

## TERMS AND CONDITIONS – GOODS AND SERVICES PURCHASE CONTRACT

### 1. INCONSISTENCY

1.1. These Terms and Conditions apply in place of, prevail and override any terms or conditions (whether or not in conflict or inconsistent with these Terms and Conditions) contained or referred to in any correspondence, quotation, purchase order, invoice, order confirmation, delivery docket or other documentation submitted by either party or elsewhere (including but not limited to the Purchase Contract) or implied by trade custom, practice or earlier course of dealing unless these Terms and Conditions are specifically excluded or varied in writing by a director or officer of both parties. Any attempt by You to interpose different or additional terms and conditions or in any respect alter or reject these Terms and Conditions is rejected by Us and will not become part of the Contract between You and Us and any purported provisions to the contrary are hereby excluded or extinguished and any similar provision in either party's terms and conditions shall be of no effect.

### 2. CONTRACT

2.1. We may issue a purchase order for Goods and/or Services to You on the terms and conditions set out in the purchase order. On Your acceptance of Our purchase order, a Contract is formed and you must supply the Goods and/or perform the Services in accordance with the terms of the Contract.

2.2. We are not required to purchase any minimum quantity of Goods and/or Services and any purchases that We make are non-exclusive.

### 3. GOODS

3.1. Upon delivery of the Goods in accordance with clause 9, You will invoice Us in accordance with clause 3.2. In consideration for Goods, Deliverables and/or Services supplied by You, We will pay the Price within 60 days from the end of the month in which We receive a tax invoice for the Goods and/or Services from You, in accordance with clause 3.2.

3.2. The Price includes any applicable GST. Where GST is included in the Price, You must provide Us with a tax invoice that complies with all requirements in the GST Act and any other applicable Law.

3.3. All payments will be made in New Zealand currency unless otherwise agreed in writing.

### 4. SERVICES

4.1. You will perform the Services requested by Us from the date We request.

4.2. We may require the removal and prompt replacement of any of Your personnel who are not performing the Services to Our reasonable satisfaction. Any such replacement person must have comparable qualifications and experience and be reasonably acceptable to Us.

4.3. You will perform the Services within a reasonable period of time as determined by Us. If the Services are likely to be delayed for any reason, You must follow the procedure set out in clause 6.

4.4. The performance of Our express obligations under this Contract is Our entire responsibility in relation to the performance of the Services.

4.5. Except to the extent that this Contract expressly requires Us to provide any resources or materials, You must provide, at Your expense, everything necessary to perform the Services.

4.6. Prior to commencing the Services You agree to complete any orientation programs as directed by Us (including, but not limited to relevant workplace health and safety training).

4.7. You warrant that you have all necessary skills and experience in order to provide the Services to Us.

4.8. You agree that in performing the Services You will comply with all legal requirements including under the Health and Safety at Work Act 2015.

4.9. This clause 4.8 will only apply if the Services include Critical Safe Work:

- (a) For the purposes of this clause 4.8, Critical Safe Work is any work that could potentially cause serious injury, and includes (but is not limited to) the following types of activities: confined space entry, heavy equipment operations, working at heights, and demolition.
- (b) If the Services You provide under this Contract include Critical Safe Work, You must prepare a Risk Assessment (**RA**)/Job Hazard Analysis (**JHA**) for the Services, and (if applicable) provide all training to Your personnel as directed by Us.
- (c) The RA/JHA shall identify known hazards associated with the Services, and preventative actions/precautionary measures to minimise or eliminate the identified hazards.
- (d) You must review the applicable RA/JHA with any of Your personnel or Subcontractors (as applicable). You must document evidence of this review in writing, and retain it for the duration of the Term.
- (e) Before you commence any Services to which an RA/JHA relate You must provide Our representative with copies of:
  - (i) the RA/JHA; and
  - (ii) safety data sheets relevant to any chemicals to be used in connection with providing the Services.

4.10. You must supply personal protective equipment (**PPE**) appropriate for the tasks being undertaken as part of the Services which meets Our requirements. We may specify minimum PPE requirements for those tasks.

4.11. You must identify a representative who has overall responsibility for ensuring Your compliance with the requirements of this clause 4 while performing the Services.

