

# Purchase Order standard terms and conditions

## 1 Definitions

- 1.1 **"Agreement"** means the Purchase Order and these standard terms and conditions.
- 1.2 **"Deliverables"** means the Goods and/or Services to be supplied by the Supplier to WSL as identified in the Purchase Order.
- 1.3 **"Delivery"** means in the case of Goods, the Delivery of the Goods in good order and condition at WSL's premises or such other location specified in the Purchase Order, and in the case of Services, means the provision of the Services to WSL's satisfaction at WSL's premises or such other location specified in the Purchase Order and **"Delivered"** has a corresponding meaning.
- 1.4 **"Goods"** means all goods, materials, equipment, parts and any other ancillary activity provided by the Supplier to WSL identified in the Purchase Order.
- 1.5 **"GST"** means the goods and services tax in terms of the Goods and Services Tax Act 1985, at the rate prevailing from time to time.
- 1.6 **"Purchase Order"** means the Purchase Order submitted by WSL to the Supplier to purchase Deliverables.
- 1.7 **"Services"** means all the services provided by the Supplier to WSL identified in the Purchase Order.
- 1.8 **"Supplier"** means the person, business, company or organisation supplying the Goods or performing the Services as identified in the Purchase Order.
- 1.9 **"Worker"** means any person who carries out work for the Supplier in any capacity, including work as an employee, contractor or subcontractor, an employee of a contractor or subcontractor, or a volunteer. It also includes anyone else directed or influenced by the Supplier in the exercise of their work.
- 1.10 **"Working Days"** means any day other than a Saturday, Sunday or a Public Holiday (as that term is defined in the Holiday Act 2003) in Auckland, and/or any day in the period commencing on the 21<sup>st</sup> day of December in any year and ending on the 7<sup>th</sup> day of January in the following year.
- 1.11 **"WSL"** means Watercare Services Limited.
- 1.12 **"WSL Contract"** means any separate contract entered into by WSL and the Supplier for the purchase of Deliverables as referenced in the Purchase Order.

## 2 Entire agreement

- 2.1 The WSL Contract (if any), the Purchase Order, and these standard terms and conditions, comprise the entire agreement between WSL and the Supplier and supersede all prior agreements, undertakings, representations, warranties or arrangements.

## 3 Precedence of documents

- 3.1 Unless otherwise stated, in the event of inconsistency the order of precedence of the following documents shall apply;
- (a) the WSL Contract, if any;
  - (b) the Purchase Order;
  - (c) these terms and conditions; and
  - (d) any other attached drawings or documents.

- 3.2 The WSL Contract (if any), the Purchase Order, and these terms and conditions, take precedence over the provisions of any terms of supply or sale of the Supplier.

## 4 Alterations / variations

- 4.1 Alterations or variations to the Purchase Order, these terms and conditions or any other attached drawings or documents shall not be legally binding upon WSL or the Supplier unless agreed in writing by the parties.

## 5 Price and payment

### 5.1 Price

- (a) The price of the Deliverables shall be specified in the Purchase Order and includes all expenses incurred by the Supplier in relation to provision of the Deliverables.
- (b) Unless otherwise stated in the Purchase Order, the price is fixed and not subject to variation without the specific written agreement of WSL and the Supplier.
- (c) The price is exclusive of any applicable GST. The parties expressly acknowledge to each other that they are registered for GST purposes where required.

### 5.2 Payment

- (a) Payment terms are stated on the Purchase Order.
- (b) Subject to this clause 5.2, payment will be made after the receipt of a Supplier's correctly rendered tax invoice by WSL, and the receipt and acceptance of the Deliverables by WSL.
- (c) A correctly rendered invoice that is a valid tax invoice for GST purposes must include, as a minimum, the Purchase Order number and any other information necessary to enable WSL to identify the Deliverables subject to the invoice.
- (d) WSL reserves the right to return to the Supplier any invoices not deemed by WSL to be correctly rendered and retains the right to set off any moneys payable to the Supplier against any sums owed by the Supplier to WSL.
- (e) If WSL disputes an amount in an invoice, the amount disputed will not become due and payable by WSL until the dispute is resolved. WSL may suspend payment in the event that the Supplier is in breach of its obligations.

