

# Standard Conditions Of Purchase

## STANDARD CONDITIONS OF PURCHASE

### 1 DEFINITIONS

In these terms and conditions:

“**Deliverables**” means the supply of Goods, and (where applicable) the provision of any incidental services, and/or the performance of the Services by the Supplier pursuant to this Purchase Order.

“**Delivery Date**” means the date or dates specified in this Purchase Order on which the Goods are required to be delivered and/or Services are to be performed.

“**Goods**” means the machinery, plant, equipment, materials and other items of any kind to be supplied under the Purchase Order and includes any and all parts thereof.

“**GST**” means goods and services tax in terms of the Goods and Services Tax Act 1985.

“**Trade Assist**” “**we**”, “**us**” or “**our**” means the Trade Assist entity listed as the Purchaser on the front of the Purchase Order whether acting as agent or on its own behalf.

“**Price**” means the price of the Deliverables as agreed between Trade Assist and the Supplier subject to any variation in accordance with these Terms and, unless otherwise agreed in writing, is expressed to be exclusive of GST.

“**Purchase Order**” means the document issued by Trade Assist to the Supplier for ordering the Goods and/or Services listed.

“**Services**” means the services to be performed under the Purchase Order.

“**Site**” means the place or places specified in the Purchase Order to which the Goods are to be delivered/Services are to be performed by the Supplier.

“**Supplier**” “**you**” or “**your**” means the party listed as the Supplier on the front of this Purchase Order, being the party to whom the Purchase Order is issued.

“**Terms**” these terms and conditions of purchase as may be amended by Trade Assist from time to time.

“**Warranty Period**” means the 12 month period or other period specified in the Purchase Order commencing on the later of:

- (a) the Delivery Date; and
- (b) if applicable, the date of acceptance of the Goods or completion of the Services (as the case may be).

### 2 SUPPLIER'S OBLIGATIONS

**2.1** The Supplier will provide the Deliverables listed in the Purchase Order as directed by Trade Assist and in accordance with these Terms.

**2.2** All Goods must be new and unused, and suitable for the purpose(s) for which they are required.

**2.3** If Services are to be performed by or on behalf of the Supplier, whether specifically as Services or incidental to the supply of Goods, the Supplier will, and will ensure that its employees, agents and subcontractors, perform such Services in a proper, professional and workmanlike manner, and exercise that degree of care, skill and diligence that would reasonably be expected of a skilled and experienced operator engaged in New Zealand in the same type of undertaking under the same or similar circumstances.

**2.4** The Supplier will comply with all applicable laws, statutes and regulation governing the provision of Goods and/or Services including the Health and Safety in Employment Act 1992. The Supplier will further comply with all health and safety rules and regulations in force on the Site and all reasonable safety-related instructions given by Trade Assist in relation to ensuring the safety of the Supplier's employees and any other persons for whom the Supplier is deemed responsible, hazard management, information for employees, training and supervision of employees, and any other statutory or regulatory safety obligations.

### **3 INSPECTION, TESTING AND ACCEPTANCE**

**3.1** At any time prior to acceptance, Trade Assist may inspect, examine and test, the materials, workmanship and suitability of the Goods. Such inspection does not relieve the Supplier of its liability for any of its obligations under these Terms or the Purchase Order, nor will it affect Trade Assist's right to subsequently reject the Goods.

**3.2** At any time during the period 14 days after delivery, Trade Assist may carry out any reasonable acceptance tests on the Goods (in whole or part). Upon satisfactory completion of the acceptance tests, the Goods shall be deemed to be accepted. If any of the Goods fail any acceptance test the Supplier must, at its cost, immediately remedy any defect, fault or problem and may be required to assist Trade Assist with testing (and retesting) as and when requested.

### **4 REJECTION**

**4.1** Without prejudice to any other rights or remedies it may have, Trade Assist reserves the right to reject the whole or any part of the Goods if the Goods do not conform with the description in the Purchase Order or not in accordance with any drawings, designs or specifications.

**4.2** Any rejected Goods may be returned, at the Supplier's cost, and Trade Assist shall be immediately repaid or credited the cost of the rejected Goods. Goods rejected but held by Trade Assist will be at the Supplier's risk.

## **5 RISK, TITLE & INSURANCE**

**5.1** Risk and liability for loss or damage to the Goods ordered pursuant to this Purchase Order will pass to Trade Assist only on acceptance of the Goods.

**5.2** Title to and ownership of the Goods shall pass to Trade Assist on delivery of the Goods to Site, except where payment is made prior to delivery in which case property in the Goods will pass to us on payment.

**5.3** Trade Assist reserves the right to cancel this Purchase Order, or any part of it at any time prior to delivery of this order or any part of it.

**5.4** In providing the Deliverables the Supplier must maintain transit insurance or carrier's risk insurance and third party liability insurance for a sum equal to the greater of five times the Price and two million dollars (\$2,000,000).

## **6 PRICE & PAYMENT**

**6.1** Unless otherwise agreed, the Price for the Deliverables specified in the Purchase Order is the only amount Trade Assist must pay. The Price will not be adjusted under any circumstances without Trade Assist's prior written consent. No charges shall be made and no legal liability for payment shall arise other than the Price shown on the face of this Purchase Order.

**6.2** Unless otherwise agreed, all Prices quoted to us are in New Zealand currency, fixed and not subject to escalation, inclusive of any taxes (except GST), levies, duties, insurance, freight (including all packaging, tagging, delivery to the Site), revenue or other charges whatsoever relating to the Deliverables.

**6.3** Invoices will be paid on or before the last day of the month following the date of receipt of the Supplier's invoice. Invoices must quote the relevant Purchase Order number and may be rejected if they fail so to do.

**6.4** Trade Assist may set off any amounts due to the Supplier against any monies owed or estimated to be owed by the Supplier to Trade Assist.

## **7 WARRANTY**

**7.1** Without limiting any of Trade Assist's other rights and remedies available under the Terms or at law, the Supplier guarantees the Deliverables against any omissions, defects or failures whether due in whole or in part to faulty design, materials or workmanship or any other cause which occurs (whether or not apparent) at any time during the Warranty Period.

**7.2** If the Supplier breaches its obligations under the warranty in clause 7.1 of these Terms, the Supplier will, at Trade Assist's option and at the Supplier's expense:

- (a) refund the Price for and, where applicable, remove, such of the Goods that are non-conforming;
- (b) repair, modify or replace such Goods; and/or
- (c) resupply the Services.

Any Goods repaired/replaced or Services resupplied will be subject to a further full Warranty Period.

## **8 INDEMNITY**

**8.1** The Supplier shall indemnify Trade Assist from and against any action, suit, claim, demand, loss, damage, cost or expense (including, but not limited to, damaged property, plant or equipment) arising as a direct or indirect result of any act or omission by the Supplier or its employees, agents or subcontractors howsoever caused in relation to the Deliverables supplied by the Supplier.

**8.2** Neither party shall have any liability (under statute, contract or tort, including negligence) to the other party or any other person for any loss of profits, income or savings, or any loss of a financial nature, or for any indirect or consequential damage, loss, cost or expense suffered by the other party or any other person.

**8.3** The provisions in clause 8 (Indemnity) will remain in full force and effect until all the obligations under the Purchase Order and these Terms have been fully satisfied by the Supplier.

## **9 GENERAL**

**9.1** Trade Assist's waiver of any specific defaults by the Supplier shall not constitute a waiver of any other conditions of the Purchase Order or these Terms.

**9.2** These Terms and each Purchase Order is governed by the laws in force in New Zealand.