4.12. To the extent applicable, You agree to ensure that any of Your employees or subcontractors involved in performance of the Services comply with all relevant obligations in this clause 4. You will be solely responsible for Your nominated personnel, employees, subcontractors, and agents used in the performance of the Services and of this Contract, and are solely responsible for the compliance of Your personnel, employees, subcontractors, and agents with all relevant obligations under this Contract.

4.13. You agree to actively work with Us to consult, co-ordinate and co-operate on health

and safety matters in accordance with the Health and Safety at Work Act 2015.

## **5. DELIVERABLES**

- 5.1. The Services must be provided with all due care and skill which would be expected of a skilled and experienced consultant in your industry. All Deliverables must conform to the requirements of this Contract, and the specifications and representations You have given Us.
- 5.2. You warrant that the Services and our possession and Use of the Deliverables will not infringe the Intellectual Property Rights of any other person.
- 5.3. We reserve the right to reject any Deliverable that does not substantially or materially conform to the requirements of this Contract. If that occurs, We will notify You of the problems with the Deliverable. You must then rectify the problems with the Deliverable and resubmit it to Us as soon as possible. If the Deliverable still does not substantially or materially conform to the requirements of the Contract, then We may at our option terminate the Contract.
- 5.4. In consideration for full payment by Us of the Price, We will own all Intellectual Property Rights in the Deliverables, and we will own the Deliverables themselves. You assign all right, title and interest (including all Intellectual Property Rights) in the Deliverables to Us effective on the date of their creation.
- 5.5. You (or Your suppliers) will own all pre-existing Intellectual Property Rights that are used in the Services or the Deliverables. But You grant Us an unrestricted perpetual, irrevocable, royalty free licence to use any of Your Intellectual Property Rights incorporated in any Deliverables or necessary for Us to use the Deliverables. Examples of Your intellectual property include pre-existing templates, tools, methodologies and standard-form documents that You use in providing the Services and any developments or modifications to any of those items.
- 5.6. You will indemnify Us (and Our officers, employees, agents, affiliates and Related Companies) against any Liability suffered or incurred in connection with any claim alleging that the supply of the Goods and/or Services or our possession or use of the Deliverables as contemplated by the Contract infringes the Intellectual Property Rights of any other person. We will notify you promptly of any such claim.

## **6. DELAY**

- 6.1. As soon as You think that an obligation under this Contract may not be met by the date requested by Us, You must promptly notify Us. You must tell us:
  - (a) the cause of the delay;
  - (b) the effect of the delay;
  - (c) the steps You are taking to minimise the delay; and
  - (d) any extension of time You require to meet the affected obligations.

- 6.2. After being notified of delay, We will both meet and discuss the impact. Where We, acting reasonably, determine that the delay is not Your fault (or Your subcontractors') We will:
  - (a) extend the time for meeting any affected obligation by a reasonable period accordingly; or
  - (b) pay you unavoidable, reasonable costs incurred due to the delay.
- 6.3. Where We, acting reasonably, determine that the delay is Your fault (or Your subcontractors'), You will commit all additional resources required to meet the date requested by Us at Your cost.
- 6.4. If You fail to notify Us of a delay which We determine is Your fault (or that of Your subcontractors') in accordance with this clause, then:
  - (a) You must perform Your obligations according to the date requested by Us; and
  - (b) We reserve Our other rights.

## **7. COMPLIANCE**

- 7.1. You must comply with all our safety, security and site procedures (including office conduct), as amended from time to time, when on Our premises. If You are to be given access to Our information systems then You must comply with Our applicable policies concerning access to information systems and use of our information, as We may amend them from time to time. We will notify You of relevant changes to Our procedures and policies. We may immediately withdraw access and terminate the Contract where You breach any of Our policies or procedures and the breach is sufficiently serious.
- 7.2. You must comply with all applicable Laws (including Laws relating to the protection of personal information and privacy) when providing the Goods, performing the Services and creating the Deliverables, and ensure that you do not put Us in breach of any Laws..
- 7.3. You will be solely responsible for Your nominated personnel, employees, subcontractors and agents used in the supply of Goods, performance of the Services and of this Contract.

