

Purchase Order General Conditions (NZ)

1. Definitions & Interpretation

1.1 Definitions

In the Contract unless the context clearly indicates otherwise:

ABC Laws, or anti-bribery and corruption laws has the meaning given to that term in clause 15.1(b).

Authority means all persons and any government, government body, semi-government, local government, authority, administrative or judicial body, public authority, statutory corporation or instrumentality that has jurisdiction over the Goods and Services.

Best Industry Practice means exercising the degree of skill, care, diligence, efficiency, prudence and foresight which would be expected from a skilled and competent service provider experienced in providing goods and services commensurate to the type, size, value and complexity of the Goods and / or Services.

Breach Notice means a notice issued by a Party specifying:

- (a) details of a breach of the Contract; and
- (b) requiring the Defaulting Party to remedy that breach within a reasonable time.

Claim means any claim, action, demand, suit or proceeding of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether in connection with the Contract, at Law, in equity, or otherwise.

Companies Act means the *Companies Act 1993*.

Conditions means these Purchase Order General Conditions.

Confidential Information means any information in any form which:

- (a) is, by its nature, confidential or non-public;
 - (b) is marked or designated or confirmed by a Party as confidential or proprietary at the time of its disclosure; or
 - (c) a Party knows or ought to know is confidential,
- but excludes:

- (d) information that is in or enters the public domain through no fault of the receiving Party;
- (e) information that was made available to a Party by a person (other than the other Party) who, as far as that Party knows, has or then had the unrestricted legal right to do so;
- (f) information that is required to be disclosed by Law, any Authority or the rules of a recognised securities exchange;
- (g) information that is disclosed to the Party's professional advisers to obtain professional advice; or
- (h) disclosure of the information to a Related Body Corporate of the Party, provided that the Related Body Corporate is subject to an obligation of confidence no less onerous than that owed under the Contract.

Consequential Loss means any loss of opportunity, profit, anticipated profit, business, business opportunities or revenue or any failure to realise anticipated savings.

Contract means the following documents:

- (a) the Purchase Order;
- (b) these Conditions; and
- (c) any other document which is attached to, or incorporated by reference in, the Purchase Order or these Conditions (provided that documents incorporated by reference have been provided or made available to Supplier).

Data Breach has the meaning given to that term in clause 14.2(d).

Date for Delivery means the date for the Delivery of the Goods and Services as specified in the Purchase Order.

Defective Goods means Goods which are not in conformity with the Contract.

Deficient Services means Services or the results of any Services which are not in conformity with the Contract.

Delivery means delivery of the Goods and performance of the Services at the Site.

Fit for the Intended Purpose means that the Goods and Services satisfy the purposes, functions and requirements set out in, or which can reasonably be inferred from, the Contract, and the written communications between the Purchaser and the Supplier.

Goods mean the goods to be supplied by Supplier under the Contract.

GST means any form of goods and services tax payable under the GST Act.

GST Act means the *Goods and Services Tax Act 1985*.

Indemnified Parties means the Purchaser and its respective Personnel and an **Indemnified Party** means any of the Indemnified Parties.

Insolvency Event in relation to an entity, means:

- (a) a receiver, receiver and manager, administrator, trustee or similar official being appointed over any of the assets or undertaking of the entity;
- (b) the entity suspending payment of its debts generally;
- (c) the entity being or becoming unable to pay its debts when they are due or is unable to pay its debts within the meaning of the Companies Act;
- (d) the entity entering into or resolving to enter into any arrangement, understanding or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (e) an application or order being made for the winding up or dissolution of, or the appointment of a provisional liquidator to, the entity or a resolution is passed or steps are taken to pass a resolution for the winding up or dissolution of the entity otherwise than for the purpose of an amalgamation or reconstruction which has the prior consent of all of the members of the entity; or
- (f) an administrator, or administrator of a deed of company arrangement being appointed in accordance with the Companies Act,

and in relation to an individual, means the individual being or becoming insolvent or committing an act of bankruptcy as those terms are used in the *Insolvency Act 2006*.

Intellectual Property Rights means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trade marks, designs, patents, circuit layouts, plant varieties, inventions and Confidential Information, and any other results of intellectual activity in any field whether or not registrable, registered or patentable, including rights that may exist in applications to register these rights and all renewals and extensions of these rights.

