMS

- 2.1 By accepting an Order from Waipā Networks, or delivering any Goods or Services that are the subject of an Order, the Supplier agrees it has entered an agreement with Waipā Networks that is governed by these Terms.
- 2.2 Other terms (including, without limitation, any terms included in a Supplier invoice, packing slip or website) will not apply in relation to any Order unless the parties expressly agree otherwise in writing and, in that case, those other terms will only apply to the extent they are inconsistent with these Terms.

3. PERFORMANCE

- 3.1 The Supplier must Deliver the Goods and/or Services in accordance with these Terms.
- 3.2 The Supplier must have a valid PO Number before it supplies any Goods and/or Services.

4. DELIVERY AND ACCEPTANCE

- 4.1 Unless otherwise agreed in writing by Waipā Networks, the Supplier must supply and deliver or perform the Goods and/or Services by the relevant Delivery Date. Where no Delivery Date is specified on the Order, the Supplier must Deliver the Goods and/or Services promptly. Time is of the essence for the Delivery of any Goods or Services.
- 4.2 A Delivery Date may be amended or extended by Waipā Networks pursuant to clause 5 of these Terms.
- 4.3 The Supplier must:
 - (a) Label the Goods as directed by Waipā Networks;
 - (b) Store the Goods until the Delivery Date; and
 - (c) At the Supplier's cost, supply and deliver the Goods packaged as reasonably required by Waipā Networks and, if no requirements are provided by Waipā Networks, then packaged adequately to protect the Goods against damage and deterioration during delivery.
- 4.4 Waipā Networks may inspect all work related to the manufacture and/or supply of the Goods and/or Services, and no such inspection will affect the obligations of the Supplier with respect to the Goods and/or Services.
- 4.5 Inspection and testing must be conducted to the satisfaction of Waipā Networks, otherwise Waipā Networks will be entitled to reject the Goods and/or Services. The Goods and/or Services must be performed to the satisfaction of Waipā Networks.
- 4.6 At the time of each Delivery, the Supplier must provide Waipā Networks with a delivery docket in duplicate setting out the details of the Goods and/or Services delivered for signature on behalf of Waipā Networks and the Supplier must retain one copy so signed.

4.7 Where any Goods and/or Services are supplied in breach of clause 4.1 and/or 4.4, Waipā Networks may (at its discretion) reject those Goods and/or Services in which case clause 4.11 will apply.

4.8 The signing of any delivery receipt or similar document by a Waipā Networks representative does not indicate Waipā Networks' acceptance of the Goods and/or Services.

4.9 Waipā Networks will inspect the goods within three working days of delivery. If, following its inspection of any delivered Goods, Waipā Networks considers that any of those Goods, or the Delivery of those Goods, breaches these Terms, then Waipā Networks may (without limiting any other right or remedy):

- (a) require that the Supplier repair or replace the Goods, in which case the Supplier must immediately do so, at its cost; or
- (b) reject the Goods, in which case clause 4.11 will apply.

4.10 If Waipā Networks is not satisfied with the Supplier's progress within a reasonable time in repairing or replacing any Goods under clause 4.9(a), Waipā Networks may:

- (a) reject those Goods, in which case clause 4.11 will apply; or
- (b) arrange for the Goods to be repaired by someone else, in which case the Supplier will reimburse all costs and expenses incurred by Waipā Networks in doing so.

4.11 If Waipā Networks rejects any Goods in accordance with these Terms, the Supplier must immediately:

- (a) remove the rejected Goods from Waipā Networks' premises at its own risk and expense. If the Supplier does not remove the rejected Goods within 15 Business Days, Waipā Networks may return the Goods and recover from the Supplier any cost and expense incurred; and
- (b) provide a full refund of any amount paid (or credit for any amount payable) for the rejected Goods.

5. DELAY

5.1 Without limiting Waipā Networks' rights, the Supplier must:

- (a) immediately notify Waipā Networks in writing if it becomes aware of any event or circumstance likely to delay supply, delivery or performance of the Goods or Services by the Delivery Date that it will, or that it is likely to; and
- (b) take all steps reasonably required by Waipā Networks to minimise that delay or likely delay.