## **8. RISK AND TITLE IN GOODS**

- 8.1. The title and risk in the Goods shall remain with You until the Goods are received by the person specified by Us in the Purchase Contract at the point of delivery and/or in accordance with the Incoterm stated in the Purchase Contract.
- 8.2. Subject to Our rights of inspection and return in accordance with clause 9, on receipt of the Goods by the person specified by Us in the Purchase Contract at the point of delivery and/or in accordance with the Incoterm stated in the Purchase Contract, title and risk in the Goods shall pass to Us.
- 8.3. To the extent permitted by law the parties agree that this Contract does not constitute a security agreement under the Personal Property Securities Act 1999. If, notwithstanding the parties' agreement to the contrary, applicable Law deems this Contract to constitute a security agreement under the Personal Property Securities Act 1999, You agree that you will not register a financing statement on the Personal Property Securities Register in respect of any security interest created or provided for by this Contract.

## 9. DELIVERY, INSPECTION AND RETURN OF GOODS

- 9.1. Goods are deemed to be sold to Us on Carriage and Insurance Paid (CIP) or Delivered Duty Paid (DDP) unless otherwise agreed in writing between the parties.
- 9.2. Time is of the essence for delivery and deliveries must be made both in the quantities and by the delivery date specified by Us in the Purchase Contract ("Delivery Date").
- 9.3. If delivery is not made by the Delivery Date (or within a reasonable time if no date is specified), then without prejudice to any other remedy available to us at Law, We are entitled to an amount, as liquidated damages, which is equal to 0.5% of the Price attributable to the value of the delayed Goods for each full week of delay up to a maximum of 5% of the Price. The parties agree that these liquidated damages are a genuine pre-estimate of loss and do not constitute a penalty. If You deliver more than one month after the Delivery Date, unless agreed in writing by Us, We may terminate the Contract without liability to You.
- 9.4. Without limiting any of Our rights, if We terminate the Contract in accordance with clause 9.3, We are entitled to:
- (a) return to You at Your risk and expense, any Goods which we had already received from You, which we cannot efficiently or commercially use due to the non or late delivery of Goods; and/or
  - (b) any money We have paid in respect of those Goods not delivered and/or those Goods already delivered but which cannot be effectively and commercially used due to the non or late delivery of Goods; and/or
  - (c) recover from You any additional expenditure reasonably incurred by Us in obtaining replacement Goods and any other loss, cost and damage reasonably or unavoidably incurred by Us arising from the late or non-delivery of the Goods or any part thereof including for the avoidance of doubt any sums which become payable to third parties as a result of the late or non-delivery.
- 9.5. On delivery of the Goods We reserve the right to reject any Goods supplied which fail Our inspection (in accordance with clause 9.6).
- 9.6. If after Our inspection of the Goods (and irrespective of whether You have obtained a receipt, a signed delivery docket or other form of acceptance of the Goods) it is found that the Goods supplied:
- (a) do not comply with any warranty by You about the Goods under the Contract including the warranties in clause 10; and/or
  - (b) are found (in Our reasonable opinion) to be unsatisfactory, defective, of inferior quality; and/or
  - (c) otherwise fail to meet strictly the requirements of the Contract,
- We (without prejudice to any other rights We may have) may, although risk may have passed to Us or delivery may have been completed:
- (d) elect not to pay the Price (and, to the extent We have already paid the Price, obtain an immediate refund of it); and/or
  - (e) attempt, at Your risk and expense, to rectify any or all deficiencies in the Goods; and/or

(f) reject the Goods by notifying You of this rejection.

- 9.7. Upon rejection You shall, at Your expense, immediately remove the Goods from Our premises, failing which We may, at Your risk and expense return the Goods to You or, where the Goods are not in a suitable condition, in Our reasonable opinion to be returned, destroy them at Your expense. Without limiting the generality of Our other rights under the Contract, We reserve the right to recover from You any additional expenditure reasonably incurred by Us in obtaining replacement Goods and any other loss, cost or damage reasonably or unavoidably suffered or incurred by Us including for the avoidance of doubt any sums which become payable to third parties.
- 9.8. In this clause 9, references to removal, return and destruction expenses include (but are not limited to) the cost of packing, transport and handling, where applicable.