Law means:

- (a) legislation, ordinances, regulations, by-laws, orders, awards, proclamations, statutory instruments, directions and practice notes of the New Zealand Parliament or any government agency or authority and mandatory codes of practice;
- (b) certificates, Licences, consents, permits, approvals, qualifications, registrations, standards and requirements of organisations having jurisdiction in connection with the provision of the Goods and Services; and
- (c) all other laws from which legal rights and obligations may arise, including those principles of common law and equity established by decision of the courts.

Liability Cap means the greater of:

- (a) 200% of the Price; or
- (b) \$1,000,000.

Licence means all licences, qualifications, registrations and other statutory requirements necessary for the performance of Services pursuant to and in compliance with the Contract.

Loss includes any losses, liabilities, damages, costs, charges or expenses (including lawyers' fees and expenses on a full indemnity basis), fines and penalties, however arising.

Manufacturer's Warranty means a warranty given by the manufacturer of the Goods in relation to those Goods.

Modern Slavery means any activity, practice or conduct that would constitute an offence in relation to slavery, forced labour, involuntary servitude, debt bondage, human trafficking, and other slavery-like exploitation as prohibited under the *Modern Slavery Act 2018 (Cth)*, the *Criminal Code Act 1995 (Cth)*, Sch 1, divisions 270 and 271 and *Modern Slavery Act 2018 (NSW)*. For the avoidance of doubt, Modern Slavery includes any conditions or practices similar to those prohibited under those laws, statutes, regulations and codes.

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Motor Vehicle Insurance means a policy of comprehensive motor vehicle insurance covering third party property damage, or any injury to or death of any person, arising from or in relation to any plant or vehicles (registered or unregistered) in connection with the Contract or the Services.

Party means Purchaser or Supplier and **Parties** has a corresponding meaning.

Personnel means:

- (a) in the case of Supplier, any of its employees, agents and representatives, any Subcontractors and any of the employees, agents and representatives of any Subcontractors, who are involved either directly or indirectly in the provision of either or both of the Goods and Services; and
- (b) in the case of Purchaser or any Related Company, any of their respective past or present officers, employees, agents or representatives.

Personal Information means any information about an identified individual, or an individual who is reasonably identifiable:

- a) whether the information or opinion is true or not; and
- b) whether the information is recorded in a material form or not.

Policies means the Site Requirements and any rules, plans, standards, policies and procedures of Purchaser as communicated or made available to Supplier from time to time.

Price means the amount payable for the Goods and Services specified in the Purchase Order and adjusted in accordance with the Contract.

Privacy Laws means the *Privacy Act 2020 (NZ)*, and any regulations made thereunder, as amended or replaced from time to time, and/or any other Law applying to the use, storage, handling or transfer of Personal Information, as such Laws apply to the Parties.

Professional Indemnity Insurance means a policy of insurance providing cover in respect of liability arising from an act or omission by Supplier or its Personnel, whether owed in contract or otherwise, in relation to the performance of Supplier's professional services and duties in relation to the Goods and Services.

Project IP has the meaning given to that term in clause 13(b).

Public and Products Liability Insurance means a policy of insurance, written on an occurrence basis, covering all liability in respect of:

- (a) loss of, damage to, or loss of use of property; and
- (b) the injury (including disease or illness) to, death of or illness of any person,

in connection with the Contract.

Purchaser means the Party so identified in the Purchase Order.

Purchaser Material means any material provided by or on behalf of Purchaser to Supplier under or in connection with the Contract or the supply of the Goods and Services.

Purchase Order means a document so identified from Purchaser to Supplier requiring the provision of Goods or the performance of the Services.

Quality Standards means all standards, codes, specifications and requirements to be complied with pursuant to the Contract or by Law.

Related Company has the meaning given to that term in the Companies Act.

Security Interest means:

- (a) any security under the *Personal Property Securities Act 1999*; and
- (b) any mortgage, charge, pledge, hypothecation or lien or any security or preferential interest of any kind, or arrangement with any creditor.

Services means the services to be performed by Supplier specified in the Purchase Order.

Site means the site for Delivery of the Goods and Services as specified in the Purchase Order.

Site Requirements means the requirements relating to working on or around the Site as Purchaser provided to Supplier in writing whether as part of a Purchase Order or otherwise.

Subcontractor means any contractor or subcontractor (including consultants and those suppliers) engaged by Supplier and those contractor's or subcontractor's employees, officers, agents, consultants and contractors.

Supplier means the Party so identified in the Purchase Order.