5.2 Waipā Networks:

- (a) Is entitled at any time in its absolute discretion to grant a reasonable, in the circumstances, extension of time to the Delivery Date; but
- (b) Is not obliged to grant an extension of time to the Delivery Date except to the extent that the Supplier is delayed in supplying and delivering the Goods

and/or Services by the Delivery Date which is caused by an act of prevention by Waipā Networks.

5.3 The Supplier must:

- (a) Take all practical steps to avoid or minimise any delay to the supply or delivery of the Goods and/or Services by the Delivery Date; and
- (b) Where a delay does not cause the supply, delivery or Acceptance of the Goods and/or Services by the Delivery Date to be extended, take whatever action is necessary to supply or deliver the Goods by the Delivery Date.

6. PASSING OF TITLE AND RISK

6.1 Title to any Goods will pass to Waipā Networks free of any security interest or other encumbrance upon the earlier of payment for those Goods and Delivery to Waipā Networks.

6.2 The Supplier will not register a security interest in the Goods, unless expressly agreed in writing by Waipā Networks.

6.3 Risk in any Goods will pass to Waipā Networks upon Delivery of those Goods to Waipā Networks.

7. DELIVERY OF SERVICES

7.1 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 Waipā Networks, 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

7.2 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.

7.3 The Supplier must ensure its employees and contractors, comply with all of Waipā Networks' policies and procedures, including those relating to health and safety (see clause 8 below), and security.

7.4 If the Supplier breaches these Terms in relation to the Delivery of any Services, then Waipā Networks 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 person and recover the cost of doing so from the Supplier.

8. HEALTH AND SAFETY PROTOCOLS

8.1 Where Services are being provided, the Supplier must at all times:

- (a) Compliance:
 - i. Comply with all health and safety legislation, regulations, applicable codes of practice and

- standards, Waipā Networks' health and safety policies and procedures and any standard operating procedures;
 - ii. Ensure that it takes all practicable steps to ensure the health and safety of all personnel of the Supplier, and any other parties associated with the Services, including Waipā Networks, workers, visitors, subcontractors, service providers, the public, and visitors to any area under the control of the Supplier;
 - iii. Have, and keep current, all relevant health and safety qualifications required to perform its obligations under these Terms;
 - iv. Immediately provide Waipā Networks with information about any health and safety matters relating to the Services if requested; and
 - v. Comply with all reasonable directions given by Waipā Networks in relation to health and safety in connection with these Terms.
- (b) Information Requests: The Supplier will, upon request, immediately provide Waipā Networks with information about any health and safety matters relating to the Services.
- (c) Cooperation: The Supplier must:
- i. So far as is reasonably practicable, consult, co-operate with and co-ordinate its activities with Waipā Networks in relation to the Services;
 - ii. Facilitate engagement between the parties (and/or its designees) in relation to work health and safety matters; and
 - iii. Ensure that any feedback, agreed changes or improvements to health and safety processes and procedures are implemented immediately.
- (d) Waipā Networks' Site: if the Supplier is carrying out the Services at a Waipā Networks owned or controlled site, then the Supplier must:
- i. Participate in Waipā Networks' emergency procedures, workplace assessments, training or orientation/induction and any other relevant health and safety activities (if requested);
 - ii. Participate in Waipā Networks' worker participation practices (if requested); and
 - iii. Identify and address any special needs requirements.
- (e) Audits: Waipā Networks (or its representatives) may carry out an audit of the Supplier to ensure compliance with all obligations set out under this clause 8. The Supplier must:
- i. Actively cooperate and participate in any health and safety audits carried out by Waipā Networks;
 - ii. Provide all necessary access and information required by Waipā Networks in relation to the audit and any other health and safety monitoring; and
 - iii. Take all reasonable steps to immediately rectify any issues raised by Waipā Networks.
- (f) Incidents and Investigations: The Supplier must immediately notify Waipā Networks of any: (i) "notifiable event" (as defined in the Health and Safety at Work Act 2015); (ii) near miss or exposure the Supplier becomes aware of in the course of undertaking the Services; (iii) any WorkSafe inspection, investigation or information request in connection with the Supplier's performance of the Services; and/or (iv) breach of this clause 8; and provide Waipā Networks with such assistance and information as Waipā Networks requires in relation to any of these matters.
- (g) Non-compliance (defective Services): Without limitation to Waipā Networks' other rights and remedies at law or under these Terms, Waipā Networks may immediately withhold any payment if the Supplier is in breach of any of its obligations under this clause 8.
- (h) Health and Safety Plans: The Supplier shall, prior to commencing the Services, undertake a site-specific risk assessment and prepare and submit to Waipā Networks a site specific safety plan for the execution of the Services.
- 8.2 This clause 8 also applies to the Supplier's subcontractors, including the reporting, notification and compliance obligations. The Supplier shall ensure that its subcontractors are aware of and comply with these obligations.
- 9. TECHNICAL DATA**
- 9.1 The Supplier must supply the Goods with all engineering, technical and other data required for the satisfactory use, maintenance, repair, installation or operation of the Goods.
- 9.2 The Supplier must supply all data reasonably requested by Waipā Networks relating to the Services (e.g. certificates of compliance for electrical work, certificates for delivery of network equipment).
- 9.3 Goods made or Services completed according to Waipā Networks' design or specification or developed for Waipā Networks at Waipā Networks' direction and any designs or specifications supplied by Waipā Networks, including all copies may be held by the Supplier on Waipā Networks' behalf and must not be disclosed or furnished to any third party without the prior written consent of Waipā Networks.
- 10. PRICE AND PAYMENT**
- 10.1 The rates stated in the Order are deemed to include everything necessary (labour, plant, equipment, travel, waiting time, delivery, packaging of any Goods and any other requirements or instructions specified in the Order as well as customs duty and any excise or other charge, levy, cost, expense or tax applicable to any Goods) for the Supplier to supply, deliver or perform the Goods and/or Services to or at the Address and to fulfil all of its other obligations under the Order.

