

WESTSIDE PURCHASE ORDER TERMS (NEW ZEALAND)

1. DEFINITIONS

Contract means the contract comprising the documents referred to in clause 2.3 that is formed on acceptance of a Purchase Order by the Supplier in accordance with clause 2.2.

Customer Site means a place owned or controlled by the Customer (including a petroleum tenement in which the Customer has an interest).

Delivery Address means the place specified in the Purchase Order for delivery of Goods or Services or such other place that is notified in writing by the Customer to the Supplier.

Delivery Date means the date specified in the Purchase Order for the delivery of Goods to the Delivery Address or completion of Services or, if no date is specified in the Purchase Order, the date that is 30 days after the date of the Purchase Order.

Goods means:

- the goods or products specified in the Purchase Order; and
- any equipment, materials, documents or other items supplied in the performance of Services.

Personnel means an employee, agent, contractor, subcontractor or professional adviser of a party, except that the Customer's Personnel do not include the Supplier or the Supplier's Personnel.

Policies and Plans means the Customer's policies and procedures in place from time to time, including the Customer's Safety Management System and the Customer's environmental and land access policies and procedures.

Price means the price stated in the Purchase Order that is payable for the corresponding Goods or Services.

Purchase Order means a Purchase Order issued by the Customer that specifies Goods and/or Services that it is offering to purchase from the Supplier.

Purchase Order Terms means the terms and conditions contained in this document.

Related Persons means, for a party, the Personnel and related companies of that party (but with the term "company" deemed to include any body corporate wherever registered or incorporated).

Services means all things necessary to perform the services specified in the Purchase Order, and includes incidental work or supplies that can be reasonably inferred as appropriate to perform them.

2. FORMAT OF CONTRACT

2.1 A Purchase Order issued by the Customer is an offer to purchase the Goods and Services specified in that Purchase Order from the Supplier for the Price on these Purchase Order Terms.

2.2 The Supplier agrees that the Customer's offer to purchase the Goods and Services specified in a Purchase Order for the Price on these Purchase Order Terms is accepted by the Supplier on the earlier of the Supplier notifying the Customer that it accepts that Purchase Order and the Supplier commencing to supply those Goods and Services.

2.3 The Contract formed on acceptance of a Purchase Order comprises: the Purchase Order, any specifications or documents attached to or referred to in the Purchase Order and these Purchase Order Terms.

2.4 Neither the issue of a Purchase Order nor the formation of a Contract prevents the Customer from procuring goods or services equivalent or similar to the Goods and Services from any other person.

3. SUPPLY OF GOODS AND SERVICES

3.1 The Supplier must supply Goods and Services safely, with due care and skill and in accordance with applicable laws.

3.2 The Supplier must comply with any directions from the Customer relating to the performance of its obligations under the Contract.

3.3 The Supplier warrants that Goods and Services will:
(a) comply with the requirements specified in the Contract, any other specifications agreed with the Customer and any samples provided by the Supplier; and

(b) comply with applicable laws and, unless agreed otherwise by the Customer, relevant standards of Standards Australia and any applicable industry codes;

(c) be free from defects and fit for the purpose stated in the Purchase Order or, if no purpose is stated, for the purpose for which they are usually supplied; and

(d) in the case of Goods, be new (unless otherwise specified).

3.4 The Supplier must obtain all usual manufacturer's warranties with respect to Goods and will assign the benefit of these warranties to the Customer (and provide copies of them to the Customer with its invoice).

3.5 The Supplier must provide the Customer, when requested, with progress reports and other information about the supply of Goods and Services.

4. DELIVERY OF GOODS AND COMPLETION OF SERVICES

4.1 The Supplier must:

(a) deliver Goods to the Delivery Address on or before the Delivery Date; and

(b) complete Services on or before the Delivery Date.