Supplier Material means any material provided to the Purchaser by Supplier or on Supplier's behalf in connection with the Contract.

Tax means any present and future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature imposed or levied by an Authority, together with any penalties, fines or interest thereon.

Tax Invoice means an invoice which complies with the GST Act in relation to the production and form of tax invoices for GST purposes.

Warranty Period means in respect of the Goods, either:

- (a) the period commencing on the date on which those Goods are delivered and ending on the expiry of 12 months; or
- (b) the period of any applicable Manufacturer's Warranty, whichever is longer.

1.2 Interpretation

In the Contract unless expressly provided otherwise:

- (a) a reference to this Contract or another instrument, Licence, policy, code or standard includes any variation, supplement, assignment, novation, substitution or replacement of any of them;
- (b) the singular includes the plural and vice versa;
- (c) includes or including means includes or including without limitation;
- (d) a reference to a person includes a natural person, firm, partnership, body corporate, unincorporated association, authority, the Crown or any other organisation or legal entity;
- (e) a reference to a natural person includes a reference to the person's executors, administrators, successors, substitutes (including, persons taking by novation) and assigns;
- (f) a reference to a corporation includes its successors and permitted assigns;
- (g) a reference to a body or Authority which ceases to exist is a reference to either a body or Authority having substantially the same objects as the named body or Authority;
- (h) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (i) a reference to a time is to that time in the country in which the Goods are Delivered or the Services are performed;
- (j) a requirement to do anything includes a requirement to cause or procure that thing to be done and a requirement not to do anything includes a requirement to prevent that thing being done;
- (k) a word that is derived from a defined word has a corresponding meaning;
- (l) any reference to a right or a discretion on the part of Purchaser means that Purchaser may exercise that right or discretion in its sole and absolute discretion;
- (m) any terms used in this Contract (unless the context otherwise requires) which are defined in the GST Act are taken to have the meaning as defined in the GST Act;
- (n) a reference to \$, NZD or dollar is to the lawful currency of New Zealand;
- (o) headings and the table of contents are inserted for convenience only and do not affect interpretation of the Contract; and
- (p) a reference to 'supplier', 'contractor' or 'service provider' or any similar derivative of such terms in any document comprising this Contract will be taken to mean Supplier.

2. Provision of Goods and Services

2.1 Goods and Services to be provided

- (a) Goods and Services may be ordered by way of Purchase Order or in accordance with such other procedures advised by Purchaser from time to time.
- (b) Supplier must provide to Purchaser the Goods and Services requested in each Purchase Order.
- (c) Purchaser may cancel all or part of a Purchase Order at any time before the supply or receipt of all or part of the relevant Goods or Services, respectively.

2.2 Goods and Services Warranties

- (a) Supplier represents and warrants that the Goods and Services:
 - (i) are provided in accordance with:

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- (A) this Contract;
 - (B) all relevant Laws and Policies;
 - (C) Best Industry Practice; and
 - (D) any reasonable direction by Purchaser or its Personnel;
- (ii) are provided using goods and materials of new and merchantable quality;
 - (iii) are Fit for the Intended Purpose and fit for the purpose for which goods and/or services of the same kind are commonly supplied;
 - (iv) correspond with any sample, demonstration model or description of the Goods, and description or demonstration of Services, provided to Purchaser; and
 - (v) any subsequent use or on-sale of the Goods and Services, will not infringe any Intellectual Property Rights of any third person and Purchaser will not have to pay any licence fee, royalty or other amount to any person in connection with the ownership, use, on-sale, or operation of the Goods and Services by Purchaser.

- (b) Supplier represents and warrants that all information about the Goods and Services provided by Supplier to Purchaser is true and correct in all respects, and no material information regarding the Goods and Services has been withheld from Purchaser.
- (c) Supplier represents and warrants that the Goods:
 - (i) will be provided with all technical information required to install, assemble and otherwise use the Goods;
 - (ii) are free of defects, are of merchantable quality and will remain so for the Warranty Period; and
 - (iii) have a life expectancy commensurate with that which would be expected of the same or similar Goods provided by a competent and reputable supplier.

2.3 Provision of Personnel

Supplier must provide, at its own expense, appropriately qualified, accredited, Licenced and trained Personnel to provide the Goods and Services. Supplier must verify the credentials of its Personnel at Purchaser's request.

