



# Hutt Valley DHB

## Purchase Order Terms and Conditions

Hutt Valley DHB ("HVDHB") appoints the Supplier, and the Supplier accepts HVDHB's appointment, to supply certain goods and/or services ("Deliverables") in accordance with a purchase order issued by HVDHB ("Purchase Order"), and the terms and conditions set out below ("Terms and Conditions").

These Terms and Conditions are the only contractual provisions that apply to the supply of each Deliverable set out in the relevant Purchase Order.

If any other terms and conditions are to apply or prevail, including the Supplier's terms and conditions HVDHB must agree to the application of those terms and conditions in writing.

### 1. Purchase Orders

- (a) HVDHB will order the Deliverables by issuing a Purchase Order to the Supplier. No contract for the supply of the Deliverables exists until HVDHB issues a Purchase Order.
- (b) The Supplier must supply each Deliverable to HVDHB for the price specified in the Purchase Order. The price is exclusive of GST but inclusive of all materials, labour, packaging, transportation, storage, insurance, and handling of the Deliverable, including any international duty or customs charges, freight, expenses, levies, and every tax relating to the Deliverables, their supply, and the Supplier's performance of the relevant Purchase Order and these Terms and Conditions.
- (c) The Supplier must supply the Deliverables to HVDHB in accordance with the terms and other specifications set out in the Purchase Order.

### 2. Changes

- (a) HVDHB may change its requirements for any Deliverable at any time prior to delivery by providing a notice of the change in writing to the Supplier ("Change Notice").
- (b) If a change affects the price or time required for performance, the Supplier must request an adjustment ("Adjustment Request") no later than five working days after the Supplier receives the Change Notice.
- (c) If an Adjustment Request is received within the timeframe, the parties must in good faith agree on a fair adjustment to the price and/or time required for performance.
- (d) If an Adjustment Request is not received within the timeframe, no adjustment will be made and the Supplier will be deemed to have accepted the Change Notice.

### **3. Delivery of goods**

If the Deliverables include goods:

- (a) The Supplier must deliver each Deliverable in accordance with the relevant Purchase Order, during HVDHB's normal working hours, no later than the delivery date specified in the Purchase Order (or if no delivery date is specified, within a reasonable time), and to the address specified in the Purchase Order.
- (b) On delivery, the Deliverable must be accompanied by a delivery note that details the description, quantity unit rates, and dollar value of each Deliverable.
- (c) If any delivery may be, or is late, the Supplier will make delivery by the fastest method at its own cost. The Supplier acknowledges that time is of the essence.

### **4. Acceptance of goods**

Without limiting any other right or remedy HVDHB may have under the Purchase Order or these Terms and Conditions, if the Deliverables include any goods:

- (a) The Supplier acknowledges that the signing of a delivery or packing slip or similar on behalf of HVDHB does not constitute acceptance of any Deliverables.
- (b) HVDHB may carry out any acceptance tests before and after delivery of any Deliverables at any location to verify compliance of the Deliverables with HVDHB's requirements. Final acceptance of the Deliverables is to be completed by HVDHB within 30 days of delivery of the Deliverables to their final location as designated by the Purchase Order ("Final Verification Date").
- (c) HVDHB may notify the Supplier of its rejection of any Deliverables that do not match the description or quantity in the relevant Purchase Order, that are delivered after the delivery date specified in the Purchase Order, or that are otherwise faulty ("Rejection Notice"). If HVDHB does not provide a Rejection Notice by the Final Verification Date, HVDHB will be deemed to have accepted those Deliverables.
- (d) If HVDHB issues a Rejection Notice, the Supplier will (at HVDHB's option and at the Supplier's cost) either:
  - (i) replace, or otherwise remedy the defects of, the Deliverables within a reasonable period of time having regard to the nature of the Deliverables; or
  - (ii) refund in full all monies paid (if any) in respect of those Deliverables within one month of those Deliverables being rejected, and provide HVDHB with a GST credit note in respect of any such refund.