- 10.2 The Price for any Goods or Services may not be changed without the prior written approval of both parties.
- 10.3 The Supplier will provide Waipā Networks a valid GST invoice to the address notified by Waipā Networks.
- 10.4 Subject to the Supplier's compliance with these Terms, Waipā Networks 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 or other payment method agreed by the parties.
- 10.5 If Waipā Networks disputes all or part of any invoice, Waipā Networks may withhold payment for the amount in dispute until the dispute is resolved.
- 10.6 In making payment for the Goods or Services, Waipā Networks may withhold, deduct or set off any amount recoverable by Waipā Networks from the Supplier under these Terms or otherwise.

11. WARRANTIES

- 11.1 In addition to all other warranties, conditions or terms expressed or implied by law or otherwise, the Supplier warrants to Waipā Networks that (unless otherwise agreed in writing):
- (a) at the time of Delivery, the Goods will be new and unused 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 Waipā Networks otherwise makes known to the Supplier;
 - (c) the Goods and Services comply with any specifications and/or requirements supplied or agreed by Waipā Networks in relation to the Goods or Services;
 - (d) the Goods and Services comply with all applicable regulatory and legislative requirements;
 - (e) it has obtained all necessary rights, licences and consents to supply the Goods and Services to Waipā Networks;
 - (f) at the time of Delivery, the Goods will be free of any security interest, lien or other encumbrance; and
 - (g) 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 Waipā Networks, breaches any Intellectual Property Rights of any party.
- 11.2 The Supplier will, to the greatest extent possible, pass onto Waipā Networks the benefit of any warranty or other assurance from any other person in respect of the Goods and/or Services supplied to the intent that Waipā Networks may have recourse against those persons through the Supplier.

12. CANCELLATION

- 12.1 Waipā Networks may cancel any Order immediately if the Supplier:
- (a) 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

- (b) becomes bankrupt, ceases to carry on business, goes into liquidation, becomes insolvent, appoints a receiver, enters into a formal proposal for a compromise with its creditors under the Companies Act 1993 or experiences any similar action as a result of debt.

- 12.2 Unless otherwise agreed, Waipā Networks may cancel any Order at any time by giving the Supplier at least 5 Business Days' notice.
- 12.3 Waipā Networks' right to cancel any Order are in addition to any other rights or remedies it may have.
- 12.4 On cancellation of any Order:
- (a) Waipā Networks may recover any fees paid in advance to the Supplier under that Order;
 - (b) the Supplier will provide all reasonable assistance and cooperation necessary to facilitate a smooth handover of the provision of the same or similar Goods and/or Services to Waipā Networks; and
- (a) clauses 6, 8.1(e), 8.1(f), 10.5, 10.6, 11, 12, 13, 14, 15, 16, 17 of these Terms, and any other terms that are intended to survive cancellation of any Order will survive cancellation.