2.4 Inspection

Purchaser may:

- (a) including prior to Delivery, inspect or audit all or any of the Goods (and any tests or other information relating to the intended performance or composition of the Goods); and
- (b) inspect or audit all or any of the Services or the results of such Services.

2.5 Deficient Services or Defective Goods

- (a) If at any time during the Warranty Period any of the Goods or Services are or become Defective Goods or Deficient Services, then Purchaser may reject the Deficient Services or Defective Goods (as applicable) in whole or part and direct Supplier to:
 - (A) refund any payments made by Purchaser in respect of any Deficient Services or Defective Goods (as applicable); or
 - (B) repair, replace, re-perform or make good, at its cost, any Deficient Services or Defective Goods (as applicable) within a reasonable timeframe; and
- (b) Goods repaired or replaced by Supplier will be subject to the same Warranty Period as the original Goods commencing from the date on which those Goods were delivered to Purchaser following any such repair or replacement.

3. Exclusivity and minimum purchase

3.1 Contract is non-exclusive

Nothing in the Contract imposes an obligation of exclusivity on Purchaser. Purchaser may engage a third party to provide any combination of goods and services of the same nature as the Goods and Services in addition to or in place of Supplier at any time and from time to time.

3.2 No minimum volume

Purchaser has no obligation to purchase a minimum volume, or any particular volume, of Goods and Services from Supplier.

4. Assignment, novation and subcontracting

- (a) Neither party may assign, novate or subcontract its rights or obligations under the Contract to another party without the prior written consent of the other party (which shall not be unreasonably withheld).
- (b) Notwithstanding clause 4(a), the Purchaser may assign or novate any or all of its rights or obligations under the Contract at any time to a Related Body Corporate of the Purchaser.
- (c) The subcontracting of a right or obligation does not relieve Supplier from any liability or obligation. Supplier will remain liable to Purchaser for the acts and omissions of any subcontractor as if they were acts or omissions of Supplier.

5. Delivery

5.1 Delivery Term

Supplier must deliver the Goods in accordance with the delivery term stated in the Purchase Order. If no delivery term is specified in the Purchase Order, the Goods must be delivered Delivery Duty Paid (DDP) (*Incoterms 2020*) to the destination made known to Supplier.

5.2 Supply difficulties

If Supplier is, or reasonably believes it will be, unable to provide the Goods or Services by the Date for Delivery, Supplier must notify the Purchaser, and use its best endeavours to, at its own cost, obtain the Goods or Services from an alternative source or provide alternate goods or services, by the Date for Delivery.

5.3 Alternate supply

Where Supplier is unable to procure Goods, Services or acceptable alternative goods or services in accordance with clause 5.2, and Purchaser procures Goods or Services from an alternative supplier, then Supplier must pay Purchaser the difference between:

- (a) the actual price of the goods or services purchased (including all freight costs); and
- (b) the Price that would have been paid for the Goods or Services had Supplier satisfied its obligations under the Contract.

Purchaser must use reasonable endeavours to mitigate its costs procuring alternative goods.

6. Risk and Title

6.1 Risk

Goods will be at the risk of Supplier until Delivery. Supplier must, at its cost, make good any damage to Goods that occurs prior to Delivery.

6.2 Title

Unless otherwise stated in a Purchase Order, title in Goods passes to Purchaser on the earlier of Delivery or payment for the Goods. Purchaser will receive full unencumbered title in Goods free of any Security Interest.

7. Performance on Site

Supplier must, and must ensure that all of Supplier's Personnel:

- (a) minimise any interference with any of the activities of Purchaser and any other person on Site (including any other contractor, invitee or Personnel of Purchaser);
- (b) only access Purchaser's Sites in the manner and at the times provided for in the Contract or, if none are specified, as directed by Purchaser;
- (c) adhere to all accepted safe and environmentally satisfactory working practices to be expected of an experienced and competent service provider exercising Best Industry Practice;
- (d) complete such safety and other training or induction necessary for the performance of Services pursuant to and in compliance with the Contract, including any safety requirement or obligation or as required for the Purchaser to meet its legal obligations;
- (e) not do anything which may place the Purchaser or its Personnel in breach of any Laws relating to employment, health, safety and environment; and
- (f) to the extent that the Supplier's Personnel access the Site, ensure the Site is left secure, clean and tidy.

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8. Price

Purchaser agrees to pay the Price to Supplier. Unless otherwise stated in a Purchase Order, the Price is inclusive of all costs and Taxes (excluding GST) incurred by Supplier in supplying the Goods and performing the Services.

