

Ministry of Social Development - Terms of Purchase

These terms apply to the supply goods or services under a Purchase Order, unless a specific, written agreement between the two parties already governs that supply.

1. DEFINITIONS

1.1 In these terms:

"Confidential information" means information which is confidential in nature, is designated by a party as confidential, or which the recipient ought reasonably to know is confidential. It includes information relating to the affairs of a party and its clients, trade secrets, know-how, drawings, samples and specifications, and the fact that the Contract exists.

"Contract" means the agreement for the purchase of the Products and Services, including these terms, the Order, and any other terms the parties agreed in writing.

"Delivery" means delivery of the Products and completion of the Services in accordance with the Contract to our reasonable satisfaction. **"Deliver"** has a corresponding meaning.

"Order" means a purchase order for the Products and Services which may be placed by us from time to time containing a reference to these terms.

"Products" means any goods to be provided by you as specified in the Order and all parts or components of those goods.

"Price" means the price for the Products and Services as specified in the Order. The Price may not be changed unless both parties agree in writing.

"Services" means any services to be provided by you as specified in the Order.

"Specifications" means any plans, drawings, data or other information relating to the Products or Services that are agreed by the parties or provided by you to us prior to the date of the Order.

"Us", "we" and "our" means the Ministry of Social Development.

"You" and "your" means the person with whom the Order is placed.

1.2 References to a statute, include any amendment to, or replacement of that statute, and any subordinate legislation made under it.

2. THE CONTRACT

2.1 The Order constitutes our offer to purchase the Products and Services. The offer is valid for 5 business days and may be withdrawn by us before you accept it. Once you accept the offer, we agree to purchase and you agree to supply the Products and Services in accordance with the Contract.

2.2 These terms govern to the exclusion of all other terms (including any terms appearing on your invoices or other paperwork) relating to your supply of the Products and Services to us. Any additional terms proposed by you must be accepted in writing by us to be binding.

3. YOUR DELIVERY

3.1 You must Deliver the Products and Services in accordance with the Order or as otherwise agreed with us in writing.

3.2 You will pack and protect the Products against damage and deterioration, mark the purchase order number on all packing slips and mark barcodes and other identifying information on the Products and their packaging as required by us. We may return the Products at your expense (including costs of packing, transport, insurance and handling) if you fail to do so. Our signing of a delivery note or acknowledging receipt, does not indicate our acceptance of any Products.

3.3 You must advise us of likely delays to Delivery and we reserve the right to cancel the Order pursuant to clause 8 in the event of any material delay to Delivery as determined by us.

3.4 You must comply with our policies and procedures notified to you, and with our reasonable directions, including those relating to health, safety and security.

4. OUR PAYMENT

4.1 As a pre-requisite to making payment under these terms, you must, within three months of being entitled to invoice for payment, send a valid tax invoice for GST purposes to us at MSD_Invoices@msd.govt.nz or SWA_Invoices@swa.govt.nz and you must mark it with the relevant purchase order number to enable us to pay the invoice.

4.2 Unless stated otherwise in the Order, you may only invoice us following Delivery. We will pay your invoice within 10 business days from the date the invoice was received.

4.3 Except as expressly stated in the Order, the Price is exclusive of GST (if any) but is otherwise fully inclusive.

5. HEALTH AND SAFETY

5.1 You will comply with all your legal obligations (including under rules professional codes of conduct and practice) and exercise due diligence in meeting your duties and obligations under the Health and Safety at Work Act 2015.

5.2 You must clearly indicate any features of the Products which may be hazardous to health and safety, or to the environment, during handling, installation, use or disposal, by including appropriate and prominent precautions on the Products and their packaging, and in the accompanying documentation.

6. TITLE, RISK AND IP

6.1 Risk and title to the Products will remain with you until the Products have been Delivered, when title and risk will pass to us.

6.2 All intellectual property owned prior to, or independently of, the Order will remain the property of its owner. All intellectual property created under the Order in the Products or Service deliverables, will be owned by us.

6.3 Unless agreed otherwise in the Order, you grant us a perpetual, irrevocable and royalty free licence to use, copy, modify and distribute the Products and all Service deliverables. However, where the Order discloses that any Products include software, such software will be licensed to us on their standard terms.