### 5.3 Advance payment

The Supplier shall ensure that where;

- (a) any payment is made for goods prior to Delivery, including any deposit, advance or instalment payment; or
- (b) the Goods are being specifically imported, manufactured or assembled to WSL's specifications; or
- (c) raw materials and components have been purchased by the Supplier for the manufacture and assembly of the Goods,

such goods, raw materials and/or components shall be identified as belonging to WSL and shall be set aside from (and shall not be used for or incorporated with) any other goods at the Supplier's premises.

## 6 Supply of goods

- 6.1 When Goods are being supplied by the Supplier as part of the Services the Supplier must:
- (a) Ensure that the Goods are without risks to the health and safety of those persons who will install, use, maintain, or repair them, or who may at any time be in the vicinity of and exposed to the Goods.
  - (b) Carry out any necessary analysis, testing, calculations, or examination to verify the safety and suitability of the Goods being supplied.
  - (c) Provide WSL with all relevant information regarding the purpose for which the Goods were manufactured, the results of any testing or examination, and any conditions necessary to ensure the Goods are without risks to health and safety.

## 7 Packaging and preservation

- 7.1 All Goods supplied by the Supplier shall be packed as specified in the Purchase Order and if not specified shall be packed so as to avoid damage or deterioration to the Goods during transportation, loading and unloading.
- 7.2 Except as agreed in writing by WSL, all Goods supplied by the Supplier shall comply with all manufacturers' specifications.

## 8 Inspection and testing

- 8.1 WSL is entitled to expedite, inspect and witness tests on the Goods at the Supplier's and any subcontractor's premises. Any such inspection or observation shall not imply acceptance or in any way relieve the Supplier from any responsibility for the Deliverables.
- 8.2 The Supplier must allow WSL access at any time to the Supplier's and any subcontractor's premises for this purpose. The Supplier must make this a condition of any subcontract.
- 8.3 WSL may carry out any acceptance tests of any Deliverables, or part thereof. If any Deliverables fail any acceptance test the Supplier will at its cost immediately remedy the failure and assist with re-testing as required by WSL.
- 8.4 WSL may reject any goods which fail to comply with the requirements of the Purchase Order. Any rejected goods may be returned at the cost of the Supplier and any moneys paid to the Supplier for the rejected goods must be immediately refunded to WSL by the Supplier.
- 8.5 Any rejected goods shall become the property of the Supplier and if held by WSL they will be held at the Supplier's risk.
- 8.6 Any rejected goods marked or identified by a WSL trademark or logo shall not be sold or otherwise disposed of by the Supplier with the trademark or logo present.

## 9 Delivery, risk and title

- 9.1 The Supplier is responsible for the Delivery and all costs (including insurance) associated with the Delivery of the Deliverables. On Delivery, all Goods must be clearly marked or identified as the property of WSL.
- 9.2 Subject to WSL's right to reject or return any Goods, title to and property in the Goods free from any encumbrances or security interests immediately passes to WSL on the earlier of payment in accordance with clause 5.2 or Delivery.
- 9.3 Risk in the Goods remains with the Supplier until Delivery to WSL.

## 10 Delays

- 10.1 Time is of the essence in the Supplier's performance under this Agreement. In the event of a possible delay in the Delivery of the Deliverables the Supplier must immediately notify WSL of the anticipated delay, with complete information regarding the cause and the earliest possible Delivery date. In such event, WSL may (without prejudice to any other rights) grant an extension to the date for Delivery and/or do whatever is necessary to expedite the provision of the Deliverables at the Supplier's expense, including terminating the Agreement (without compensation to the Supplier).

## 11 Coordination of services

- 11.1 In undertaking the Services the Supplier will consult, cooperate and coordinate activities with WSL and any other relevant party to ensure that the Supplier and WSL understand the nature of the Services, the risks arising from the Services, and the controls to be implemented to mitigate those risks, and to provide ongoing verification that the risks are being controlled and the Services are being performed in accordance with this Agreement.