## 10. WARRANTIES

- 10.1. These terms and conditions are additional to, and do not limit, any rights or remedies that We may have under warranties, conditions, guarantees and undertakings express or implied by Part 3 of the *Contract and Commercial Law Act 2017*, *Fair Trading Act 1986* and/or the *Consumer Guarantees Act 1993*, as they are amended, or any other applicable Law, or that are otherwise made by You.
- 10.2. You warrant that:
- (a) You have the full power and authority to enter into the terms of the Contract;
  - (b) You have right and title to the Goods and Deliverables delivered to Us and those Goods and Deliverables are free and clear of all liens, encumbrances, security interests and any other restrictions as to title;
  - (c) the Goods, Deliverables and/or Services delivered to Us will be of commercial standard, acceptable quality, free of defects, and comply with all applicable Laws;
  - (d) the Goods, Deliverables and/or Services will be delivered using all due care and skill;
  - (e) the Goods, Deliverables and/or Services delivered to Us have been manufactured, produced, processed, prepared and packaged, labelled, presented, described, stored, transported and delivered in accordance with the terms and conditions of the Contract and so as to comply with all applicable local and international Laws, standards or industry code requirements which apply;
  - (f) the Goods are new and not refurbished or reconditioned;
  - (g) where We supplied written specifications and/or requirements, the Goods, Deliverables and/or Services will conform with such specifications and/or requirements;
  - (h) the sale, possession or use of the Goods, Deliverables and/or Services as intended by Us will not infringe or contribute to the infringement of any third party rights including but not limited to Intellectual Property Rights (save that this warranty shall not apply in relation to any logos, designs, specifications or other materials provided by Us for incorporation into the Goods or Deliverables);

- (i) You will at all times comply with all requirements of any applicable Laws of New Zealand and of the country of origin of the Goods, Deliverables and/or Services including but not limited to, the manufacture, storage, labelling, transportation, importation, exportation, licensing approval or certification of the Goods, Deliverables and/or Services and all other Laws from which Liability may accrue to Us by Your breach;
  - (j) You will maintain the insurances in accordance with clause 11;
  - (k) the Goods will be insured up to the time risk of the Goods passes to Us in accordance with clause 8.2; and
  - (l) the Goods, Deliverables and/or Services are fit for the particular purpose(s) for which We intend to use such Goods and/or Services.
- 10.3. You agree to indemnify and keep Us (and Our officers, employees, agents, affiliates and Related Companies) indemnified against all and any Liability arising from the breach of any warranty provided pursuant to this clause 10.

## 11. INSURANCE

- 11.1. You must maintain at Your sole expense, insurance with a reputable and solvent insurer(s) which adequately covers Your Liability to Us and to third parties arising out of or in connection with the Contract, including (but not limited to):
- (a) a comprehensive public and product liability policy to cover all sums which You may become legally liable to pay as compensation consequent upon:
    - (i) the death of, or bodily injury (including disease or illness) to, any person; and
    - (ii) the loss of, or damage to, property.

The limit of liability provided by this comprehensive public and product liability policy must not be less than \$10 million, unless otherwise agreed by the parties;
  - (b) insurance in respect of all Claims and Liabilities arising, whether at common law or under statute, relating to workers compensation or employer's Liability, from any accident or injury to any person employed by You in connection with the performance of the Contract; and
  - (c) an insurance policy which will cover the Goods until risk passes to Us in accordance with clause 8.2 for their full value against loss or damage, including loss or damage in transit and during unloading.
- 11.2. You will upon attending Our premises for the first time and/or at induction (and at any other time upon request from Us) provide Us with a copy of this policy or a certificate of insurance evidencing the required coverage (at Our election).

## 12. CHANGES, CANCELLATION AND VARIATIONS

- 12.1. At any time prior to the delivery of the Goods, Deliverables and/or Services, We may request by notice in writing that You change the Goods, Deliverables and/or Services or any specification in relation to the Goods, Deliverables and/or Services and Your obligations to supply the Goods, Deliverables and/or Services following such a change will be subject to the parties agreeing on the applicable prices, rates or

charges (acting reasonably).