4.2 Time is of the essence of the Supplier's obligations in clause 4.1.

4.3 Without limiting clause 4.2, if any Goods are not delivered or Services are not completed by the Delivery Date, the Customer may cause the Supplier to deliver the Goods or the complete the Services by the most expeditious means at the Supplier's cost.

5. PRICE AND PAYMENT TERMS

5.1 Unless stated otherwise in the Purchase Order, the Price:

(a) is inclusive of all costs and expenses incurred in the supply of Goods and Services, including labour, equipment, materials, travel, delivery, packaging, insurance and taxes (other than GST);

(b) is in New Zealand dollars and not subject to rise and fall.

5.2 At the times stated in the Purchase Order or, if no times are stated, following delivery of Goods and completion of Services, the Supplier must issue an invoice to the billing address set out in the Purchase Order. The invoice must be in the form of a Tax Invoice and include the Purchase Order number and:

(a) a description of the Goods supplied, the quantity of Goods and units of measure and the Price payable consistent with the Purchase Order;

(b) a description of the Services supplied, the Price payable consistent with the Purchase Order and time sheets or other supporting information detailing the hours worked by the Supplier or its Personnel; and

(c) where the Supplier claims reimbursement of an expense to which it is entitled under the Purchase Order, tax invoice receipts to substantiate the relevant expense.

5.3 The Supplier will submit any further information that is requested by the Customer to substantiate the invoice or any part thereof.

5.4 Subject to clause 5.5 and any other rights of the Customer, the Customer will pay the amount of the invoice by electronic funds transfer to the bank account nominated by the Supplier in the relevant invoice within the period specified in the Purchase Order or, if no period is specified, then within 30 days from the end of the month in which the invoice is submitted.

5.5 If the Customer disputes the amount of an invoice, the Customer will pay the undisputed part of the invoice in accordance with clause 5.4. If the resolution of the dispute determines that the Customer is to pay an amount to the Supplier, the Customer will pay that amount in accordance with clause 5.4 following resolution of the dispute and issue of an invoice for the amount.

5.6 The Customer may deduct any amounts due from the Supplier to the Customer from any amount payable to the Supplier.

6. CUSTOMER SITES

6.1 Prior to accessing a Customer Site, the Supplier and its Personnel must undertake any induction required by the Policies and Plans or otherwise required by the Customer.

6.2 When accessing a Customer Site, travelling to or from a Customer Site or transporting Goods to or from a Customer Site, the Supplier must, and must ensure that its Personnel:

- (a) comply with applicable laws relating to health and safety and the environment and with the Policies and Plans that are applicable to the Customer Site; and
- (b) do not cause the Customer to be in breach of any laws.

6.3 The Supplier must provide any assistance required by the Customer relating to an audit or investigation conducted by the Customer (including an audit or investigation of the Supplier's compliance with applicable laws and the Policies and Plans).

7. PACKAGING AND DELIVERY REQUIREMENTS

7.1 The Supplier must ensure Goods are suitably packed to prevent damage and deterioration in transit (including any transit from the Delivery Address to the Customer's premises) and storage.

7.2 Where Goods are to be loaded or unloaded at the Delivery Address, the Supplier is responsible for loading or unloading the Goods, as the case may be, unless stated otherwise in the Purchase Order.

7.3 Goods must be accompanied by a delivery docket securely attached to the packaging that includes the Purchase Order number, the order item number, the Supplier's details (including name and contact number), the Delivery Address, any shipping address provided by the Customer (if different to the Delivery Address) and the contents, quantity, date of dispatch and weight of each package.

7.4 Any Goods which are dangerous must be transported, packaged, labelled and unloaded in accordance with applicable laws and be accompanied by information as required by applicable laws.

8. TITLE AND RISK

8.1 Subject to clause 8.2, title in Goods passes to the Customer on the earlier of delivery to the Delivery Address and payment of the Price. The Supplier warrants that it has good and marketable title to Goods and the Customer will receive title to Goods free from encumbrances.

8.2 The Supplier retains title to any Goods that are rented to the Customer. The Supplier must allow the Customer to possess and enjoy such Goods during the agreed rental term.