## 12 Warranty

- 12.1 The Supplier warrants (as a continuing representation and warranty) that the Deliverables;
- (a) will be complete and free from any defect (including latent defect), whether through faulty design, inferior materials or workmanship;
  - (b) are suitable and fit for the purpose intended;
  - (c) will not emit any contaminant or hazardous substance;
  - (d) will be complete and Delivered by the date for Delivery indicated on the Purchase Order, or where no date for Delivery is indicated, will be Delivered within a reasonable time of the issue of the Purchase Order;
  - (e) will be Delivered with clear title and free of any security interest, liens, charges and encumbrances;
  - (f) will be provided with due diligence by appropriately trained, experienced and supervised Workers;
  - (g) in respect of Goods, that the Goods Delivered will conform with any samples provided to WSL;
  - (h) in respect of the Services, that they will be executed using the care and skill to be expected of a reputable Supplier in the relevant industry or sector; and
  - (i) conform to the Purchase Order requirements and any specifications and all applicable laws and regulations. The Supplier further warrants that the Goods are new and are of merchantable quality or such quality as specified in the Purchase Order.
- 12.2 These warranties are in addition to any statutory warranties applicable to the Deliverables.
- 12.3 If any part or aspect of the Goods fail or becomes defective within eighteen (18) months from the date of Delivery to WSL, or twelve months (12) after the Goods are placed into service by WSL, whichever is the first to occur, the Supplier must without delay and at no cost to WSL do all things necessary to remedy the defect or failure in the Goods. This can be by way of replacement, modification, repair or other means acceptable to WSL. If the Supplier does not do so, within a reasonable period following notice of the defect from WSL, then WSL will have the right to remedy the defect and recover costs so incurred (including any professional fees) from the Supplier.
- 12.4 If, during the term of the Agreement, and a further term of twelve (12) months following completion of Services, WSL is of the view that the Services do not comply with the requirements of the Agreement then WSL may require the Supplier to re-perform the Services at the Supplier's cost within such time as WSL reasonably may request.
- ## 13 Health and safety and security
- 13.1 The Supplier shall ensure so far as is reasonably practicable that the health and safety of any;
- (a) Workers involved in carrying out the Deliverables;
  - (b) Workers whose activities in carrying out the Deliverables are influenced or directed by the Supplier; and
  - (c) other person,
- is not put at risk from carrying out the Deliverables.
- 13.2 When visiting any of WSL's sites the Supplier will ensure that its Workers abide and cooperate with all health, safety, security and operational requirements of WSL. The Supplier shall ensure that its Workers advise WSL of any known hazards in relation to the Goods and/or Services prior to or at the time of Delivery of the Deliverables.
- 13.3 In the event that WSL discovers an unsafe practice or a breach of this clause 13, then in addition to any other rights under this Agreement, WSL may immediately suspend the work associated with the unsafe practice or breach. The suspension will not be lifted until the work area is made safe, the unsafe practice removed or the breach rectified. All costs of the suspension shall be borne by the Supplier.
- 13.4 If the Supplier does not rectify the breach or unsafe practice as described in clause 13.3, then WSL may terminate this Agreement immediately.
- 13.5 The Supplier will immediately notify WSL of any accident, injury or illness, near miss, or exposure the Supplier becomes aware of in the course of providing the Deliverables and provide WSL with such assistance as WSL may require to investigate such incident (including, without limitation, using reasonable endeavours to procure all Workers to provide any information requested by WSL).
- 13.6 The supplier will immediately notify WSL of any visits or inspections by WorkSafe New Zealand in relation to the activities of the Supplier, its Workers, or conditions at any workplace where Services have been, are, or will be undertaken. The Supplier must provide details (and copies of any relevant documentation) to WSL in respect of any engagement with WorkSafe New Zealand as a consequence of a visit or inspection.

## 14 Liability and indemnity

- 14.1 The Supplier must fully indemnify, and keep indemnified, WSL and its officers, employees, contractors and agents against all claims, demands, proceedings, liabilities, costs, charges and expenses, whether direct or indirect, suffered by WSL and its officers, employees, contractors and agents arising from any act, omission, neglect or fault (including any negligence) of the Supplier, its officers, employees contractors and agents related to its obligations under this Agreement.
- 14.2 Except for liability arising under clause 14.1, the Supplier's liability under this Agreement, whether in contract, tort or otherwise, in relation to claims, damages, liabilities, losses or expenses, shall be limited to five times the price paid or payable

under this Agreement (exclusive of GST and disbursements) with a minimum limit of \$25,000.

- 14.3 WSL will not be liable to the Supplier for any indirect or consequential loss or damage suffered by the Supplier as a result of any breach by WSL of its obligations under this Agreement. WSL's liability to the Supplier arising under this Agreement, is limited to the price payable for the Deliverables.

