

Te Whatu Ora – Health New Zealand (the Buyer) Purchase Order Terms and Conditions

1. Contract

- 1.1. All Purchase Orders placed by the Buyer are subject to these Terms. Where the Buyer and the Supplier have a separate signed contract for the relevant goods or services, the terms and condition of the separate contract take precedence.
- 1.2. These Terms prevail over the terms contained in the Supplier's standard conditions of sale, invoices, packing slips, delivery dockets, quotations or any other communication even if at some later date the Buyer signs, or otherwise purports to accept, the terms of that documentation.

2. Purchase Order

- 2.1. The Buyer will confirm all orders for Supplies by issuing Purchase Orders. The Supplier will confirm in writing receipt of all Purchase Orders within 24 hours. The Buyer will not be liable for any Supplies unless ordered on the Buyer's Purchase Order.
- 2.2. Notwithstanding any failure to provide written acceptance, a Purchase Order will be deemed accepted if:
 - a) the Supplier does not reject it within one Business Day of receipt, or
 - b) the Supplier commences the Supplies.
- 2.3. The Supplies commence once a Purchase Order is accepted, or if the Supplies are commenced in advance of a Purchase Order, then from the time the Supplies are commenced.
- 2.4. The Supplier will supply and deliver the Supplies for the Prices, in accordance with the Purchase Order.

3. Price and Payment

- 3.1. Prices are, unless otherwise specified, fixed and not subject to variation except as permitted under these Terms. The Prices are the only amount payable for the delivery of the Supplies and include all the Supplier's costs and expenses in complying with its obligations under these Terms (including freight, shipping, packing, duties and insurance). Unless otherwise stated in the Purchase Order, Prices include all Government taxes and charges.
- 3.2. The Supplier shall submit a valid GST tax invoice specifying the Purchase Order number, Supplies item number and other relevant details required by the Buyer.
- 3.3. Invoices are to be addressed to: Te Whatu Ora, Waikato, Accounts Payable, PO Box 1001, Hamilton, New Zealand.
- 3.4. Subject to any contrary term of these Terms or the Purchase Order, the Buyer will pay any undisputed tax invoice by the 20th calendar day of the month following the month of the Buyer's receipt of that invoice. The Buyer may set-off any amount due and payable by the Buyer to the Supplier against any amount owing by the Supplier, however or whenever incurred (including under an indemnity).

4. Supplier General Obligations and Warranty

- 4.1. Without limiting any other obligation under these Terms, the Supplier must:
 - a) maintain all necessary rights and permits to supply the Supplies;
 - b) carry out its obligations under these Terms with reasonable care, skill and diligence, and in accordance with best industry practice and all applicable laws;
 - c) provide all personnel, materials, equipment and anything else required to provide the Supplies under these Terms;
 - d) keep records of all Purchase Orders, deliveries and invoices relating to the Supplies and make such information available to the Buyer on request;
 - e) provide information, updates and reports to the Buyer relating to the delivery of Services, as reasonably required by the Buyer;
 - f) ensure that every person involved by the Supplier in providing the Supplies is competent, appropriately qualified and is, where relevant, registered with or licensed by the appropriate statutory or professional body;
 - g) pass to the Buyer at no cost (or if unable to do so shall hold for the Buyer's benefit) all third party warranties in relation to the Supplies. If the Supplier cannot pass such warranty to the Buyer it must (at its own cost) make all or any warranty claims on any Supplies supplied by third parties.
- 4.2. The Supplier warrants that:
 - a) the Supplies will comply in all respects with all applicable laws, including any requirements for notifications (such as on the WAND database) or registrations;
 - b) all information provided by the Supplier to the Buyer under or in relation to these Terms is true, accurate and not misleading in any material respect (including by omission);
 - c) the Supplies supplied will not infringe the intellectual property rights of any third party;
 - d) all Product will: be delivered free of any encumbrance, adverse interest or claim by any third party;

- i. be delivered free of any encumbrance, adverse interest or claim by any third party;
- ii. be new, of merchantable quality, free from faults or defects, fit for its intended purpose and conform with all specifications; and
- iii. provide the full functionality and performance claimed for the Product.

