

Purchase Order Standard Terms and Conditions

CONDITIONS OF PURCHASE (GOODS AND SERVICES) DOMESTIC AND INTERNATIONAL

1. DEFINITIONS

For the purposes of these Conditions of Purchase:

Agreement means the Order together with these Conditions of Purchase);

Delivery Point means the place specified as the delivery point in an Order;

Domestic means that the Seller is located within New Zealand;

Goods means the goods specified in an Order that are to be supplied by the Seller to QAC on the terms set out in this Agreement;

GST means goods and services tax payable under the GST Act or any similar tax under any replacement legislation;

GST Act means the Goods and Services Tax Act 1985 (as amended);

Inland Revenue means the New Zealand Inland Revenue Department;

ITA means the New Zealand Income Tax Act 2007;

NRCT means Non-Resident Contractors' Tax levied under the ITA;

International means that the Seller is located outside New Zealand;

QAC means Queenstown Airport Corporation Limited

Order or Purchase Order means a purchase order issued by QAC to the Seller;

Personal Property Securities Register means the electronic register maintained by the New Zealand Companies Offices (on behalf of the New Zealand Ministry of Business, Innovation and Employment) and which allows security interests in personal property to be registered and searched in accordance with the New Zealand Personal Property Securities Act 1999;

Seller means the person to whom the Order is addressed or any subcontractor, independent

contractor or other class of person appointed by that person;

Services means the services referred to in an Order that are to be supplied by the Seller to QAC on the terms set out in this Agreement;

Tax Invoice means an invoice that complies with section 24 of the GST Act.

2. GENERAL

(a) **Where a separate written agreement has been executed between QAC and the Supplier the terms of that Agreement will take precedence over these terms and conditions, otherwise:** any Goods and/or Services purchased by QAC from the Seller will be purchased on the terms set out in this Agreement only. This Agreement constitutes the entire agreement of the parties in respect of the matters covered by it and supersedes all previous agreements in respect of those matters, including the Seller's terms (if any).

(b) QAC enters into this Agreement, and holds the benefit of this Agreement (including rights to recover liability) for itself and is entitled to enforce this Agreement (including any indemnity), whether by way of equitable, legal or statutory relief, for itself.

3. PRICE

(a) The purchase price of the Goods and/or Services will be the price specified in the Order or, where no price is specified, the price current when the Goods and/or Services are ordered.

(b) The purchase price of the Goods and/or Services will be:

(i) for Domestic Sellers, inclusive of all taxes and duties of any kind that either party is required to pay in respect of the sale of the Goods or the provision of the Services other than GST;

(ii) for International Sellers, in New Zealand dollars, unless specified otherwise in the Order and inclusive of all taxes and duties of any kind other than those QAC is responsible for paying under clause 3(c).

- (c) Liability for freight and insurance as between the Seller and QAC:
- (i) for Domestic sellers, will be as specified in the Order or, where liability is not specified, the Seller will pay for freight and insurance.
 - (ii) for International sellers, all trade shall be governed by INCOTERMS® 2010. Where no Incoterm rule is specified on the order, the DDP (Delivered Duty Paid) rule shall apply.
- (d) Following acceptance of an Order and completion of the supply of Goods or provision of Services, the Seller must send QAC a valid invoice that records the price of the Goods and/or Services separately from the value of any GST payable on those Goods and/or Services. Where any amendment is made to the amount payable for the Goods and/or Services after the invoice has been issued, the Seller must issue a credit or debit note (as the case may be) to QAC. If required by QAC, the Seller will issue a Tax Invoice and any credit note or debit note issued by the Seller must comply with the GST Act.
- (e) The Seller alone shall be responsible for paying all income tax and other taxes and levies of any nature imposed upon the Seller in respect of the supply of the Goods and/or Services to QAC, whether in New Zealand or elsewhere, and for making arrangements with Inland Revenue or the equivalent taxation authorities elsewhere in respect of such payments. QAC will not make any adjustment or reimbursement in respect of any additional amounts which the Seller may pay to or on behalf of its personnel to compensate for any increases in income tax or other taxes and levies of whatsoever nature which they may incur or suffer by reason of either operating, or supplying the Goods and/or Services to QAC in New Zealand.
- (f) Where the Seller is a non-resident contractor for the purposes of the ITA, the Seller acknowledges that payments made by QAC in respect of any Service provided by that Seller (and/or its employees who are in New Zealand at the time the Service is performed) to QAC are subject to NRCT and QAC is required to deduct the total amount of NRCT from payments to the Seller unless:
- (i) the Seller provides QAC with a Certificate of Exemption issued by Inland Revenue specifying that NRCT is not to be deducted from payments to the Seller in respect of their contract activity in New Zealand; or
 - (ii) The Seller provides QAC with the following declaration:

“The Seller and/or its employees will not be present in New Zealand for more than 92 days in any 12-month period in which the Seller performs work for QAC. For the avoidance of doubt such presence in New Zealand includes any work performed for entities other than QAC.”
- (g) If the Seller does not meet the requirements of either 3(f)(i) or (ii), QAC will deduct any NRCT that QAC is required to deduct from the purchase price paid to the Seller and QAC will not be required to increase the purchase price payable to the Seller by the amount of any such deduction of NRCT.
- (h) If the Seller provides a statement as specified at 3(f)(ii), and the statement becomes valid, the Seller will immediately advise QAC and remit to QAC the total amount of any NRCT paid by QAC.
- (i) Any amount withheld or deducted by QAC from any payment due to the Seller and paid to the Inland Revenue pursuant to QAC’ reasonable understanding of its duty under the ITA, or the Tax Administration Act 1994 (or related statutes or replacements) or regulations made thereunder shall for the purposes of this Agreement be deemed to have been paid by QAC to the Seller and the payment thereof to the Commissioner of Inland Revenue shall be treated as a complete discharge of QAC’ liability to the Seller in respect of the amount so paid.

- (j) The parties agree that the purchase price of any Goods purchased by QAC from the Seller pursuant to this Agreement is the lowest price that the parties would have agreed upon on the basis of payment in full on the date of this Agreement and on that basis no income or expenditure arises in respect of the sale and purchase of the Goods under the rules relating to financial arrangements in the ITA.

4. DELIVERY OF GOODS

- (a) The Goods are to be delivered by the Seller to the Delivery Point in accordance with the specified Incoterm (Incoterms® 2020).
- (b) Where a delivery date is specified in the Order, time is of the essence. The Seller indemnifies QAC against any loss or damage suffered if the Seller does not deliver the Goods to the Delivery Point by the specified delivery date and, without prejudice to QAC's other rights, QAC may cancel the Order and/or all further deliveries of Goods.
- (c) Delivery of the Goods will be deemed to have occurred when:
 - (i) the Goods have been uploaded at the Delivery Point; and
 - (ii) QAC has inspected the Goods; and
 - (iii) QAC or its agent has acknowledged receipt of the Goods.
- (d) Without prejudice to QAC's other rights, if the Seller delivers a different quantity of Goods to that specified in the Order, QAC may accept all of the Goods or accept any lesser quantity and reject the rest of the Goods.
- (e) The Seller will be liable for all costs and losses that QAC incurs as a result of the delivery of the wrong quantity of the Goods or the wrong goods.
- (f) The Seller must provide detailed delivery documents with every delivery of Goods, which must contain, as a minimum, QAC's order number and order item number, the date, the Seller's details, the quantity of Goods dispatched and an item description.

5. PROVISIONS AND SERVICES

Where the Order specifies a date by which the Services must be provided, time is of the essence. The Seller indemnifies QAC against any loss or damage suffered if the Seller does not provide the Services by the specified date and, without prejudice to QAC's other rights, QAC may cancel the Order and/or all further provision of Services.

6. OWNERSHIP AND RISK

- (a) Except as otherwise provide in this Agreement, ownership of and risk in the Goods will pass to QAC upon the latter of:
 - (i) the Goods being delivered to, inspected by, and accepted by QAC. Acceptance as to ownership of the Goods does not defeat the Seller's warranties contained in clause 11, or QAC's rights of return under clause 8, or act as a waiver of any of QAC's other rights.
 - (ii) full payment of the Price by QAC to the Seller.
- (b) Notwithstanding clause 6(a), the Seller bears the risk of loss or damage to Goods until ownership of those Goods passes to QAC in accordance with clause 6(a) or the terms of the Order.

