

## **TERMS AND CONDITIONS FOR SUPPLY OF PRODUCT AND SERVICES**

The Supplier agrees to supply the Product and Services categorised above and more specifically described and detailed in the Purchase Order issued by the Government of the Cook Islands (the "Government") on the following terms and conditions:

### **1. APPLICATION**

These terms and conditions apply to all purchases of Product and Services except where the Government agrees in writing that they be varied or do not apply. These terms and conditions supersede any contrary provisions in the Supplier's terms and conditions of supply including those terms that the Supplier normally uses. No right under these terms and conditions shall be deemed to be waived except by notice in writing by each party. In the event that any one or more of the provisions contained in these terms and conditions are declared invalid by an order, decree or judgment of any Court of competent jurisdiction, these terms and conditions will be read as if such provision had not been inserted.

### **2. PRICES**

- 2.1. The prices stated on the Government's Purchase Order are fixed, unless there is a written agreement stipulating the price may be varied, when it may be varied and how the price is to be determined.
- 2.2. The price includes the Services, freight, insurance, packaging, crating, local cartage, customs duty and/or any other services in the delivery of the Product.
- 2.3. The price is exclusive of VAT.
- 2.4. The Supplier is not entitled to claim expenses, surcharges or margins or disbursements except if otherwise agreed in advance and in writing by the Government.

### **3. DELIVERY**

- 3.1. The time of delivery and performance of the Product and Services is a fundamental element of these terms and conditions.
- 3.2. The Product and Services shall be delivered and rendered in a prompt and timely manner on or within the delivery dates specified in the Purchase Order. All Product and Services must be delivered and performed within the Government business hours (normal business hours are 8:00 am to 4:00 pm, Monday to Friday), unless otherwise specified in the Purchase Order.
- 3.3. The Supplier shall notify the Government in writing immediately when the Supplier becomes aware there may be a delay in the delivery of Product or rendering of Services to the Government.
- 3.4. The Government is entitled to cancel the Purchase Order or change its specification (without incurring additional charges) if the Product and/or Services are not supplied on the supply dates or times specified in the Purchase Order.
- 3.5. All Product and Services must be supplied to the address specified in the Purchase Order. The Supplier shall make itself aware of any special requirements when supplying the Product and Services to Government property.

- 3.6. When Product is delivered to the Government it shall be accompanied by a delivery docket that records the Purchase Order number, the description, quantity with the applicable units of measure, unit rates and dollar values of the Product and Services delivered. The delivery docket must be signed for and retained by a Government officer.
- 3.7. All Product shall be packaged in a manner to prevent damage or deterioration when being delivered to the Government.
- 3.8. The Government may use other suppliers for the supply of Product and Services, or product and services of the same nature as the Product and Services, at any time.

#### **4. IDENTIFICATION**

- 4.1. The Purchase Order number must be shown on all packages, invoices and correspondence relating to the Product and Services. Product supplied against an invalid Purchase Order or without a Purchase Order, will be returned to the Supplier at the Supplier's expense including the cost of packaging, transportation, insurance and handling of the Product and Services.
- 4.2. Where applicable, the Supplier grants the Government access to the Supplier's premises, facilities and staff concerning the delivery and identification of the Product. The Government shall have the right to audit and inspect the Supplier's records concerning delivery of the Product and rendering of the Services. These rights are for both the Government and any other party that has the use or benefit of the Product and Services.

#### **5. QUALITY, INSPECTION AND ACCEPTANCE**

It is a condition of these terms and conditions and the Supplier warrants that:

- 5.1. All Product and Services shall be in accordance with any requirements set out in these terms and conditions and/or in the Purchase Order and shall be free from defects in workmanship, materials and design. These obligations survive acceptance of the Product and Services and payment.
- 5.2. The Supplier shall use the highest reasonable standard of skill, care and quality and employ techniques, methods, procedures and materials of a high quality and standard in accordance with best professional practice in providing the Product and rendering the Services.
- 5.3. The Supplier will comply with all relevant (a) Cook Island standards and international standards (if not in conflict) (both general and industry-specific); (b) statutes; (c) regulations; (d) by-laws; (e) ordinances; and (f) Government policies, applicable in respect of the supply of the Product and rendering the Services.
- 5.4. Where the Supplier has the benefit of any warranties or covenants from a third party in respect of the Product and Services, the Supplier shall disclose and assign the benefit of the warranties and/or covenants to the Government.
- 5.5. The Product and any result or product of the rendering of the Services, its material and workmanship, shall be subject to inspection and testing at all reasonable times and

places by the Government (or those parties to whom the Government supplies the Product) before, during or after delivery.