The Price may not be increased without the Purchaser's prior written consent.

9. Invoicing and payment

9.1 Invoicing

Supplier must submit a Tax Invoice to Purchaser in respect of Goods or services provided on Delivery of Goods or Completion of the Services (**Completion**).

9.2 Payment

- (a) Purchaser must pay Supplier the amount certified as being due for payment in the relevant Tax Invoice within 62 days of the end of the month in which the Tax Invoice is submitted.
- (b) Payment is payment on account only and is not evidence of the value of the Goods or Services, an admission of liability or an admission that the Goods or Services are in accordance with the Contract.
- (c) The Supplier shall have up to **6 (six)** months from Completion to submit a Tax Invoice to the Purchaser after which the Supplier will not be entitled to submit the Tax Invoice and the Purchaser will not be under any payment obligation with respect to that Tax Invoice.

9.3 Set-off

Either Party (**First Party**) may deduct from any amount due, or to become due to the other Party (**Second Party**), all debts and monies due and payable from the Second Party or its Personnel to the First Party under or in connection with the Contract or any other agreement between the Parties.

10. Termination

10.1 Breach capable of remedy

If a Party is in breach of the Contract and that breach is capable of remedy, then the other Party may issue that Party with a Breach Notice requiring that Party to remedy the breach.

10.2 Termination for Material Breach or Insolvency

A Party may immediately terminate the Contract by notice to the other Party (**Defaulting Party**):

- (a) if the Defaulting Party is in material breach of the Contract and:
 - (i) the Defaulting Party fails to comply with a Breach Notice; or
 - (ii) the breach is not capable of remedy; or
- (b) if an Insolvency Event occurs in relation to the Defaulting Party; or
- (c) on any other grounds specified in the Contract giving rise to a right of termination.

10.3 Consequences of termination

Notwithstanding any other provision of this Contract, on termination of the Contract for any reason:

- (a) the sole liability of Purchaser to Supplier will be the payment of amounts payable for Goods Delivered and Services performed up to the date of termination; and
- (b) the rights and obligations of the Parties under clauses 1, 10, 12, 13 and 14 survive termination of this Contract.

10.4 Termination for Convenience

The Purchaser may, upon giving 30 days prior written notice, terminate the Contract for any reason whatsoever. The Supplier will not be owed any compensation for such termination.

11. Insurance

11.1 Insurances required to be effected by Supplier

Supplier must, before performing any of its obligations, effect the following insurance policies with a reputable insurer and maintain those policies during the performance of the Supplier's obligations under the Contract:

- (a) Public and Products Liability Insurance with a limit of liability of \$10 million per occurrence (and for products liability insurance, in the aggregate);

- (b) where the Services are professional services, Professional Indemnity Insurance with a limit of liability of \$2 million per occurrence;
- (c) Motor Vehicle Insurance with a limit of liability of at least \$5 million per occurrence; and
- (d) any other insurances agreed between the Parties and set out in a Purchase Order.

11.2 Evidence of Insurance

Before commencing the performance of its obligations under the Contract, and at other times requested by Purchaser, Supplier must give Purchaser certificates of currency issued by the insurer in respect of each insurance policy.

11.3 Supplier's Liability

Nothing in this clause limits Supplier's liability or responsibility under any other provision of this Contract.

12. Liability & Indemnities

12.1 Liability

- (a) Supplier is liable for and will indemnify and keep indemnified the Indemnified Parties against any Loss arising out of or in connection with any:
 - (i) breach by Supplier or its Personnel of the Contract (including any warranty);
 - (ii) negligent act or omission of Supplier or its Personnel;
 - (iii) false or misleading conduct, fraudulent or reckless act or omission or any wilful default by Supplier and/or Supplier's Personnel;
 - (iv) act or omission of Supplier or its Personnel causing property damage or personal injury, illness or death to any person;
 - (v) breach of Law by Supplier or its Personnel;
 - (vi) Claim regarding the infringement or alleged infringement of Intellectual Property Rights of any person or breach of confidentiality; and
 - (vii) (where the Goods have been on-supplied to a third party), Claim by that third party that the Goods are Defective Goods or do not comply with any statutory warranties, any Manufacturer's Warranty, or any warranties provided by Supplier under this Contract, to the extent the defect or non-compliance is attributable to the Supplier or its Personnel.
- (b) Each indemnity in the Contract is a continuing obligation separate and independent from Supplier's other obligations.
- (c) It is not necessary for any Indemnified Party to incur expense or make payment before enforcing a right of indemnity conferred by the Contract.