7. INSPECTION

QAC or its representative has the right at all reasonable times to inspect the Goods (whether in the course of manufacture or not) and/or Services, whether at the Seller's place of business or otherwise. Notwithstanding such inspection or QAC's acceptance of delivery, all Goods and where applicable, Services are subject to QAC's inspection and acceptance at its own premises following delivery or completion. If the Goods are to be installed or incorporated into any plant, machinery or any other part of QAC's premises, such inspection and acceptance may be carried out after installation or incorporation under operating conditions.

8. RETURN OF GOODS

If QAC cancels the Order or rejects any Goods in accordance with this Agreement, QAC may, at the risk and expense of the Seller, return the

whole or any part of the Goods to the Seller and, at QAC's discretion, require the Seller:

- (a) to replace or repair the defective Goods at no additional cost; or
- (b) refund in full any money paid to the Seller for Goods that have been returned.

9. FAILURE TO PROVIDE SERVICES

If the Seller fails to provide all or part of the Services in accordance with this Agreement, QAC may obtain replacement services from a third party at the Seller's cost.

10. PACKING

All Goods must be marked, packed and otherwise protected, at the Seller's expense, for transit to the Delivery Point, in such manner as will prevent any damage to or deterioration of the Goods under normal transport and storage conditions having regard to the nature of the Goods.

11. WARRANTIES

- (a) The Seller warrants that the Goods:
 - (i) are free from any charges, encumbrances or other security interests;
 - (ii) will, on delivery to QAC, be free from any liens, charges, encumbrances and security interests and no financing statement is or will be registered or maintained in respect of the Goods in the Personal Property Securities Register;
 - (iii) will, for a period of 12 months after the supply of such Goods, remain fit for the purposes made known by QAC (expressly or by implication) or, if purposes are not made known, will be fit for all the purposes for which goods of the type in question are commonly supplied or for which the Seller represents that they are or will be fit;
 - (iv) are of merchantable quality and are free from defects in design, material and workmanship provided that where the Goods have been manufactured in accordance with any drawings, specifications or

instructions provided by QAC, the Seller warrants only that the Goods conform to such drawings, specifications or instructions, are of sound material and workmanship, and are free from any defects;

- (v) where the Goods have been manufactured by a third party, QAC will receive the full benefit of all warranties given by that third-party manufacturer in respect of those Goods;
- (vi) correspond with the sample, demonstration model or description where the sale is by sample, demonstration model or description, as the case may be; and
- (vii) will not be supplied to QAC on terms that would allow the Seller or any third party to have access to any of QAC' premises to recover the possession of the Goods.

To the extent permitted by law, the above warranties are in lieu of and to the exclusion of any express or implied conditions or warranties, statutory or otherwise, relating to the quality and description of the Goods.

- (b) The Seller warrants that the Services:
 - (i) will be provided in a timely manner in compliance with this Agreement;
 - (ii) will be performed with due care, skill and diligence by competent and qualified persons; and
 - (iii) will be fit for the purposes made known by QAC to the Seller (expressly or by implication) or, if no purposes are made known, for all the purposes for which Services of the type in question are commonly acquired or for which the Seller represents they are or will be fit.
- (c) The Seller warrants that it has obtained all licences, authorisations and other formalities necessary for the manufacture (and for International Sellers the export) of

the Goods and/or the provision of the Services.

- (d) Without limiting QAC's rights under this Agreement or otherwise, if the Seller breaches any of the warranties in this clause 11 and/or the warranty in clause 14, QAC may:
- (i) in the case of Goods, reject all of the Goods or any of them and obtain from the Seller, at QAC's option, a refund of the purchase price paid in respect of the rejected Goods or replacement Goods; or
 - (ii) in the case of Goods, accept the Goods or any of them and obtain from the Seller damages in compensation for any reduction in value of the Goods below the purchase price paid or payable for the Goods; or
 - (iii) in the case of Services, require the Seller to stop providing the Services and obtain replacement services from a third party at the Seller's cost.
- (e) Ownership of any Goods rejected under clause 11(d)(i) shall remain with the Seller and those Goods will continue to be at the Seller's sole risk.