- 12.2. At any time prior to delivery of the Goods, Deliverables and/or Services, We may cancel or vary the Purchase Contract (in whole or in part) in response to a legitimate business need, including cancellation of contracts by Our customers. We must provide You with prior written notice of such cancellation or variation and must pay You for all Goods and/or Services actually delivered up to the date of such cancellation or variation.
- 12.3. Save as expressly set out in this clause 12, We will have no liability to You for cancelling or varying the Purchase Contract.

## 13. TERMINATION

- 13.1. Without derogating from any other provisions of the Contract, either party may immediately terminate the Contract by written notice to the other party if:
- (a) the other party is in default of any of its obligations set out in the Contract:
    - (i) which is not capable of remedy; or
    - (ii) which is capable of remedy but which is then not remedied within 30 days of written notice by the party of such default; or
  - (b) an Insolvency Event has occurred in relation to a party or to their Related Company.
- 13.2. We may, in addition to Our termination rights set out elsewhere in the Contract, immediately terminate the Contract by written notice to You if:
- (a) any dispute or litigation is initiated in the country of manufacture or supply of the Goods which may result in the prevention of the export of the Goods to Us from that country;
  - (b) any dispute or litigation is initiated within New Zealand which may result in the prevention of the distribution, sale, promotion, storage, delivery, use of the Goods and/or incorporation of the Goods into other goods by Us, Our agents, representatives or sub-contractors; or
  - (c) at any time if there is a change in Laws in relation to the Goods which would prevent the import, promotion, storage, delivery, use and/or distribution and sale of such Goods by Us.
- 13.3. We reserve the right to terminate the Contract without cause by giving You at least 30 days' prior written notice.
- 13.4. The termination of the Contract for any reason does not extinguish or otherwise affect any rights or liabilities of any party against the other which accrued prior to the time of the termination, or otherwise relate to or arise from any breach or non-observance of obligations under the Contract which arose prior to the time of termination.
- 13.5. Upon termination and without limiting any other rights under the Contract or under applicable Law:
- (a) We will be released from any further liability to pay for the Goods, Deliverables and/or Services not delivered pursuant to the Purchase Contract;
  - (b) We may refuse to accept delivery of Goods, Deliverables and/or Services not delivered pursuant to the Purchase Contract;
  - (c) Subject to Our right of inspection and return in accordance with clause 9, We

will pay You any outstanding monetary amounts payable up to the date of termination in respect of Goods that have been delivered on receipt of a valid tax invoice;

- (d) You must deliver to Us any Deliverables that are fully or partially complete;
- (e) You must refund Us any money We have paid in respect of those Goods, Deliverables and/or Services not delivered;
- (f) You must return all of Our property or confidential information provided to You under the Contract;
- (g) Both parties agree to take all reasonable steps in the circumstances to mitigate any loss or damage resulting from the termination of the Contract; and
- (h) Any indemnity or obligation of confidence under this Contract is independent and survives termination of this Contract. Any other provision of the Contract which by its nature is intended to survive termination of this Contract survives termination, including clauses 7, 8.3, 9.4, 9.6, 10, 11, 13.4, 13.5, 14, 16, 17, 18, 19, 20, 21 and 22.

#### **14. CONFIDENTIALITY**

14.1. You must keep confidential and secure, and must not disclose to any person:

- (a) the terms of the Contract; and
- (b) all information You receive from Us or which relates to the Goods, Deliverables and/or Services, Our business, Our Intellectual Property Rights or any of Our other products,

except and only to the extent that:

- (c) disclosure is required by Law provided that You provide Us with prompt written notice of such legal requirement, afford Us with a reasonable opportunity and cooperate with Our efforts to oppose or limit such disclosure, and if We are unsuccessful in Our opposition, limit the disclosure to what is legally required as advised by Your legal counsel;
- (d) disclosure is to Your employees, officers, agents or professional advisers who are bound by similar confidentiality obligations and who have a need to know to perform the obligations under the Contract;
- (e) the information is already in the public domain except as a result of a breach of the Contract; or
- (f) You have obtained prior written consent from Us, which will be at Our absolute discretion.