- 5.6. If inspection and testing is to be conducted on the premises of the Supplier or the Supplier's sub-contractors, the Supplier shall provide (without additional charge) all reasonable facilities and assistance for the safe and convenient inspection and testing required by the Government's inspectors in the performance of their duty.
- 5.7. The Supplier acknowledges that the signing of a delivery note or similar on behalf of the Government does not constitute acceptance of any Product and Services. The Government may reject any Product and Services (as applicable), even after they have been accepted, that: (a) are not of merchantable quality; (b) are not fit for purpose as stipulated in the Purchase Order; (c) are in an unsatisfactory condition or not functioning in the way they are designed to function; or (d) do not otherwise meet the requirements (including requirements relating to delivery) of these terms and conditions, or in circumstances where the Services do not meet the requirements of clause 5.1("Rejected Product"/"Rejected Services").
- 5.8. For any Rejected Product or Rejected Services the Supplier will, within ten (10) business days of receiving notice of Government's rejection of the Rejected Product or Rejected Services, at the Government's sole and absolute discretion and at the Supplier's sole risk and expense: (a) repair the Rejected Product; (b) replace the Rejected Product; (c) request the re-performance of the Services (d) remove the Rejected Product for full credit or reimbursement; or (e) suspend or cancel the Services, and in the case of clause 5.8(c), reimburse/credit the Government in full for any amounts paid by the Government in respect of the Rejected Product or Rejected Services, as the case may be.
- 5.9. Title to the Rejected Product will pass back to the Supplier on the earlier of the replacement of the Rejected Product, repair of the Rejected Product or, refund or credit of any amounts paid by the Government as specified in clause 5.8(c).
- 5.10. Clauses 5.7 and 5.8 do not limit or negate any other rights or remedies that the Government may have under these terms and conditions or at law.
- 5.11. A lack of Government inspection does not relieve the Supplier of any responsibility to perform its obligations according to these terms and conditions.

## **6. OWNERSHIP AND RISK**

- 6.1. Subject to clauses 5.7 and 5.8:
  - a. title in the Product passes to the Government when the Product is delivered to the Government or when the Government completes payment for the Product, whichever is the earlier date;
  - b. the Product remains at the Supplier's risk until the Product is delivered to the Government and is declared by the Government as not being Rejected Product or Rejected Services.
- 6.2. Where the Product is delivered to the Government subject to the Services, the Product remains at the Supplier's risk until the Government is satisfied with the complete rendering of the Services.

## **7. PAYMENT**

- 7.1. The Supplier shall provide to the Government's Contact Person, within five (5) business days of the end of the month following delivery of the Product or rendering of the Services, a VAT tax invoice for each delivery of the Product and rendering of the Services, stating Purchase Order number, date of delivery and full description of the Product and Services and quantity delivered. Invoices received without all of these details will be returned to the Supplier, unpaid.
- 7.2. If monthly charges are applicable, the Supplier shall supply to the Contact Person specified in the Purchase Order a monthly statement of that month's deliveries not later than the tenth business day of the month following delivery.
- 7.3. Invoices and statements are to be addressed to the address specified in the Purchase Order.
- 7.4. Subject to clause 5, payment for Product delivered, once approved, will be effected on the first Wednesday on or after the 20th of the month following the date of the Supplier's VAT tax invoice or receipt of the delivery of the Product, whichever is the later.
- 7.5. Any invoices provided by the Supplier which have not met the requirements of this Payment clause will not be affected.
- 7.6. Payment will be effected by Electronic Funds Transfer (EFT) (direct credit).

## **8. CONFLICT**

- 8.1. The Supplier confirms it has no knowledge of any conflict of interest in providing the Product and rendering the Services.
- 8.2. If any conflict arises or has the potential to arise during the supply of the Product and Services, the Supplier shall immediately inform the Government in writing and the Government will decide on the appropriate steps to be followed in such event, which may include the right of the Government to terminate the Purchase Order with immediate effect.