12. INDEMNITY AND INSURANCE

- (a) The Seller indemnifies each member of QAC, and their officers, agents, employees, contractors and agents against all claims, costs, demands, expenses, liabilities, damages or losses of any nature, arising out of or in connection with the Seller's failure to comply with this Agreement, provided that the Seller's liability under this clause 12(a) shall be limited to \$NZ1 million (plus GST, if any) for any one event or for any series of related events.
- (b) The Seller shall hold, and keep current until the expiry of the warranty period specified in clause 11(a)(iii) or until such time as the Seller has provided the Services to the satisfaction of QAC (as the case may be), \$NZ1 million public liability insurance and, if QAC requires, \$NZ1 million professional indemnity insurance in relation to the Goods and/or Services. At QAC's request,

the Seller must provide QAC with copies of certificates containing details of the required policies.

- (c) Without prejudice to any other remedies available to QAC, if the Seller provides any Services or constructs, inspects or delivers any Goods to QAC, the Seller will, at its own expense, indemnify, hold harmless and defend QAC and its officers, agents, contractors and employees for any loss, liability or demand, or the payment of any sum of money by reason of any damage to any property, that may occur in connection with the construction, inspection or delivery of the Goods and/or the provision of the Services.
- (d) To the extent that this clause 12 confers benefits on any person that is not a party to this Agreement (each a "Beneficiary") the parties agree that such benefits are enforceable by such Beneficiary directly against the Seller for the purposes of Part 2 of the Contract and Commercial Law Act 2017.

13. HEALTH, SAFETY AND ENVIRONMENT

If it provides Goods and/or Services at QAC's premises, the Seller must ensure that:

- (a) its employees, contractors and agents are competent in health, safety and environmental matters and that they at all times identify and exercise all necessary precautions for the health and safety of all persons and the protection of the environment;
- (b) it complies with all applicable New Zealand legislation including (without limitation) the Resource Management Act 1991 and the Health and Safety at Work Act 2015;
- (c) it complies with all of QAC's safety requirements and procedures;
- (d) it performs appropriate health, safety and environment risk assessments and implements any necessary preventative controls prior to providing the Goods and/or Services;
- (e) it immediately reports to QAC all incidents involving injury or potential injury to any

person or the environment or damage to property;

- (f) QAC's premises are left secure, clean, orderly and fit for use; and
- (g) all QAC's property, including (without limitation) all security swipe cards, keys, books, records and papers, is returned to QAC once the Seller has provided those Goods and/or Services.

14. INTELLECTUAL PROPERTY RIGHTS

- (a) The Seller warrants that the sale or use of the Goods and/or the supply of the Services will not infringe any patent, design, trademark, copyright or other intellectual property right of a third party or result in QAC becoming liable for the payment of any royalties or other fees.
- (b) Any intellectual property created by the Seller in the course of providing the Goods or the Services will be owned by QAC.
- (c) The Seller will, at its own expense, indemnify, hold harmless and defend QAC and its officers, agents, contractors and employees for any loss, damage, expense, liability, claim or demand for actual or alleged infringement of any patent, design, trade mark, copyright or other intellectual property right of a third party, arising from the purchase, use or sale of the Goods, supply of the Services, or any other dealings arising under this Agreement.
- (d) All plans, drawings, specifications and other technical or engineering data relating to the Goods and/or Services supplied by or on behalf of QAC to the Seller, and any copies or patterns made from those documents, remain QAC's exclusive property and the Seller will only use them for the purposes of the Order and will return them to QAC on demand.
- (e) Clauses 14(a) and (b) do not apply where the Goods are manufactured to QAC's detailed design.