### **5. Defective services**

Without limiting any other right or remedy HVDHB may have under the Purchase Order or these Terms and Conditions, if the Deliverables include any services:

- (a) if any of the Deliverables provided are defective or partly or wholly unperformed by the relevant date for performance as stated in the Purchase Order or as set out in these Terms and Conditions ("Non-Compliant Services"), HVDHB may require the

Supplier to rectify, perform or re-perform such Deliverables at the Supplier's own cost;

- (b) if the Supplier is unable to do so to HVDHB's reasonable satisfaction, HVDHB may engage a substitute supplier (at the Supplier's cost) to do so; and
- (c) HVDHB will have no obligation to pay for Non-Compliant Services and, if and to the extent HVDHB has paid for any Non-Compliant Services, HVDHB will be entitled to set-off such amounts against any payments it owes under the Purchase Order and these Terms and Conditions or otherwise.

## **6. Invoices and payment**

- (a) The Supplier will issue an invoice for the Deliverables supplied to the invoice address specified on the Purchase Order. The invoice must at a minimum:
  - (i) specify the Deliverables that are the subject of the invoice, the Price for those Deliverables, and any applicable purchase order numbers; and
  - (ii) be in the form of a valid tax invoice as specified by section 24 of the Goods and Services Tax Act.
- (b) Unless HVDHB disputes the invoice, HVDHB will pay the Supplier on or before the 20<sup>th</sup> day of the month immediately following the month in which the later of:
  - (i) delivery and acceptance of the Deliverables occurs; and
  - (ii) HVDHB received an invoice issued in accordance with clause (a).
- (c) If HVDHB disputes any invoice issued under clause (a), HVDHB will notify the Supplier as soon as reasonably practicable, identifying the amount in dispute and the reasons for the dispute.
- (d) Payment of any invoice will not constitute acceptance of any Deliverables.

## **7. Title and risk**

If goods are supplied:

- (a) subject to clause 7(c), clear title and risk in those Deliverables will pass to HVDHB after the Supplier delivers the Deliverables to HVDHB and the Deliverables have been receipted and accepted by HVDHB in accordance with clause 4 of these Terms and Conditions;
- (b) every risk to a Deliverable remains with the Supplier until completion of delivery and acceptance. The Supplier will insure the Deliverables (including, but not limited, to cover for any damage or loss to the Deliverables during delivery) until risk in the Deliverables passes to HVDHB;
- (c) the Supplier agrees not to:
  - (i) charge, mortgage, or otherwise encumber any of the Deliverables; or
  - (ii) create, permit or allow to subsist any other Security Interest in the Deliverables under the Personal Property Securities Act 1999 ("PPSA").

For the purposes of these Terms and Conditions, "Security Interest" has the meaning given to that term in the PPSA.

## **8. Supplier obligations**

Without limiting any of the Supplier's other obligations set out elsewhere in the Purchase Order or these Terms and Conditions, in providing the Deliverables, the Supplier will:

- (a) act with high levels of care, skill, diligence, prudence, and foresight;
- (b) act promptly and efficiently in providing the Deliverables;
- (c) ensure the Deliverables are reasonably fit for their purpose;
- (d) comply with HVDHB's health and safety, emergency and security requirements notified to the Supplier from time to time, and promptly notify HVDHB of any health and safety hazards or issues which arise in relation to the Deliverables; and
- (e) to the extent permissible by law, pass to HVDHB the benefit of any warranty or guarantee received from any other person in respect of a Deliverable so that HVDHB may have recourse against those persons through the Supplier for any defects.