5. Packaging & Delivery

- 5.1. The Supplier will package and transport the Product in accordance with all regulatory requirements and in an appropriate manner.
- 5.2. The Supplier will ensure that each Product supplied is clearly and indelibly labelled in English with the following information:
 - a) manufacturer's name, product reference/supplier part number, unique lot/batch number and manufacturing date (if applicable) and expiry date;
 - b) where the Product is sterile Product, in a peel back container noting the method of sterilisation;
 - c) packs and sets will list all components; and
 - d) where the Product contains any hazardous substance (as defined in the *Hazardous Substances and New Organisms Act 1996*), appropriate labelling to this effect.
- 5.3. A delivery note stating the Purchase Order number(s) and itemising each item purchased (including quantity) will be provided with all Product delivered.
- 5.4. Partial deliveries of Product may only be made with the Buyer's prior written consent.
- 5.5. Risk in Product will pass to the Buyer upon receipt of delivery by the Buyer. Title in Product shall pass to the Buyer upon payment.
- 5.6. Signing of a delivery note or physical acceptance of delivery will not be taken as acceptance of either the quality or quantity of the Supplies. Acceptance by the Buyer is subject to its subsequent inspection and/or use of the Supplies.
- 5.7. On the required date, all Supplies will be delivered to the Delivery Address. If no date is specified or agreed in writing then Supplies must be delivered with all reasonable speed and so as to cause the least possible disruption to the Buyer. The Buyer may reject delayed deliveries.

6. Access to the Buyer's sites

- 6.1. If access to the Buyer's sites is necessary for the delivery or provision of the Supplies, the Buyer will allow access at reasonable times. The Supplier will observe the Buyer's health and safety and security policies and procedures, and access may be denied for non-compliance.
- 6.2. The Supplier will:
 - a) consult, cooperate and coordinate with the Buyer to the extent required by the Buyer to ensure that the Buyer and the Supplier will each comply with their respective obligations under the Health and Safety at Work Act 2015 as they relate to these Terms;
 - b) perform its, and ensure that its personnel perform their obligations under these Terms in compliance with its and their obligations under the Health and Safety at Work Act 2015;
 - c) comply with all reasonable directions of the Buyer relating to health, safety and security when on the Buyer premises; and
 - d) report any health and safety incident, injury or near miss, or any notice issued under the Health and Safety at Work Act 2015, to the Buyer to the extent that it relates to, or affects, these Terms.

7. Defects and Recalls

- 7.1. Unless the Buyer exercises its rights under clause 7.2, where the Buyer notifies the Supplier of any defects in the Supplies, the Supplier must at its own expense promptly remedy such defect to the Buyer's reasonable satisfaction. If the Supplier fails to do so promptly or if the Buyer reasonably determines that an urgent situation justifies it, then the Buyer may remedy the breach and recover the cost of doing so from the Supplier.
- 7.2. If the Supplies do not substantially meet the requirements of these Terms (including any specifications), the Buyer may reject all or part of the Supplies and purchase alternative Supplies elsewhere. The Supplier must refund to the Buyer, upon request, any payments made by the Buyer in respect of such rejected Supplies. Title and risk in rejected Product shall revert to the Supplier upon receipt by the Buyer of the refund.
- 7.3. The Supplier will notify the Buyer in writing immediately if it recalls or is required by Government or any other authorities to recall or modify any or all of the Product.
- 7.4. In the event of any recall, the Supplier will use its best endeavours to provide replacement Product that is acceptable to the Buyer as soon as possible, but notwithstanding this, the Buyer may reject any recalled Product and purchase alternative Product elsewhere.
- 7.5. Where rejection or recall of the Supplies applies, any additional costs incurred by the Buyer in purchasing alternative Supplies, including any difference between the price for the Supplies and the actual cost of purchase of the alternative Supplies (if the actual cost is higher) will be paid to the Buyer by the