8.3 Risk in Goods passes to the Customer when:

- (a) subject to paragraph (b), Goods are delivered to the Delivery Address; and
- (b) where Goods are delivered 'ex works', Goods are collected from the Supplier at the Delivery Address.

8.4 Where Goods are rented to the Customer, risk passes back to the Supplier on expiry of the agreed rental term.

9. INSPECTION

9.1 The Supplier agrees that the Customer may inspect and test Goods or Services. Any inspection or test by the Customer does not relieve the Supplier of its obligation in the Contract or at law.

9.2 The Supplier must provide the Customer and its Personnel with access to any place where Goods are being manufactured or stored or Services are being performed to enable the Customer to exercise its rights under clause 9.1.

9.3 The Supplier must conduct tests and inspections of Goods or Services that are required by: any document forming part of the Contract, an applicable law, relevant standards of Standards Australia and any applicable industry codes.

10. DEFECTIVE GOODS AND SERVICES

10.1 If, in the reasonable opinion of the Customer, Goods do not meet the requirements of the Contract (**Defective Goods**), the Customer may, in its absolute discretion:

- (a) reject the Defective Goods and, if any payment has been made for the Defective Goods, the Supplier must reimburse to the Customer, as a debt due, the amount paid for the Defective Goods; or
- (b) require the Supplier to, at its cost, repair or replace the Defective Goods. If the Supplier fails to do so, the Customer may repair or make good the Defective Goods and recover

from the Supplier, as a debt due, the reasonable costs incurred in doing so.

10.2 If, in the reasonable opinion of the Customer, Services do not conform to the requirements of the Contract (**Defective Services**), the Customer may require the Supplier, at its cost, to do all things as are necessary to rectify the Defective Services. If the Supplier fails to comply rectify the Defective Services within any time stated by the Customer (or within a reasonable time if no time is stated), then the Customer may rectify the Defective Services and recover from the Supplier, as a debt due, the reasonable costs incurred in doing so.

10.3 If the Customer exercises its rights under clause 10.1(a) and the Supplier does not remove the Defective Goods from the Customer's premises, the Customer may either: store the Defective Goods at the Supplier's cost and risk or return the Defective Goods to the Supplier at the Supplier's cost and risk.

10.4 The Customer may recover from the Supplier, as a debt due, the reasonable costs incurred in exercising its rights under clause 10.3.

10.5 No payment by the Customer prejudices the Customer's rights under this clause 10.

11. VARIATIONS

11.1 The Customer may direct the Supplier in writing to increase, decrease, omit or change Goods or Services (**Variation**). No Variation will invalidate the Contract and the Customer will not be in breach of the Contract if it reduces the quantity or scope of the Goods or Services and then engages a third party to supply those Goods or Services.

11.2 If the parties cannot agree on the change in the Price or Delivery Date resulting from a Variation, the Customer will determine a reasonable adjustment to the Price or the Delivery Date, as applicable.

12. LIABILITY AND INDEMNITY

12.1 Subject to clause 12.2 and to the extent permitted by law, the Supplier must indemnify the Customer and its Related Persons against any cost, expense, loss, damage or liability (including any fine or penalty) that the Customer or its Related Persons suffer or incur in respect of:

- (a) loss of, or damage to, or loss of use of, any real or personal property; or
- (b) personal injury, disease or illness to, or death of, any person, caused or contributed to by the acts or omissions of the Supplier or its Personnel.

12.2 The indemnity in clause 12.1 does not apply to the extent that cost, expense, loss, damage or liability is caused by the negligent act or omission of the Customer or its Related Persons.

12.3 Under no circumstances will either party be liable to the other for any indirect or consequential loss, including loss of actual or anticipated profits or revenues, loss of goodwill, loss of business reputation, damage to credit rating or loss of use, except to the extent that such losses are incurred by gross negligence, wilful misconduct, fraud, dishonesty or criminal acts or omissions.