12.2 Limit on liability

- (a) Supplier's liability will be reduced proportionally to the extent that the Loss is caused or contributed to by any negligent act or omission, error, fraud or wilful misconduct by the Indemnified Parties.
- (b) Subject to clause 12.2(d), neither Party will be liable to the other Party for any Claims or Liability in respect of any Consequential Loss suffered or incurred as a result of any breach, act or omission by the Party (whether in negligence or otherwise) (**Consequential Loss Exclusion**).
- (c) To the extent permitted by Law, Supplier's total liability under the Contract is limited to the Liability Cap.
- (d) The Liability Cap and the Consequential Loss Exclusion do not limit Supplier's liability to the extent that the Claim or Loss:
 - (i) is recoverable under an insurance policy required by this Contract (or would have been covered by such insurance policy had the Supplier complied with its insurance obligations);
 - (ii) arises as a result of fraud, wilful misconduct (including wilful default) or criminal conduct of the Supplier or its Personnel;
 - (iii) is the result of the Supplier's abandonment (whether wholly or substantially) of Supplier's obligations under this Contract;
 - (iv) arises as a result of a breach of Law by Supplier or its Personnel;

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- (v) arises as a result of any Claims for infringement of the Intellectual Property Rights of any person or breach of confidentiality; or
- (vi) is in connection with any damage to third party property or injury to, illness or death of any person.
- (vii) Notwithstanding anything else in this Contract and to the full extent permitted by Law, the maximum aggregate liability of Purchaser to Supplier for all Claims and Loss arising under or in connection with this Contract or in connection with the Goods and Services is limited to an amount equal to the Price.

13. Intellectual Property

- (a) Except as provided in this clause, nothing in the Contract affects the ownership of a Party's Intellectual Property Rights.
- (b) All Intellectual Property Rights (including future Intellectual Property Rights) produced by or on behalf of Supplier in connection with the Contract, both present and future (**Project IP**), remain the property of Supplier.
- (c) Supplier grants to Purchaser a perpetual, irrevocable, non-exclusive, worldwide, transferable, royalty-free licence (including the right to sublicense) to use, exercise and exploit all Project IP and to exercise the Intellectual Property Rights in Supplier Material for any purpose in connection with the business of Purchaser and its Related Companies.
- (d) Purchaser grants Supplier a non-exclusive, fully paid-up licence, to use and reproduce the Purchaser Material for the sole purpose of providing the Goods and Services.
- (e) Supplier represents and warrants that the exercise of Purchaser's rights in respect of the Project IP and Supplier Material will not infringe any person's rights in that material, including any Intellectual Property Rights and moral rights.
- (f) The licences and obligations in this clause survive the termination or expiry of Intellectual Property Rights.

14. Confidential & Personal Information

14.1 Confidentiality

Subject to this clause, each Party must ensure that:

- (a) all Confidential and/ or Personal Information is kept confidential; and
- (b) its Personnel and its Subcontractors maintain in confidence all Confidential and / or Personal Information.

14.2 Data security and privacy

During this Contract, either Party may receive Personal Information from the other party in the form of data or other information contained on physical or electronic media. The Parties agree that:

- (a) it will only use the Personal Information for the purposes of fulfilling its obligations under this Contract, and will not disclose any Personal Information to any third party without the disclosing Party's prior written consent;
- (b) it will effect and maintain industry-standard security measures (including the use of secure passwords and encryption at rest and in flight) to prevent any unauthorised use or disclosure of, or unauthorised access, loss or damage to, Personal Information;
- (c) it will at all times comply with all applicable laws and regulations, including the Privacy Laws, applying to the use, storage, handling or transfer of that Personal Information;
- (d) it will notify the other Party as soon as practicable if there is any actual or suspected loss, theft or unauthorised access, use or disclosure to/of any Personal Information which the notifying Party has in its possession or control (a "**Data Breach**"); and
- (e) it will provide any information reasonably required by the notified Party in relation to the Data Breach.

15. Business Standards

15.1 Anti-bribery and corruption

- (a) The Parties must not offer or provide any benefit (including any payment, gift, hospitality or gratuity, whether monetary or in-kind) to any person with the intention of improperly influencing such person in the exercise of their duties (including to make a decision or to take or refrain from taking other action).