14.2. You must not make any public announcements or disclosure in relation to the Goods, Deliverables and/or Services, the Contract or Your relationship with Us without Our prior written consent, such consent not to be unreasonably withheld.

14.3. Our Intellectual Property Rights remain Our property whether during or after the termination of the Contract. You agree that You will not use any of Our Intellectual Property Rights for any purpose other than to supply Goods, Deliverables and/or Services to Us and will return and deliver all of Our Intellectual Property Rights following the termination of the Contract.

14.4. The obligations set out in this clause continue to apply after the fulfilment of any part of the Contract or termination or cancellation of the Contract.

14.5. We may require that You execute a further confidentiality deed. The terms and conditions of such a confidentiality deed shall be considered as a condition of this Contract.

#### **15. FORCE MAJEURE**

15.1. If a party is affected, or likely to be affected, by a Force Majeure Event that party must immediately give the other party prompt written notice of that fact including:

- (a) full particulars of the Force Majeure Event;
- (b) an estimate of its likely duration;
- (c) the obligations affected by it and the extent of its effect on those obligations; and
- (d) the steps taken to rectify it.

15.2. The obligations of the party giving the notice are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.

15.3. A party claiming a Force Majeure Event must use its best endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible. However, this does not require a party to settle any industrial dispute in any way it does not want to.

15.4. A party is not liable for its inability to perform, or delay in performing, any of its obligations under the Contract if that inability or delay is caused by a Force Majeure Event subject always to that party having complied with the provisions of this clause 15.

15.5. If a Force Majeure Event continues for more than 30 days, then the party not affected by the Force Majeure Event may immediately terminate the Contract without penalty by written notice to the other and the provisions of clause 13.5 shall apply.

#### **16. OUR LIABILITY**

16.1. Our maximum liability to You as a result of a breach of the Contract by Us will be limited to the total price of Goods, Deliverables and Services contracted under the Contract. This amount represents a genuine estimate of the maximum amount of damages You will suffer in the event of default by Us. We will not, in any circumstances, be liable to You, whether in contract or tort or any other basis, for any special incidental, consequential, indirect or exemplary damages, including loss of profits, loss of revenue and/or loss of use.

#### **17. INDEMNITY**

17.1. You assume all risk of loss and indemnify Us and hold Us (and Our officers, employees, agents, affiliates and Related Companies) harmless from and against any and/or all Liability and prosecution arising from, or related to:

- (a) any manufacturing defect in the Goods (other than a defect arising solely as a result of the storage after delivery and handling of the Goods by Us which is not in accordance with the directions given to Us by You);
- (b) any Deliverables being defective;

- (c) any of Your Services or Deliverables producing defective results;
- (d) any use of the Goods or Deliverables;
- (e) any breach of the Contract, including breach of a warranty by You or any of Your officers, employees, agents or subcontractors; or
- (f) any unlawful or negligent act or omission by You, Your officers, employees, agents or subcontractors,

except to the extent the Liability is caused by Our negligence, fraud or wilful misconduct.

## 18. GOVERNING LAW & DISPUTE RESOLUTION

- 18.1. This Contract is governed by the laws of New Zealand without giving effect to international principles of the conflict of laws and the parties expressly exclude the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods with respect to sales covered by the Contract. The parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.

## 19. ANTI-BRIBERY

- 19.1. You shall comply with and will not cause Us or Our Associates to be in violation of the United States *Foreign Corrupt Practices Act 1977*, the United Kingdom *Bribery Act 2010* the Australian *Criminal Code Act 1995 (Cth)*, the New Zealand *Crimes Act 1961* or *Secret Commissions Act 1910* and any other applicable anti-bribery legislation.
- 19.2. Without limiting clause 19.1 You will not, directly or indirectly, pay any money to, or offer or give anything of value to, any Government Official in order to obtain or retain business or to secure any commercial or financial advantage for You, any of Your respective affiliates, Us or Our Associates.
- 19.3. You must:
- (a) make and keep books, records and accounts in reasonable detail which accurately and fairly reflect the transactions and disposition of assets of Your company; and
  - (b) devise and maintain a system of internal accounting controls.
- 19.4. If You breach clause 19.2, then We may immediately terminate this Contract by written notice to You.