## **9. Supplier warranties**

In addition to any other warranties and guarantees given by the Supplier or implied by custom or law, the Supplier represents, warrants and guarantees to HVDHB that:

- (a) if goods are supplied:
  - (i) each Deliverable will be newly manufactured and unused on delivery;
  - (ii) if applicable, each Deliverable will have at least 95% of shelf life, calendar life or utilisation life on delivery;
  - (iii) each Deliverable will be free from any latent defect;
  - (iv) ownership, possession, use and resale of each Deliverable by HVDHB will not infringe any intellectual property rights, proprietary right or interest of, or result in any liability to HVDHB to, any person;
  - (v) the Supplier:
    - A. is able to, and will, pass free and clear title to the Deliverable to HVDHB under clause 7(a);
    - B. has the legal and beneficial right to supply the Deliverable to HVDHB;  
and
- (b) in relation to all Deliverables (whether goods or services), the Supplier represents, warrants and guarantees to HVDHB that:
  - (i) despite any inspection, acceptance or payment by HVDHB, or any work done in respect of, or use of, any Deliverable by HVDHB, each Deliverable will for at least 12 months from the date of acceptance by HVDHB:

- A. be free from any defect in design, materials and workmanship;
  - B. conform as to quantity, quality and description and satisfy any standard of design, quality and performance specified by HVDHB; and
  - C. be fit for the use and purpose for which HVDHB requires it;
- (ii) no form of inducement or reward has been or will be directly or indirectly provided to any representative of HVDHB;
  - (iii) all information provided by the Supplier to HVDHB under or in relation to the Purchase Order is true, accurate, and not misleading in any material respect (including by omission); and
  - (iv) the Supplier is solvent and will be able to pay its debts as they become due in the normal course of business and the Supplier's assets are greater than the value of its liabilities, including any contingent liabilities.

## **10. Warranty claims**

- (a) The Supplier will promptly remedy each warranty claim to HVDHB's satisfaction.
- (b) Warranties start again for the full period on completion of remedying each defect.
- (c) If any defect results in HVDHB not receiving the expected value or performance from the Deliverable, the Supplier will, at its own cost, promptly replace the Deliverable with a new and compliant Deliverable with a full warranty, if requested by HVDHB.

## **11. Compliance with laws**

The Supplier:

- (a) will ensure they, and each Deliverable, complies with every New Zealand law, and applicable industry codes and standards; and
- (b) is responsible for ensuring that every necessary and prudent authorisation (including consents, permits and licences) is obtained to ensure that it can deliver, and HVDHB can use and own, each Deliverable.

## **12. Remedies**

If:

- (a) any Deliverable is destroyed or damaged prior to acceptance, not delivered how, when or where required by HVDHB, or fails any acceptance test or otherwise does not comply with HVDHB's requirements;
- (b) any warranty claim is not promptly dealt with in accordance with the warranty clause;
- (c) the Supplier breaches, and fails to properly or promptly perform, any of its obligations to HVDHB's satisfaction within five working days after notice from HVDHB of the breach;

- (d) the Supplier commits a breach of its obligations under these Terms and Conditions that is not capable of remedy;
- (e) any direct or indirect change of control of the Supplier occurs; or
- (f) the Supplier is or becomes insolvent or bankrupt, goes into receivership or liquidation, or amalgamates with any other person(s);

then HVDHB may:

- (g) withhold any payment due to the Supplier until the matter is resolved to HVDHB's satisfaction;
- (h) cause the Supplier to remove any rejected Deliverables from HVDHB's premises at the Supplier's risk and expense, and no longer be obliged to pay for that Deliverable, or if paid for, receive a refund from the Supplier or set-off the amount paid against any amount HVDHB may owe the Supplier. If the rejected Deliverables are not removed by the Supplier within 20 working days of notification of the rejection, HVDHB will return the Deliverables to the Supplier at the Supplier's own risk and expense;
- (i) suspend or terminate (in whole or in part) the Purchase Order by written notice to the Supplier; and/or
- (j) recover, or deduct from or set-off against any amount HVDHB may owe the Supplier, amounts for any direct or indirect damage, loss or cost (including legal cost) to HVDHB relating to the non-performance by the Supplier or any Deliverable.