- (b) Each party represents, warrants and undertakes that:

- (i) in performing its obligations under this Contract neither it nor any of its Personnel have offered, authorised, promised, given, solicited or accepted, and none of the foregoing will offer, authorise, promise, give, solicit or accept, to or from any person (including any Authority), any payment, gift, service, thing of value or other advantage where such an action would violate any laws relating to anti-bribery and corruption in the jurisdictions in which it operates (**ABC Laws**);
- (ii) in performing its obligations under this Contract it and its Personnel will comply with all ABC laws;
- (iii) neither the Supplier nor any of its Personnel, engage in Modern Slavery and, in the case of the Supplier, it will take reasonable steps to ensure that none of its Subcontractors or suppliers directly or indirectly involved in the provision or manufacture of goods or services supplied under this Contract engage in Modern Slavery; and
- (iv) it will comply with all Modern Slavery reporting requirements applicable to it.

15.2 Business Practice Standards

- (a) Purchaser has developed the following policies, guides and statements regarding business practices and standards:
 - (i) BlueScope's Supplier Code of Conduct;
 - (ii) BlueScope's Code of Conduct; and
 - (iii) BlueScope's Human Rights Policy,
 (together, the **Business Practice Standards**) which are available <https://www.bluescope.com/sustainability/supply-chain>
- (b) Supplier acknowledges that it has received or gained access to copies of the Business Practice Standards.
- (c) Supplier is expected to read, understand and at all times comply with the Business Practice Standards and Purchaser reserves the right to monitor and/or audit Supplier's compliance with the Business Practice Standards.

15.3 Notice

Upon becoming aware of any actual or reasonably anticipated breach of clauses 15.1 or 15.2, Supplier must immediately provide written notice of the breach (giving full details of such breach) to Purchaser.

15.4 Right of Termination

- (a) if a Party is in material breach of any part of this clause 15, or the other Party reasonably suspects such a breach in its sole discretion, then without prejudice to any other remedy the other Party may have, the other Party may terminate this Contract immediately by notice to the breaching Party .
- (b) Despite any other provision in this Contract, as a consequence of termination under clause 15.4, the terminating Party shall not be liable for any Loss that the other party or any other person may suffer as a result of such termination, and where the terminating Party is the Purchaser, the Purchaser shall not be liable to purchase any Goods or Services.
- (c) Any right of termination under this clause is in addition to any other right of termination the Party may have under the Contract or at Law.

16. General

16.1 Inconsistency

Unless expressly provided otherwise, to the extent of any inconsistency between the terms set out in these Conditions or a Purchase Order issued pursuant to these Conditions, the terms of the Purchase Order shall prevail.

16.2 Construction

The Contract is not to be construed against a Party on the basis that the Party or its lawyers were responsible for its drafting.

16.3 Purchaser holds for the benefit of each Indemnified Party

Each Party to the Contract acknowledges and agrees that Purchaser and each Related Company holds each exception, limitation, defence, immunity

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or other benefit contained in the Contract on behalf of and for the benefit of each Indemnified Party.

16.4 No reliance

- (a) Without limiting any other provision of the Contract the Supplier represents and warrants that it has not entered into the Contract in reliance on any representation expressly or impliedly given by or on behalf of Purchaser; and
- (b) the Supplier represents and warrants that it has made its own inquiries as to the Licences which apply to the supply of the Goods and the performance of the Services.

16.5 Relationship of Parties

- (a) Nothing in the Contract creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties.
- (b) Neither Party has the authority to bind the other Party by any representation, declaration or admission, or to make any contract or commitment on behalf of the other Party or to pledge the other Party's credit.

16.6 Governing Law

- (a) The Contract is governed by the laws of New Zealand.
- (b) The Parties irrevocably submits to the non-exclusive jurisdiction of the courts of New Zealand and courts competent to determine appeals from those courts with respect to any proceedings which may be brought arising out of or in connection with the Contract.

16.7 Waiver

A right created by the Contract cannot be waived except in writing signed by the Party entitled to that right. Delay by a Party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a Party of a right operate as a subsequent waiver of the same right or of any other right of that Party.

16.8 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from the Contract without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

16.9 Preservation of existing rights

The expiration or termination of the Contract does not affect any right that has accrued to a Party before the expiration or termination date.

16.10 No merger

Any right or obligation of any Party that is expressed to operate or have effect on or after the completion, expiration or termination of the Contract for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

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