## 20. NOTICES

- 20.1. A party will give any required notice under the Contract to the other party at the address, fax number or email address as last notified by the other party.
- 20.2. Notice will be effective once received, and will be deemed to be received if:
- (a) posted in New Zealand (on the third business day after posting);
  - (b) posted from overseas (ten business days after posting);
  - (c) faxed (at the time shown on the transmission report that confirms that the complete message has been sent); or
  - (d) emailed (when successfully received at the recipient's email server).

## 21. MISCELLANEOUS

- 21.1. You agree that it is a condition of this Contract that You and any of Your directors, officers, employees, representatives, agents, subcontractors, sublicensees and consultants involved in the performance of the Contract ("Representatives") attend Our induction prior to the provision of the Services at Our premises. We may require that You and/or any of Your Representatives enter into a Contractor Induction Agreement with Us, and if so it will be a condition of this Contract that:
- (a) You provide a copy of Your and any of Your Representatives industry qualification and/or licence upon Our request;
  - (b) You and any of Your Representatives attend further induction at Our premises within twelve (12) months of the initial induction that You and any of Your Representatives attended;
  - (c) You provide a copy of Your current policy or a certificate of the insurance policies as described in clause 11; and
  - (d) You and any of Your Representatives execute a confidentiality deed.
- 21.2. We may deduct, or set off any amount payable to You by Us against any amount payable by You to Us including but limited to any amount due to Us from You for Goods, Deliverables and/or Services rejected by Us or for any warranty claims made by Us.
- 21.3. You shall provide Us with reasonable prior notice of, and the opportunity to attend (ourselves or through a representative of Us), any regulatory inspection of any facility at which any of the manufacturing, processing, testing or storage activities relating to the Goods are performed ("Covered Activities"); provided, that if prior notice of any such inspection is not possible, You shall provide notice and a summary of the results of such inspection to Us within three (3) business days after such inspection. You shall provide Us with copies of any written inspection reports, requests, directives or other correspondence or communications issued to You by any regulatory authority relating to the Covered Activities or the Goods ("Regulatory Communications") within three (3) business days of Your receipt thereof. Prior to responding to any Regulatory Communications, You will provide a copy of any such responses to Us for Our review and comment.
- 21.4. You must promptly notify Us in writing if the following events occur, or are likely occur to You:
- (a) a change in the ownership or control of You;
  - (b) a change in the place of manufacture or distribution of the Goods;
  - (c) the sale or transfer of all or any part of Your business;
  - (d) the acquisition by any competitor of either Us, Mylan Inc or any of Our Associates of any interest of any kind in the ownership of You;
  - (e) an Insolvency Event concerning You or any Related Company; or
  - (f) any other matter or thing which may affect Your ability or capacity to supply the Goods, Deliverables and/or Services to Us, including but not limited to any changes in the regulatory status of the Goods or if any regulatory action is taken in respect of the Goods, and inform Us of any action planned to address any such matters or things.

- 21.5. The rights of the parties under these terms and conditions are cumulative and additional to any other rights a party may have at law or in equity.
- 21.6. The Contract does not create a relationship of employment, trust, agency or partnership between the parties.
- 21.7. A party must not assign any of its rights or obligations under this Contract without the prior written consent of the other party, which must not be unreasonably withheld.
- 21.8. A party may not subcontract to any person the performance of any of its obligations under this Contract without the written approval of the other party, which must not be unreasonably withheld. You will remain fully responsible for the performance of this Contract and will not be relieved of that responsibility merely because of the subcontracting of the whole or any part of this Contract.
- 21.9. The Contract may be modified only in writing, signed by the authorised signatories of each party.
- 21.10. This Contract constitutes the entire agreement between the parties concerning the subject matter of this Contract and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties .
- 21.11. This Contract may be executed in any number of counterparts. All counterparts will constitute one instrument.
- 21.12. Waiver of any provision of or right under this Contract:
- (a) must be in writing signed by the party who is entitled to the benefit of that provision or right;
  - (b) is effective only to the extent set out in any written waiver; and
  - (c) will not act as a waiver of any other provision or right under this Contract.
- 21.13. The parties agree that a construction of this Contract that results in all provisions being enforceable is to be preferred to a construction that does not so result. If, despite this, any provision of the Contract is held to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation, it must be severed so that the validity and enforceability of the remaining provisions are not affected.