7. REPRESENTATIONS

7.1 In addition to all other representations, conditions or other terms, express, implied by law or otherwise, you represent to us that:

- all information you supply under the Contract is true, complete and accurate;
- the Products and Services will be provided in a timely manner and to a standard of skill, care and diligence which would reasonably be expected from a skilled, reasonable and experienced operator in similar circumstances;
- at the time of Delivery, the Products will be new and unused (unless otherwise agreed by us) and of merchantable quality, fit for the usual purposes for which they are intended and for any particular purpose made known to you, comply with any sample you provided, and be packaged so as to protect the

contents and keep them clean, dry and in an as-new condition until they are first used, if appropriate;

(d) the Products and Services will be free from defects in design, material or construction and will comply with the Specifications and applicable statutory requirements;

(e) the Products will be free of any security interest, lien or other encumbrance;

(f) the Products and Services will not infringe nor violate any intellectual property;

(g) the Products and Services will be Delivered on the delivery date specified in the Order or where no such date is specified within a reasonable time of us placing the Order; and

(h) you have the right to supply the Products and Services.

7.2 You acknowledge that for the purposes of the Contract we are to be treated as a "consumer" in terms of the Consumer Guarantees Act 1993.

8. DEFAULT AND CANCELLATION

8.1 If we consider that any Products or Services do not conform to the Contract then, at our sole option and without prejudice to any other remedy or right, we may:

(a) reject those and any related Products and Services in whole or in part and return the rejected Products to you, or require you to collect them, at your risk and expense, and you must immediately reimburse us for any money paid in respect of the rejected Products and Services; or

(b) require you to replace, repair, reinstate or resupply those Products or Services at your expense so they conform to the Contract, or have the Products or Services replaced, repaired, or resupplied by another person and recover the cost of doing so from you, and suspend payment for those Products and Services until the breach has been remedied.

8.2 We may cancel the Order at any time on 30 days' written notice.

8.3 Either party may cancel the Order immediately on written notice, if the other party:

(a) materially breached the Contract and failed to remedy the breach within 7 days after receiving written notice specifying the breach and requiring it to be remedied. Breach of any representation by you can be treated by us as a material breach of the Contract whether or not we elect to accept any of the Products or Services; and

(b) becomes bankrupt, ceases business, goes into liquidation, becomes insolvent, appoints a receiver or enters into a formal proposal for a compromise with creditors under the Companies Act 1993.

8.4 No failure or delay on our part to exercise any of our rights in respect of any default under the Contract by you will prejudice our rights in connection with that default or any subsequent default.

8.5 If the Order is cancelled you will return to us all payments made under it. However, if upon cancellation we elect to keep or take any Products we will pay you for them. Otherwise no compensation will be payable to you on cancellation.

9. INDEMNITY AND LIABILITY

9.1 You will indemnify and hold us harmless against all actions, proceedings, losses, damages, liability, costs and expenses (including reasonable legal expenses) relating to any actual or threatened claim by or on behalf of any person/s for a breach of any of the representations in clause 7.1.

9.2 Neither party will be liable to the other (under the law of contract, tort (including negligence), equity or otherwise) for any damages of any kind arising out of or in connection with this Agreement that are indirect or consequential.

10. CONFIDENTIALITY

10.1 Neither party nor its officers, employees, agents and or subcontractors will divulge the other party's Confidential Information to others, without the prior written consent of the other party, otherwise than as required in the ordinary course of performing its obligations under the Contract or as may be necessary for us to promote, sell or service the Products or as required by law.

10.2 All Confidential Information provided by us will be and will remain our property, and you must use the Confidential Information only for the purpose of the Contract, and return the Confidential Information to us upon our request at any time or, if no request is made, upon completion or termination of the Contract.

10.3 You must obtain our prior written approval before making any public reference to us being your customer.

11. GENERAL

11.1 Our relationship with you is not exclusive, and we are free to purchase goods and services (including those equivalent to yours) from other suppliers.

11.2 You will cooperate fully in giving us any documents or information we are required to provide pursuant to a request made under the Official Information Act 1982, pursuant to questions raised in Parliament, or by or to Ministers in Select Committee, concerning the Products or Services.

11.3 Any notice to be given under the Contract must be in writing and sent:

(a) to any email address normally used by the recipient under the Contract; or
(b) by post to the recipient's registered office or, if they have no registered office, their usual address.

11.4 The recipient will be deemed to have received the notice:

(a) if sent by post, 2 business days after it has been posted; or
(b) if sent by email, no later than when the recipient's email server acknowledges receipt.

11.5 Nothing in the Contract will be deemed to constitute either party as agent, partner or joint venturer of the other, or authorise either party to bind the other.

11.6 Unless specified otherwise in the Order, all money is in New Zealand dollars and all dates and times are New Zealand time.

11.7 You may not assign or otherwise transfer any of the rights, benefits or obligations under the Contract, without our prior written consent.

11.8 You may not without our written consent, sub-contract another person (except couriers) to fulfil any of your obligations under the Contract. If consent is given, you remain fully responsible for all obligations to us under the Contract.

11.9 The Contract is governed by New Zealand law.

11.10 These terms will prevail to the extent of any inconsistency between them and any other part of the Contract.

11.11 Clauses 6 to 11 will survive the Contract.