## 15 Insurances

- 15.1 In relation to the Deliverables, the Supplier shall take out and maintain with a New Zealand insurer of good repute;
- (a) insurance against all insurable risks for loss, damage or destruction to the Goods for their full reinstatement or replacement value, including cover while the Goods are in transit;
  - (b) comprehensive public and products liability insurance with a limit of indemnity not less than \$2,000,000 per claim;
  - (c) insurance covering the Supplier's own property, equipment, materials owned, hired, leased or used by the Supplier for the purpose of this Agreement; and
  - (d) any additional insurance required by any applicable law.
- 15.2 In relation to professional Services, in addition to 15.1 above, the Supplier shall at all times hold and maintain with a reputable insurer professional indemnity insurance with a limit of not less than the limit of liability under clause 14.2.
- 15.3 The Supplier will at the request of WSL provide copies of all certificates of currency in respect of the insurances required to be taken out by Supplier under this clause 15.

## 16 Force majeure

- 16.1 Neither WSL nor the Supplier shall be liable to the other for default or delay in performing its obligations in respect of this Agreement 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, provided that the party affected by such occurrence notifies the other party in writing within five (5) Working Days of the commencement of that occurrence. When the party ceases to be affected by the force majeure event it must immediately recommence performing its obligations under this Agreement and notify the other party accordingly. However, if as a result of any such force majeure event, supply of all or part of the Deliverables is delayed more than thirty (30) days after the Delivery date specified in the Purchase Order, WSL may, without penalty and compensation to the Supplier, terminate the Agreement.

## 17 Disputes

- 17.1 WSL and the Supplier shall attempt to quickly and amicably settle any disputes or differences that may arise. In the event that any such disputes or differences cannot be negotiated and amicably resolved between the parties within fifteen (15) Working Days after the dispute was first raised, then either party may refer it for final determination by the courts.

- 17.2 In the event of and during any unresolved dispute the Supplier must ensure the continued progress of achieving the Deliverables.

## 18 Termination

- 18.1 If Goods are standard or stock items (or have been offered by the Supplier as such) WSL can, by notice to the Supplier, at any time up to Delivery, cancel the commitment to buy them. Any other commitment of WSL to receive and pay for Deliverables that are not standard or stock items may be cancelled by WSL and in such instances WSL will reimburse the Supplier for all reasonable irrecoverable costs directly incurred by the Supplier up to the point of cancellation.
- 18.2 WSL may suspend performance of, or cancel, or suspend and then at any subsequent time cancel, this Agreement without any liability to the Supplier if the Supplier breaches the terms of this Agreement, or if the Supplier's business fails. The Supplier's business will be treated for this purpose as having failed if;
- (a) the Supplier makes any voluntary arrangement with its creditors;
  - (b) (being an individual or firm) the Supplier become bankrupt;
  - (c) (being a company) the Supplier becomes subject to an administration order or goes into liquidation;
  - (d) any third party takes possession of, or enforces rights over, any of the Supplier's property or assets under any form of security;
  - (e) the Supplier stops or threatens to stop carrying on business;
  - (f) the Supplier suffers any process equivalent to any of these, in any jurisdiction; or
  - (g) WSL reasonably believes that any of the events mentioned above is likely to occur and WSL notifies the Supplier accordingly.
- 18.3 A party (affected party) may immediately terminate this Agreement where the other party breaches any material obligation, term or condition of this Agreement and fails to remedy that default within ten (10) Working Days of receiving a notice (from the affected party) requesting it remedy the breach.
- 18.4 Any right of cancellation or suspension under this section is additional to any rights available to WSL under the law of any relevant jurisdiction.

## 19 Confidentiality

- 19.1 Any information provided by WSL to the Supplier which is marked as confidential, or the Supplier ought reasonably to know is confidential, must not be disclosed to any third party by the Supplier without the prior written consent of WSL or used by the Supplier other than for the purpose of satisfying the Supplier's obligations under this Agreement. The parties agree that this obligation shall survive termination or expiration of this Agreement.