## 22. DEFINITIONS

In these terms and conditions of purchase:

- 22.1. **Act** means the *Companies Act 1993*.
- 22.2. **Associates** mean any of Our subsidiaries, affiliates, associates, directors, officers, shareholders, employees, representatives or agents worldwide.
- 22.3. **Claim** means any claim made (whether in the form of an allegation, demand, suit, action or other proceeding of any kind) under or in connection with the Contract or its subject matter.
- 22.4. **Contract** means the Purchase Contract and these Terms and Conditions.
- 22.5. **Contractor Induction Agreement** means an agreement whereby You or any of Your Representatives (as the case may be) provide responses to a medical questionnaire and execute a confidentiality deed.
- 22.6. **Deliverables** means any information, or documents (hardcopy or electronic), software, materials, or other things, to be provided to Us as part of the Services.
- 22.7. **Force Majeure Event** means any occurrence or omission as a direct result of which the party relying on it is prevented from or delayed in performing any of its obligations (other than a payment obligation) under this document and that is beyond the reasonable control of that party including forces of nature, industrial action and action or inaction by a government agency.
- 22.8. **Goods** mean the products specified in the Purchase Contract.
- 22.9. **Government Official** means any officer or employee of a government or any department, agency, or instrumentality thereof, or of a public international organisation, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organisation.
- 22.10. **GST** means the goods and services tax under the GST Act.
- 22.11. **GST Act** means *Goods and Services Tax Act 1985* as amended or replaced from time to time and includes other GST-related legislation.
- 22.12. **Incoterms** means the standard accepted commonly used trade terms and conditions utilised in international trade as published by the International Chamber of Commerce and entitled *Incoterms 2010*.
- 22.13. **Insolvency Event** means in respect of a party death/liquidation, provisional liquidation, voluntary administration, compromise, arrangement, amalgamation, administration, re-construction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors, the appointment of a receiver, the inability of a party to pay its debts when they fall due, bankruptcy or the filing for bankruptcy or any event that is analogous to the aforementioned events under any Law.
- 22.14. **Intellectual Property Rights** means all past present and future rights in relation to patents, design rights, copyrights, trademarks and service marks, know-how and rights of a like nature throughout the world (if any) (whether registered or not and applications for any of the foregoing).
- 22.15. **Law** means any requirement of any statute, rule, regulation, proclamation, ordinance or by-law in the present or future and includes any requirements, standards, codes, guidelines or directions of a legal, government or regulatory authority including Medsafe (the New Zealand Medicines and Medical Devices Safety Authority) – for example the New Zealand Code of Good Manufacturing Practice for Manufacture and Distribution of Therapeutic Goods.
- 22.16. **Liability** means any actual, quantifiable liability, whether present or future, including any costs, losses, damages, fees (including reasonable legal fees), fines, taxes and expenses and Liabilities has a corresponding meaning.
- 22.17. **Price** means the amount specified as the total price of the Goods in the relevant Purchase Contract.
- 22.18. **Purchase Contract** means the purchase order and/or contract issued by Us and accepted by You to which these Terms and Conditions attach, specifying the Goods and/or Services to be supplied, the agreed Price for the Goods and/or Services and other details relevant to the supply of the Goods and/or Services,

including any documents sent by Us to You specifying the requirements for quantity and specifications of the Goods and/or Services and the timing of the delivery of the Goods and/or Services. The Purchase Contract is subject to these Terms and Conditions.

- 22.19. **Related Company** has the same meaning under the Act.
- 22.20. **Services** mean the services We request You to perform under this Contract including the services in the Purchase Contract.
- 22.21. **Terms and Conditions** means these Terms and Conditions annexed to and applying to the Purchase Contract.
- 22.22. **Us, We, Our** means "Mylan New Zealand Limited".
- 22.23. **You, Your** means the seller / supplier of the Goods specified in the Purchase Contract.