13. INSURANCE

13.1 The Supplier must take out and maintain:

- (a) public and products liability insurance with a limit of indemnity of at least \$10,000,000 per occurrence;
- (b) workers' compensation insurance as required by law;
- (c) if the Purchase Order requires the Supplier to transport Goods to or from the Delivery Address, insurance covering loss of or damage to Goods during transit;
- (d) if the Purchase Order requires the Supplier to provide professional advice or services, professional indemnity insurance with a limit of indemnity of at least \$2,000,000 per occurrence; and
- (e) if the Supplier will use motor vehicles or mobile plant at a Customer Site, comprehensive motor vehicle insurance with a limit of indemnity of at least \$10,000,000 per occurrence.

13.2 The insurances in clause 13.1 must be maintained from the commencement of the Contract to the completion of the Supplier's obligations.

13.3 The Supplier must ensure that its subcontractors are covered by the insurances in clause 13.1 or otherwise maintain equivalent insurances as is appropriate (including with respect to limits) given the work or services provided by them.

13.4 The Supplier must provide copies of all certificates of currency and certificates of insurance for the insurances in clause 13.1.

14. FORCE MAJEURE

14.1 **Force Majeure** means an event beyond the control of the party affected by it which cannot be remedied or overcome by the exercise of usual industry practices, but does not include inclement weather or strikes or other industrial action.

14.2 A party will not be liable for breach of the Contract if it is prevented or delayed in performing its obligations by Force Majeure and has notified the other party in writing of the events claimed to be Force Majeure.

14.3 The Delivery Date will be extended by the Customer by the period during which delivery of Goods or completion of Services is delayed as a result of Force Majeure.

15. TERMINATION

15.1 To the extent permitted by law, the Customer may immediately terminate the Contract by giving written notice to the Supplier if any of the following events occur in respect of the Supplier:

- (a) a court order is made that the Supplier be put in liquidation;
- (b) a court order is made appointing a liquidator or provisional liquidator in respect of the Supplier, or one of them is appointed, whether or not under an order;
- (c) a receiver, receiver and manager, or official or statutory manager is appointed in respect of the Supplier or the assets or undertaking of the Supplier or any part of those assets or that undertaking;
- (d) the Supplier enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
- (e) the Supplier resolves to go into liquidation, or otherwise dissolve itself, or gives notice of intention to do so;
- (f) the Supplier is unable to pay its debts as and when they become due and payable;
- (g) the Supplier is presumed to be unable to pay its debts within the meaning of section 287 *Companies Act 1993*.

15.2 The Customer may immediately terminate the Contract by giving written notice to the Supplier if:

- (a) the Supplier breaches the Contract and the breach is incapable of remedy or the Supplier fails to remedy the breach within 7 days of receiving written notice from the Customer that it is required to do so;
- (b) the Customer considers that the Supplier has breached clause 16;
- (c) the Supplier is or becomes incompetent in the performance of its obligations in the Customer's reasonable opinion; or
- (d) the Supplier fails to supply Goods or Services within the time required by the Contract.

15.3 If the Customer terminates the Contract under clause 15.1 or 15.2(a), the parties' remedies, rights and liabilities will be the same as they would have been under the law governing the Contract had the Supplier repudiated the Contract and the Customer elected to treat the Contract as at an end and recover damages.

15.4 The Customer may, in its absolute discretion, terminate the Contract or any part of it at any time by giving the Supplier at least 7 days' written notice.

15.5 If the Customer terminates the Contract under clause 15.4:

- (a) the Customer will pay the Supplier for Services performed or Goods delivered by the Customer prior to termination which have not been previously paid for; and

- (b) the Supplier is not entitled to any other payment or claim arising out of the Contract or its termination.

15.6 Notwithstanding termination, the obligations of the Supplier under the Contract that are capable of surviving the termination, including the provisions relating to confidentiality, intellectual property, indemnities and governing law, will survive termination until each of those obligations have been completely discharged.