13. INSURANCE

- 13.1 From the date these Terms are accepted by the Supplier under clause 2.1 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 of at least \$5million.

14. LIABILITY

- 14.1 Notwithstanding any other provision of the Order (including these Terms), Waipā Networks' liability to the Supplier howsoever arising in connection with the Order or the supply or performance of the Goods and/or Services:
- (a) Excludes any indirect or consequential loss (including without limitation any loss of revenue, profit, business or reputation); and
 - (b) Will not exceed, in the aggregate, the value of the Goods to be supplied or Services performed under the Order in the preceding 12 month period.

15. INDEMNITY

- 15.1 The Supplier will fully protect, indemnify and hold harmless Waipā Networks, its officers, employees and agents from and against any liability, losses, damages, actions, proceedings, claims, demands, costs and expenses including solicitor and own client costs, incurred in connection with any breach by the Supplier of any of these Terms, or the negligent or wrongful act or default of the Supplier or any of its employees, subcontractors or agents.

16. CONFIDENTIALITY AND RECORDS

- 16.1 The Supplier will not use Waipā Networks' name to advertise or promote itself or its business in any way without the prior written consent of Waipā Networks.
- 16.2 The Supplier must keep all Confidential Information confidential and, in relation to each Order:
- (a) not use, disclose or copy the Confidential Information for any purpose other than for the purpose of, and to the extent necessary for, Delivery of the Goods and/or Services in accordance with the requirements of that Order; and
 - (b) return the Confidential Information to Waipā Networks upon Waipā Networks' request at any time or if no request is made, upon completion of Delivery of the Goods and/or Services under that Order.
- 16.3 The Supplier must only disclose the Confidential Information to its employees, contractors and agents to the extent necessary for the purpose of an Order and must ensure those employees, contractors and agents keep the Confidential Information strictly confidential on the same terms as those set out in this clause 16.
- 16.4 The Supplier must keep full records and documentation in relation to the Services and these Terms and provide copies of such records and documentation to Waipā Networks on reasonable request, and immediately notify Waipā Networks of any disclosure requests the Supplier receives.

17. INTELLECTUAL PROPERTY

- 17.1 All Intellectual Property Rights owned by a party prior to, or independently of, an Order will remain owned by that party.
- 17.2 All Intellectual Property Rights created during the course of supplying the Goods or Services will be owned by Waipā Networks. The Supplier must execute all documents and take all other actions reasonably required by the Waipā Networks to give effect to this clause 17.2.
- 17.3 The Supplier must indemnify Waipā Networks against all claims, demands, proceedings, liabilities, costs, charges and expenses suffered or incurred by Waipā Networks and/or its officers, employees, contractors and agents arising from any claim that the Goods or Services, or Waipā Networks' use of them, infringe the Intellectual Property Rights of any person.

18. GENERAL

- 18.1 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 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 (a 'force majeure event'), provided that the party affected by such force majeure event notified the other party within five (5) Business Days of the commencement of the force majeure event. When the party ceases to be affected by

the force majeure event it must immediately recommence performing its obligations under the 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 Goods and/or Services is delayed by more than 30 days after the Delivery Date, Waipā Networks may, without penalty and compensation to the Supplier, cancel the Order.

- 18.2 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 Waipā Networks in writing if any conflict of interest arises in relation to the Goods and/or Services.
- 18.3 The Supplier must not assign or subcontract any of its rights or obligations under these Terms without Waipā Networks' prior written consent.
- 18.4 Nothing in these Terms is to be interpreted as constituting either Waipā Networks 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.
- 18.5 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.
- 18.6 The Supplier's Delivery of Goods and Services is non-exclusive and Waipā Networks may appoint any other person to provide goods and services identical or similar to the Goods and Services.
- 18.7 No failure or delay on the part of Waipā Networks in exercising any of its rights under the Order or these Terms shall be construed as constituting a waiver of any such rights.
- 18.8 These Terms will be governed and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
- 18.9 The United Nations Convention on Contracts for the International Sale of Goods, signed in Vienna on 11 April 1980 will not apply to any Order.