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- Supplier on demand and will be recoverable from the Supplier as a debt due to the Buyer.
- 8. Intellectual Property Rights**
- 8.1. All intellectual property owned by either party and existing prior to the commencement of the supply of the Supplies will remain the exclusive property of that party.
- 8.2. The Supplier agrees that all new intellectual property that arises or is created by the Supplier in the course of supplying the Supplies will be the Buyer's exclusive property.
- 8.3. The Supplier grants to the Buyer a perpetual, royalty free, non-exclusive licence to use all Intellectual Property owned by the Supplier under Clause 8.1 to receive the full benefit of the Supplies.
- 9. Confidential Information**
- 9.1. In this clause, "**Confidential Information**" means all and any material and information in whatever form in respect of these Terms, the Supplies, the business and operations of the Buyer, its past, present or future patients or clients, employees or contractors, provided to the Supplier at any time by or on behalf of the Buyer or that the Supplier otherwise obtains access to the course of delivering the Supplies but excludes information which:
- can be established by written records to be already known to the Supplier at the time of disclosure, or access; or
 - is in or enters the public domain through no fault of the Supplier.
- 9.2. The Supplier will keep confidential and not share any of the Confidential Information. The Supplier will not copy, use, or store any Confidential Information without the Buyer's written consent except as necessary for the purpose of meeting its obligations under these Terms.
- 9.3. The Supplier must put in place and maintain security measures to stop any unauthorised person from accessing, obtaining, receiving, reading, holding, possessing or using the Confidential Information.
- 9.4. If the Supplier is required by law to disclose Confidential Information it must immediately tell the Buyer before the information is disclosed and only disclose that part of the Confidential Information reasonably necessary to comply with the requirement.
- 9.5. The Supplier's obligations of confidentiality under this clause 9 will survive termination of these Terms.
- 10. Liability, Indemnity and Insurance**
- 10.1. The Supplier will fully indemnify the Buyer, from and against any and all liability, losses, damages, costs and expenses of any nature whatsoever (including without limitation solicitor and own client costs) awarded against, incurred or suffered by the Buyer arising out of or resulting from any:
- unlawful, negligent or wilful act or omission by the Supplier; or
 - allegation, claim or proceeding that the Buyer's use of the Supplies or other information or material supplied by the Supplier under this Agreement infringes any third party's intellectual property rights.
- 10.2. Except to the extent that liability cannot be legally limited or excluded and whether in contract, tort, negligence, under an indemnity, under statute, in equity or otherwise:
- The Buyer's liability arising out of or in connection with these Terms shall be limited to payment of the Prices due and owing for the Supplies; and
 - in no event shall the Buyer be liable for indirect or consequential loss or damage, economic loss, loss of profit, loss of revenue, loss of contract, loss of production or production stoppage, or loss of data.
- 10.3. The Supplier shall at its expense effect and maintain:
- a public liability policy for an amount not less than \$5 million per occurrence, or such other amount as agreed by the Buyer in writing; and
 - an insurance policy covering (to replacement value) the loss of or damage to the Product at all such times that risk of loss of or damage to the Product remains with the Supplier.
- 10.4. All insurance policies must be on terms and with an insurer reasonably acceptable to the Buyer. The Supplier must provide satisfactory evidence of such insurance to the Buyer upon request.
- 11. Termination**
- 11.1. Either party may terminate these Terms at any time by giving the other party notice in writing where:
- the other party commits a material breach of these Terms which is incapable of being remedied;
 - the other party commits a material breach of these Terms that is capable of being remedied but which is not remedied within ten (10) Business Days of that party receiving written notice of the breach from the non-breaching party; or
 - the other party becomes, or threatens to become, or is at serious and substantial risk of becoming, subject to any form of insolvency event including, without limitation, any resolution, procedure or proceedings relating to its liquidation, inability to pay its debts as they fall due, insolvency or appointment of a receiver, receiver and manager, administrator, liquidator, provisional liquidator, statutory manager or similar officer, or if it makes an assignment for the benefit of its creditors.