16. ANTI-BRIBERY, CORRUPTION AND SANCTIONS

16.1 The Supplier warrants that neither it nor its related bodies corporate or officers are subject to any sanction or included on any list under a law, regulation or other legally binding measure relating to bribery, corruption, trade sanctions or similar activities (**Anti-Bribery Laws**).

16.2 The Supplier must comply with and ensure that its Personnel comply with Anti-Bribery Laws in the performance of the Supplier's obligations under the Contract.

17. CONFIDENTIALITY AND PRIVACY

17.1 The Supplier must keep, and procure that its Personnel keep, confidential all information relating to the Customer, Goods and Services or the Contract.

17.2 Clause 17.1 does not apply to:

- (a) information that is, or subsequently becomes, in the public domain other than as a result of a breach of this clause or any other obligation of confidence imposed on the Supplier;
- (b) disclosure of information that is permitted in writing by the Customer or is strictly necessary for the performance of the Supplier's obligations under the Contract;
- (c) disclosure of information that is required by law or the requirements of a stock exchange that apply to the Supplier; or
- (d) disclosure of information to the Supplier's legal or other professional advisers for the purposes of obtaining professional advice and provided such advisers are already under a legal obligation of confidentiality by reason of their profession.

17.3 The Supplier must not make public announcements in relation to this Contract.

17.4 If the Supplier performs services which require the collection, handling, processing or analysis of '*personal information*', as that term is defined in the *Privacy Act 1993*, the Supplier must comply with the Information Privacy Principles as set out in that Act.

18. INTELLECTUAL PROPERTY

18.1 The Supplier grants the Customer an irrevocable, royalty free, transferable licence (including the right to sub-licence) to use any copyright, moral rights, patents, trademarks, designs and other intellectual property rights (**Intellectual Property Rights**) in Goods and Services for the purpose of using and enjoying those Goods and Services.

18.2 The Supplier warrants that:

- (a) the exercise of the rights granted under clause 18.1 will not infringe the Intellectual Property Rights of any third party;
- (b) the supply of Goods and Services by the Supplier and the use of Goods and Services by the Customer or a Related Person will not infringe the Intellectual Property Rights of any third party; and
- (a) it consents and has procured the consent of its Personnel to the Customer and its Related Persons doing anything that infringes any rights in Part 4 *Copyright Act 1993* that the relevant person has in Goods and Services.

18.3 The Supplier will indemnify the Customer and its Related Persons in respect of any liabilities arising out of any breach of this clause 18 by the Supplier.

19. GST AND TAXES

19.1 If a party is or becomes liable to pay GST in connection with a taxable supply under the Contract, that party may recover from the other party, an amount equal to the GST payable in respect of that taxable supply subject to the issue of a Tax Invoice.

19.2 The Customer may deduct an amount in respect of non-resident contractor's tax from any payment made to a non-resident Supplier under the Contract, to the extent that such deduction is required by law. If an amount is withheld in accordance with this clause and paid by the Customer to the Commissioner, it is deemed to have been paid to the Supplier on the date on which the remainder of the payment to which it relates was paid to the Supplier.

19.3 If the Customer makes a payment to the Supplier under this Purchase Order without withholding an amount in respect of non-resident contractor's tax (**NRCT Amount**), and it is later determined that the Customer must pay the NRCT Amount to a tax authority, the Customer is entitled to recover from the Supplier as a debt due, the NRCT Amount plus, where the failure to withhold is due to any act or omission of the Supplier, the amount of any cost, loss or damage suffered by the Customer as a consequence of the failure to withhold (including but not limited to any penalties or interest imposed on the Customer).

