

DEPARTMENT OF INTERNAL AFFAIRS PURCHASE ORDER TERMS AND CONDITIONS

1. OPERATION OF THESE TERMS

- 1.1 By accepting an Order from DIA, or Delivering any Good or Service that is the subject of an Order, the Supplier agrees it has entered an agreement with DIA that is governed by these Terms.
- 1.2 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.

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 Service promptly. Time is of the essence for the Delivery of any Goods or Services.
- 2.4 Without limiting DIA's rights, the Supplier must:
 - (a) immediately notify DIA in writing if it becomes aware that it will, or that it is likely to, be late in Delivering any Goods or Services; and
 - (b) take all steps reasonably required by DIA 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):
 - (a) adequately pack and protect the Goods against damage and deterioration during Delivery;
 - (b) deliver the Goods to the delivery address provided by DIA;
 - (c) provide detailed advice notes and packing slips with the Goods;
 - (d) mark the valid PO Number, any Goods' numbers and the name of the DIA buyer on all invoices, packing slips, advice notes and correspondence; and
 - (e) otherwise satisfy DIA's delivery requirements set out in the Order or otherwise advised by DIA.
- 3.2 Where any Goods are supplied in breach of clause 3.1, DIA may (at its 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 DIA representative does not indicate DIA's acceptance of the Goods.
- 3.4 If, following its inspection of any delivered Good, DIA considers that that Good, or the Delivery of that Good, breaches these Terms, then DIA 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 DIA is not satisfied with the Supplier's progress within a reasonable time in repairing or replacing any Good under clause 3.4(a), DIA 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 DIA in doing so.
- 3.6 If DIA rejects any Good in accordance with these Terms, the Supplier must immediately:
 - (a) remove the rejected Good from DIA's premises at its own risk and expense. If the Supplier does not remove the rejected Goods within 15 Business Days, DIA may return the Good 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 Good.

4. TITLE AND RISK

- 4.1 Title to any Good will pass to DIA free of any security interest or other encumbrance upon the earlier of payment for that Good and Delivery to DIA.
- 4.2 Risk in any Good will pass to DIA upon Delivery of that Good to DIA.

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 DIA, 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, including (without limitation) the Standards of Integrity and Conduct issued by the State Services Commission (see www.ssc.govt.nz).
- 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, and must ensure its employees and contractors must, comply with all of DIA's policies and procedures, including those relating to health and safety, and security.
- 5.4 If the Supplier breaches these Terms in relation to the Delivery of any Service then DIA 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.

6. PRICE AND PAYMENT

- 6.1 The Price for any Goods or Services may not be changed without the prior written approval of both parties.
- 6.2 The Supplier will provide DIA a valid GST invoices to the address notified by DIA.
- 6.3 Subject to the Supplier's compliance with these Terms, DIA 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.
- 6.4 If DIA disputes all or part of any invoice, DIA may withhold payment for the amount in dispute until the dispute is resolved.

6.5 In making payment for the Goods or Services, DIA may withhold, deduct or set off any amount recoverable by DIA 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 DIA 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 DIA otherwise makes known to the Supplier;
- (c) the Goods and Services comply with any specifications and/or requirements supplied or agreed by DIA 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 DIA;
- (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 DIA, breaches any Intellectual Property Rights of any party.

8. CANCELLATION

8.1 DIA 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.

8.2 DIA may cancel any Order for Services at any time by giving the Supplier at least 5 Business Days' notice.

8.3 DIA's right to cancel any Order are in addition to any other rights or remedies it may have.

8.4 On termination or expiry of any Order:

- (a) DIA may recover any fees paid in advance to the Supplier under that Order;
- (b) 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 DIA; and
- (a) clauses 4, 6.4, 6.5, 7, 8, 9, 11, 12 and 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 DIA's name to advertise or promote itself or its business in any way without the prior written consent of DIA.

10.2 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, Delivering the Goods and/or Services in accordance with the requirements of that Order; and
- (b) return the Confidential Information to DIA upon DIA's request at any time or if no request is made, upon completion of Delivery of the Goods and/or Services under that Order.

10.3 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 10.

11. INTELLECTUAL PROPERTY

11.1 All Intellectual Property Rights owned by a party prior to, or independently of, an Order will remain owned by that party.

11.2 All Intellectual Property Rights created the course of supplying the Goods or Services will be owned by DIA. The Supplier must execute all documents and take all other actions reasonably required by the DIA to give effect to this clause 11.2.

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

12. GENERAL

12.1 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.

12.2 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 DIA in writing if any conflict of interest arises in relation to the Goods or Services.

12.3 The Supplier must not assign or subcontract any of its rights or obligations under these Terms without DIA's prior written consent.

12.4 Nothing in these Terms is to be interpreted as constituting either DIA 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.

12.5 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.

12.6 The Supplier's Delivery of Goods and Services is non-exclusive and DIA may appoint any other person to provide goods and services identical or similar to the Goods and Services.

12.7 No failure or delay on the part of DIA in exercising any of its rights under the Order or these Terms shall be construed as constituting a waiver of any such rights.

12.8 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.

12.9 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.

13. INTERPRETATION

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

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

DIA means Her Majesty the Queen in right of New Zealand acting by and through the Chief Executive of the Department of Internal Affairs or his or her duly authorised delegate.

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

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 DIA 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 DIA 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 DIA 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 DIA issues an Order.