15. AMENDMENTS TO DRAWINGS, SPECIFICATIONS OR INSTRUCTIONS

QAC may amend any of the drawings, specifications or instructions for Goods and/or

Services (**Amendment**) and the Seller must comply with any notification of an Amendment. If an Amendment results in a decrease or increase in the Seller's costs, or in the time for providing the Goods and/or Services, the parties may agree, in writing, to adjust the price and/or the time for providing the Goods and/or Services, provided that the Seller notifies QAC of the request for such an adjustment within seven days after receipt of the Amendment notification.

16. PAYMENTS

- (a) The Seller must submit Tax Invoice(s) in accordance with the details specified in the Order. All invoices must be issued promptly and clearly identify the following information:
 - (i) the Purchase Order number; and
 - (ii) a clear description of the work being invoiced, set out in accordance with the structure of the Order.
- (b) Unless otherwise agreed in writing between the parties, QAC is to pay for the Goods and/or Services in accordance with any terms set out in the relevant Order, or, if no such terms are set out, on the 20th day of the month following the date of the invoice or Tax Invoice for the Goods and/or Services submitted by the Seller, unless there is a dispute regarding the invoice or Tax Invoice.
- (b) Unless otherwise agreed in writing between the parties, QAC will direct credit the payment for the Goods and/or Services into the Seller's bank account. QAC will notify the Seller of that payment by remittance advice to the Seller on or before the day of the payment.
- (c) Payment shall not prejudice QAC's right to reject any Goods and/or Services for breach of warranty or to obtain a refund for such Goods and/or Services.
- (d) QAC will not be liable to pay for any Goods delivered in excess of the amounts specified in any Order.

17. CANCELLATION

- (a) Unless previously withdrawn by QAC, an Order is open for acceptance by the Seller for the period stated in the Order or, when no such period is stated, for a period of three business days from the date of the Order.
- (b) QAC may cancel an Order, with immediate effect, by notice to the Seller, if the Seller:
 - (i) fails to perform any of its obligations under this Agreement and the failure has not been remedied within three business days of receipt of a notice by the Seller requiring the failure to be remedied;
 - (ii) has appointed a receiver, receiver and manager, liquidator, statutory manager, passes a resolution for winding up, or assigns its estate or any substantial part of it for the benefit of its creditors; or
 - (iii) is unable to pay its debts in the ordinary course of business or is insolvent.
- (c) QAC may at any time, by notice in writing to the Seller, cancel the Order in respect of any undelivered Goods or uncompleted Services, if the Order covers:
 - (i) standard stock goods or standard services, QAC's only obligation to the Seller is to pay for Goods delivered, or Services provided, prior to the date of cancellation; and
 - (ii) Goods or Services manufactured or provided, or to be manufactured or provided, to QAC's specification or specifications prepared by the Seller for QAC, then, on receipt of the cancellation notice, the Seller must immediately stop all performance under the Order except as QAC otherwise directs.
- (d) Notwithstanding clause 17(c)(ii), where the Seller is not in default of its obligations under this Agreement, QAC must, on cancellation under clause 17(c)(ii), pay to the Seller:

- (i) all reasonable costs directly incurred by the Seller in connection with the Order up to and including the date of cancellation; and
 - (ii) such other reasonable costs, including cancellation charges under any subcontract, as the Seller may establish to the satisfaction of QAC,
- provided however that the total cancellation payment plus any previous payment made by QAC to the Seller for the Goods and/or Services, as the case may be, must not exceed the total price stipulated in the Order. On such payment, the ownership of all Goods and uncompleted work shall pass to QAC.
- (e) The expiry or termination of this Agreement is without prejudice to the rights and obligations of the parties accrued up to and including the date of expiry or termination.

18. LEGAL COMPLIANCE

The Seller must comply with all applicable laws, rules, regulations, bylaws, standards, codes of practice, and QAC's current policies and procedures in providing the Goods and Services.

19. WAIVER

- (a) No waiver by a party of its rights under this Agreement is effective unless it is in writing signed by that party.
- (b) A waiver by QAC pursuant to this clause 19 will not prejudice its rights in respect of any subsequent breach of the Agreement by the Seller.
- (c) No failure by QAC to exercise, and no delay in exercising, a right under this Agreement will operate