20. CAPACITY OF CUSTOMER

20.1 Where the Customer specified in a Purchase Order is a joint venture or the Customer issues a Purchase Order as agent for a joint venture:

- (a) the obligations and liabilities of the participants in the joint venture under or in connection with the Contract are, subject to clause 20.1(d), several (and neither joint nor joint and several);
- (b) each participant's obligations and liabilities are limited to its participating interest in the joint venture from time to time;
- (c) the operator of the joint venture as nominated in the Purchase Order or otherwise notified to the Supplier acts as the sole and exclusive agent and representative of the joint venture for the purposes of the Contract, including giving and receiving all notices in relation to the Contract; and
- (d) in the event that any one or more of the participants in the joint venture are controlled by the same entity, the liability of those participants who are controlled by the same entity is joint and several.

21. SUBCONTRACTING AND ASSIGNMENT

21.1 The Supplier may not assign its rights or obligations under the Contract or sub-contract any work to be performed pursuant to the Contract without the prior written consent of the Customer.

21.2 Approval to subcontract does not relieve the Supplier from any liability or obligation under the Contract and the Supplier is liable and responsible for the acts or omissions of its subcontractors as if they were acts or omissions of the Supplier.

22. ENTIRE AGREEMENT

22.1 The Contract contains the entire agreement between the Customer and the Supplier with respect to its subject matter and supersedes all prior agreements, memoranda of understanding, representations, warranties, promises, statements and negotiations in respect of its subject matter.

22.2 Unless expressly agreed in writing by the Customer, no terms or conditions sought to be imposed by the Supplier (including the Supplier's terms and conditions and proposal or quotation for the supply of Goods or Services) form part of the Contract.

23. RELATIONSHIP BETWEEN THE PARTIES

23.1 The Supplier is engaged as an independent contractor and nothing in the Contract or the Purchase Order makes the Supplier or its Personnel an employee, partner, agent of the Customer.

23.2 As between the Customer and the Supplier, the Supplier is responsible for compliance with any laws relating to the employment of the Supplier's Personnel, including the payment of wages and other monetary entitlements, and deduction and remission of taxes.

23.3 The Supplier will indemnify the Customer from any costs or losses incurred by the Customer arising out of:

- (a) a claim by any of the Supplier's Personnel that he or she is an employee or contractor of the Customer; or

- (b) a claim by any of the Supplier's Personnel against the Customer of any right or entitlement arising out of his or her employment or the termination of his or her employment.

24. GENERAL

24.1 The Customer will not be liable for any cost, expense, damage, loss or liability (**Claim**) claimed by the Supplier unless the Supplier has submitted a written claim to the Customer within 14 days after the occurrence of the events or circumstances on which the Claim is based. The written notice must include the legal basis for the Claim and the facts relied upon in support of the Claim in sufficient detail to permit verification and assessment and details of the quantum of the Claim.

24.2 The Contract is governed by the laws of New Zealand, and the parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of New Zealand.

24.3 Failure or delay by the Customer to require full or partial performance of the Contract does not affect its right to require performance subsequently. Single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other exercise of that or any other right, power or remedy.

24.4 Each party must do all things necessary to give the Contract its intended effect.

24.5 Any provision of the Contract that is or becomes illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and will not invalidate the remaining provisions.

24.6 Subject to clause , neither the Contract nor the Purchase Order may be changed or modified in any way after it has been issued except in writing signed by or on behalf of all the parties.

24.7 In the Contract (unless the context otherwise requires):

- (a) the singular includes the plural and vice-versa;
- (b) the words 'include' and 'including' are to be construed without limitation;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) a word or expression defined in the:
 - (i) *Companies Act 1993* has the meaning given to it in the *Companies Act 1993*;
 - (ii) *Goods and Services Tax Act 1985* has the meaning given to it in *Goods and Services Tax Act 1985*;
- (e) headings do not affect the interpretation of the Contract;
- (f) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinated legislation issued or made under, that legislation or legislative provision;
- (g) a reference to a document or agreement includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (h) natural persons include partnerships, bodies corporate, unincorporated associations and authorities;
- (i) a party includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (j) if the Supplier comprises two or more entities, then the Contract will bind each of those entities jointly and severally and benefit those entities jointly.