## **9. INTELLECTUAL PROPERTY**

- 9.1. "Intellectual Property" includes copyright, designs, drawings, specifications, reports, data and documentation. All Intellectual Property arising from the provision of the Services ("New IP") is owned by the Government and the Supplier shall co-operate with the Government (including by signing documents) to help the Government protect its rights in the New IP.
- 9.2. To the extent that New IP incorporates or requires Intellectual Property arising outside of the provision of the Services (Pre-existing IP), the Supplier licences, or shall procure the licence to the Pre-existing IP for the Government on a perpetual, royalty-free basis.
- 9.3. The Supplier warrants and represents to the Government that the New IP and the Pre-existing IP will not infringe the Intellectual Property rights of any third party.

## **10. ASSIGNMENT**

The Supplier shall not assign or sub-contract any rights or obligations applicable under these terms and conditions without the prior written consent of the Government given at its discretion.

## **11. NOTICES**

- 11.1. All correspondence shall include the Purchase Order number and addressed to the Government's Contact Person named on the Purchase Order form.
- 11.2. All correspondence shall be in writing sent by email, mail with postage prepaid or by hand delivery to the address for notices as set out above or such other address as a party has notified in writing.
- 11.3. Subject to clause 11.4, notice given in person is deemed to be served upon delivery or by post three (3) business days after the date of posting. Any notice served on a non-business day is deemed to have been served on the first business day after that day. Any notice by email shall be deemed to be received on the first business day after such email has reached the receiver's designated information system for receiving emails or, in all other situations, when the email comes to the receiver's attention.
- 11.4. The Government shall only be deemed to have received delivery of a notice upon the Government acknowledging in writing receipt of the notice.

## **12. INDEMNITY**

The Supplier indemnifies the Government in respect of all costs (including legal costs), claims, liabilities, losses, damage and expenses suffered or incurred by the Government and any other person claiming through the Government as a direct or indirect consequence of any unlawful, negligent, tortious, criminal, reckless or dishonest errors, acts or omission of the Supplier in the performance of its obligations under these terms and conditions. This indemnity survives the termination of these terms and conditions.

## **13. REMEDIES**

The Supplier shall not be entitled to anticipatory profits or to special (including multiple or punitive), incidental or consequential damages or losses.

## **14. INSURANCES**

- 14.1. The Supplier shall take out and maintain at its own cost, at all times during the continuance of these terms and conditions, such insurances as specified in the Purchase Order. All such insurance shall be on such terms and with such insurers as the Government may reasonably require.
- 14.2. The Supplier shall, if requested by the Government, provide the Government with written evidence that all insurances are in force and shall produce, whenever reasonably required by the Government, the relevant policies and evidence of payment of the current premiums. If the Supplier fails to provide such evidence the Government may, after notifying the Supplier in writing, arrange or keep in force that insurance and may, for the purpose of doing so, pay the relevant premiums and deduct a corresponding amount from any moneys payable by Government to the Supplier under these terms and conditions.

## **15. LAW**

These terms and conditions are governed by the laws of the Cook Islands. The parties agree to submit to the non-exclusive jurisdiction of the High Court of the Cook Islands.

#### **16. TERMINATION FOR CONVENIENCE**

Notwithstanding anything to the contrary contained in these terms and conditions, the Government shall be entitled to cancel any applicable Purchase Order, at its convenience, on 10 business days' written notice to the Supplier; provided the Government will pay for all Product and Services rendered delivered to the satisfaction of the Government in respect of any Purchase Order, prior to the date of notice of cancellation.

#### **17. GENERAL WARRANTIES**

The Supplier represents, warrants and undertakes that:

- 17.1. it has full power, capacity and authority to execute, deliver and perform its obligations under these terms and conditions or any Purchase Order;
- 17.2. it has and will continue to have, all necessary consents, permissions, licences and rights to enter into and perform its obligations under these terms and conditions or any Purchase Order;
- 17.3. there are no existing agreements, undertakings or arrangements which prevent it from entering into these terms and conditions or which would impede the performance of its obligations under these terms and conditions or any Purchase Order;
- 17.4. it has not offered any inducement in connection with the entering into or negotiation of these terms and conditions or any Purchase Order and;
- 17.5. it has not (nor is any of its representative directors or employees) a party to any litigation, proceedings or disputes which could adversely affect its ability to perform its obligations under these terms and conditions or any Purchase Order.

#### **18. DISPUTE RESOLUTION**

In the event of a dispute arising between the parties in respect of any matter in relation to this Agreement, the authorised representatives of each party will negotiate a resolution. If the dispute cannot be resolved by negotiation within five days of service by one party to the other of the written notice of a dispute arising, the dispute will be referred to arbitration under the Arbitration Act 2014.