- 11.2. The Buyer may at any time without cause terminate these Terms by giving 10 Business Days' notice in writing to the Supplier.
- 11.3. Termination of these Terms will not affect any rights accrued up to the date of termination.
- 12. Logistics Provider May Purchase**
- 12.1. Any Purchase Order placed by the Logistics Provider (acting for the benefit of the Buyer) will also be subject to these Terms ("Logistics Provider Agreement"), except where the Logistics Provider has signed a separate agreement with the Supplier for the relevant Supplies, in which case such agreement takes precedence.
- 12.2. Where these Terms apply to a Logistics Provider Agreement:
- references to the Buyer will be deemed to be references to the Logistics Provider, and
 - the Supplier acknowledges and agrees that the Buyer is not liable for the acts and omissions of the Logistics Provider under the Logistics Provider Agreement, including the obligation to pay the Prices.
- 12.3. If the Logistics Provider purchases any Supplies directly from the Supplier under a Logistics Provider Agreement, the Supplier further agrees that each Logistics Provider Agreement confers a benefit to the Buyer (as ultimate end-user of the Supplies), and the Supplier's obligations under each Logistics Provider Agreement will be accordingly enforceable by the Buyer pursuant to Subpart 1 of Part 2 of the Contract and Commercial Law Act 2017.
- 13. General**
- 13.1. All terms that are intended to survive termination (including but not limited to indemnity, liability and confidentiality) shall do so.
- 13.2. A failure or delay on the part of any Party in exercising any power or right under these Terms will not operate as a waiver, nor will any single or partial exercise of such right or power preclude any other or future exercise of the same.
- 13.3. Time will be of the essence in relation to the Supplier's performance of its obligations under these Terms.
- 13.4. The Supplier may not assign or subcontract its obligations under these Terms without the prior consent of the Buyer. The Supplier agrees that it is solely responsible for its personnel, including any subcontractor engaged.
- 13.5. In the event that any clause in these Terms is subsequently found to be unenforceable, invalid or illegal for any reason whatsoever, the other clauses will remain in full force and effect.
- 13.6. The Supplier acknowledges that the Buyer is a Crown entity and agrees that it will always act in its dealings with the Buyer in a manner consistent with the highest standards of probity.
- 13.7. The Supplier must not in any way advertise or make statements to the media in relation to these Terms or the Purchase Order without the prior written consent of the Buyer.
- 13.8. For any amendments or variations of these Terms to be binding they must be in writing and executed lawfully by both parties.
- 13.9. These Terms will be governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the courts of New Zealand.
- 14. Definitions and Interpretation**
- 14.1. In these Terms, unless the context requires otherwise:
- Business Day** means any day excluding a weekend or public holiday in Hamilton;
- Buyer** means Te Whatu Ora - Health New Zealand a Crown entity NZBN number 9429050678402;
- Delivery Address** means the address for the delivery of Supplies notified to the Supplier;
- Logistics Provider** means Onelink, a division of Pharmacy Retailing (NZ) Limited, or such other entity contracted to provide logistics support to the Buyer, as notified in writing by the Buyer to the Supplier;
- Logistics Provider Agreement** has the meaning set out in clause 12.1;
- Parties** mean the parties to these terms;
- Price** means the price for the Supplies as specified in the Purchase Order, or otherwise agreed between the Parties;
- Product** means all goods or other materials supplied or to be supplied by the Supplier as specified in a Purchase Order, and includes product which is the output of Services;
- Purchase Order** means the document entitled "Purchase Order" in or to which these Terms are referred or attached;
- Services** mean the services to be provided by the Supplier specified in a Purchase Order;
- Supplier** means the company, firm, person or persons named in the Purchase Order;
- Supplies** means performance of the Services or delivery, supply or manufacture in whole or in part of the Product; and
- Terms** means these terms and conditions of purchase.
- 14.2. In these Terms, unless the context requires otherwise:
- headings are for ease of reference only and do not affect interpretation;
 - the singular includes the plural and vice versa;
 - a reference to "\$" or "dollars" is to New Zealand dollars;
 - a reference to a party to these Terms or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
 - where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have the corresponding meanings; and
 - a reference to all or any part of a law includes that law as amended, consolidated, re-enacted or replaced from time to time.