## 20 Intellectual property

- 20.1 WSL and the Supplier agree that all intellectual property rights owned by either party and existing prior to commencement of the supply of the Deliverables will remain the exclusive property of that party.
- 20.2 The Supplier agrees that all intellectual property rights created by the Supplier or its employees, subcontractors or agents in the course of supplying the Deliverables will be the exclusive property of WSL.
- 20.3 The Supplier grants to WSL, or agrees to procure the grant to WSL of, an unrestricted royalty-free licence to use and copy pre-existing intellectual property to the extent reasonably required to enable WSL to use the Deliverables.
- 20.4 WSL grants to the Supplier, an unrestricted royalty-free licence to use and copy WSL's intellectual property provided to the Supplier to the extent reasonably required to enable the Supplier to provide the Deliverables.

## 21 Branding

- 21.1 The Supplier will not use any WSL trade mark, service mark, logo or other brand identifier (each a WSL brand) without the prior written approval of WSL.
- 21.2 The Supplier will, if required by WSL, use WSL brands in any signage, correspondence or other documentation relating to the Deliverables. Any use of a WSL brand will be for the purposes of this Agreement's Deliverables only, and is to be in accordance with the branding requirements notified by WSL to the Supplier.

## 22 Records, provision of information and reporting

- 22.1 The Supplier must keep full records and documentation in relation to the Goods and Services and this Agreement and comply with any directions, instructions or policies, relating to records, provided by WSL. On request by WSL, the Supplier must immediately provide to WSL all documents and records relating to the Goods and Services or this Agreement within the Supplier's possession or control.
- 22.2 The Supplier agrees to immediately pass on any request for information that it receives from a regulator or third party (including requests under the Local Government Official Information and Meetings Act 1987 or the Health and Safety at Work Act 2015) to WSL for instruction and/or action.
- 22.3 The Supplier shall provide regular reports on the performance of the Services and its other obligations under this Agreement, as reasonably required by WSL.

## 23 Waiver

- 23.1 No failure or delay on the part of WSL in exercising any of its rights under this Agreement shall be construed as constituting a waiver of any such rights.

## 24 Governing law

- 24.1 Unless otherwise specified, this Agreement will be governed and construed in accordance with the law of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
- 24.2 The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the supply of Goods from the Supplier.

## 25 Subcontracting and assignment

- 25.1 The Supplier is not permitted to assign or subcontract all or any part of its obligations under this Agreement without the prior written consent of WSL.
- 25.2 Any subcontractor engaged by the Supplier shall be obliged by the Supplier to comply with the terms of this Agreement as if the subcontractor was a party to it. The Supplier shall be liable to WSL for the acts, defaults, and negligence of such subcontractor in providing the Goods or Services as fully as if they were the acts, defaults or negligence of the Supplier.
- 25.3 If the Supplier engages any subcontractor the Supplier shall arrange for WSL, the Supplier and the Subcontractor to consult, cooperate and coordinate activities in the provision of Services by the subcontractor to ensure that the Supplier, the subcontractor, and WSL understand the nature of the Services, the risks arising from the Services, and to provide ongoing verification that the risks are being controlled and the Services are being performed in accordance with this Agreement.

## 26 Compliance with laws

- 26.1 The Supplier must comply with all relevant laws and standards applicable to the supply of the Goods and/or the Services and the operation of any equipment used in the performance of the Services.

## 27 Non-exclusivity

- 27.1 The Purchase Order, or these terms and conditions, do not confer on the Supplier any right to be a sole or exclusive supplier of the Deliverables to WSL.

## 28 Independent contractor

- 28.1 The Supplier is an independent contractor and must exercise independent control, management and supervision in the performance of this Agreement. The Supplier is not WSL's agent, partner or employee. The Supplier's personnel will not under any circumstances be considered employees of WSL for any purpose.
- 28.2 The Supplier acknowledges that where WSL acquires Deliverables as a consumer (as that term is defined in the Consumer Guarantees Act 1993), then that Act applies to the acquisition of the Deliverables.

## 29 Notices

- 29.1 A notice under this Agreement is treated as having been duly given and received;
- (a) if delivered by hand, at the time of delivery;
  - (b) if sent by post, two (2) Working Days after it was posted;
  - (c) if sent by facsimile, on its receipt as to which a confirmation slip will be prima facie evidence of receipt; or

(d) if sent by email, on the day following transmission of the email.

29.2 The addresses of the parties are as stipulated in the Purchase Order.