### **13. Termination**

On the termination of a Purchase Order:

- (a) HVDHB may also cancel any outstanding Purchase Orders by notifying the Supplier in writing, and HVDHB will not be liable to the Supplier in relation to any such cancelled Purchase Orders;
- (b) termination will be without prejudice to either party's rights and remedies in respect of any breach by either party of the relevant Purchase Order and these Terms and Conditions; and
- (c) clause 7 (*Title and risk*), this clause 13, clause 14 (*Supplier indemnity*), and clause 18(c) (*Disclosure*) together with other provisions that are by their nature intended to survive, will remain in effect.

### **14. Supplier indemnity**

Unless prohibited by law, the Supplier indemnifies HVDHB against any direct, indirect or consequential losses (including, without limitation, loss of revenue, opportunity or profits or any other special or punitive losses), liability, damages, actions, proceedings, claims, demands, costs and expenses including (without limitation) solicitor and own client costs, (collectively, "losses") incurred directly or indirectly in connection with or as a consequence of, any act or omission of the Supplier or any of its employees, contractors or agents in performing obligations under the relevant Purchase Order and these Terms and Conditions, except to the extent that such losses are contributed to by HVDHB.

## **15. No advertising**

The Supplier will not advertise in any newspaper, magazine, journal or other advertising medium, or broadcast on radio, television, or the internet, that it supplies Deliverables to HVDHB without HVDHB's written approval.

## **16. Force majeure**

- (a) The Supplier is not liable for any failure or delay in performing if it is due to a cause reasonably beyond the control of the Supplier and the Supplier has used its best endeavours to perform on time despite the cause.
- (b) For the purposes of this clause 16, a circumstance reasonably beyond the control of the Supplier does not include industrial action on the part of the Supplier or the Supplier's personnel, or inability by the Supplier to supply the Deliverables due to disputes with its third party suppliers or the Supplier or its suppliers not having taken all reasonable steps to ensure systems do not fail due to digital date recognition errors.

## **17. Disputes**

- (a) If any dispute between the parties arises, the parties will endeavour to resolve the dispute promptly by negotiation.
- (b) If the parties cannot resolve the dispute by negotiation within 15 days of the dispute first being notified, the dispute may be referred to mediation with the agreement of both parties and any associated costs will be shared equally between the parties.
- (c) Pending resolution of the dispute, the parties will continue to perform all their obligations, except where it is impracticable to continue performing any obligations being the subject of the dispute and such obligations will be suspended during the dispute.

## **18. General**

- (a) All amounts are in New Zealand dollars unless otherwise specified. New Zealand time and dates apply. All documentation is to be in English.
- (b) The Supplier will not assign, subcontract or transfer any of its rights or obligations under the relevant Purchase Order and these Terms and Conditions without the prior written consent of HVDHB.
- (c) Neither party will at any time disclose to any person, otherwise than is necessary for the relevant Purchase Order and these Terms and Conditions or as required by law, any information that a party acquires in relation to those documents (whether or not from the other party) without the other party's prior written consent.
- (d) These Terms and Conditions and the relevant Purchase Order constitute the entire agreement between the parties in respect of the Deliverables described in the Purchase Order and supersede all prior agreements, arrangements, understandings and representations (whether oral or written) given by or made between the parties, relating to the relevant Deliverables, and no other terms and conditions will apply in relation to the matters dealt with in these Terms and Conditions including the Supplier's terms and conditions (unless otherwise agreed in writing).
- (e) The Supplier is an independent contractor and nothing in the relevant Purchase Order or these Terms and Conditions are intended to, or will be deemed to, establish

any partnership or joint venture between the parties, constitute any party the agent or employee of the other party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

- (f) The Purchase Order and these Terms and Conditions are governed by New Zealand law and the parties irrevocably submit to the non-exclusive jurisdiction of the New Zealand courts in any proceedings relating to it.