Waikato District Health Board

Terms and Conditions of Purchase

1. Definitions and Interpretation

1.1. Definitions

In these Conditions, unless otherwise indicated by the context:

Agreement means the agreement between Waikato DHB and the Supplier consisting of a Purchase Order, these Conditions and all documents attached by Waikato DHB or which Waikato DHB agrees are incorporated by reference;

Background IP Rights means IP Rights of a party which: (a) are in existence at the date of the Agreement; or (b) come into existence after the date of the Agreement otherwise than in connection with the Agreement;

Conditions means these terms and conditions of purchase;

Confidential Information means all documentation, data, drawings, intellectual property and other information of a party (and includes Personal Information) except to the extent that such information is in the public domain through no breach of the Agreement;

Defects Liability Period means the period of 18 months from the date of receipt of delivery by Waikato DHB or any other period agreed in writing by the parties;

GST means the *Goods and Services Tax Act* 1985 and the related provisions of the *Tax Administration Act* 1994;

Hazardous Substance means a hazardous substance as defined in the *Hazardous Substances and New Organisms Act* 1996;

IP Rights means all rights conferred by statute, common law or equity in relation to copyright, trade secrets, trademarks, designs, drawings, patents, know-how, secret processes, formulae, semiconductor or circuit layouts and all rights of a proprietary nature created (whether or not registered or registrable);

Law means any applicable statute, rules, regulations, by-laws, codes, standards, ordinances, licences, orders, official policies, directions, requests, requirements and guidelines in force from time to time in New Zealand, whether made by Parliament or local government or by regulatory departments, bodies, instrumentalities, Ministers, agencies, or statutory authorities;

Party means Waikato DHB or the Supplier and "Parties" means both of them:

Personal Information has the meaning given in the Privacy Act;

Personnel means the employees, officers, agents, consultants, other contractors and subcontractors of a Party;

Policies means Waikato DHB's written guidelines, policies, principles, procedures and rules;

Privacy Laws means the *Privacy Act* 1993 ("**Privacy Act**") and any other applicable laws of privacy;

Product means all goods or other materials supplied or to be supplied by the Supplier under the Agreement including product which is the output of Services;

Purchase Order means the document entitled "Purchase Order" in or to which these Conditions are referred or attached;

Services means the services to be provided by the Supplier specified in a Purchase Order;

Site means the site to which Product is to be delivered or at which Services are to be performed;

Supplier means the company, firm, person or persons named in the Purchase Order;

Waikato DHB means Waikato District Health Board; and

Work means performance of the Services or delivery, supply or manufacture in whole or in part of the Product.

1.2 Interpretation

In these Conditions, unless otherwise indicated to the contrary:

- (a) a reference to the Agreement or any other document or agreement, includes any variation, replacement or novation of them;
- (b) the use of the word "includes" or "including" shall be interpreted to mean "includes" or "including" without limitation";
- (c) headings are for ease of reference only and do not affect interpretation;
- (d) the singular includes the plural and vice versa;
- (e) a reference to "\$" or "dollars" is to New Zealand dollars;
- a reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (g) where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase shall have corresponding meanings; and
- (h) a reference to all or any part of a Law includes that Law as amended, consolidated, re-enacted or replaced from time to time.

2. Formation of Contract

2.1. Acceptance of the Purchase Order shall be deemed to be an acceptance of these Conditions to the exclusion of any other terms, unless and to the extent that Waikato DHB expressly agrees in writing to the incorporation of such other terms or any variation of these Conditions.

- 2.2. If the Supplier commences Work the Supplier shall be deemed to have accepted the Purchase Order and these Conditions notwithstanding any failure to provide written acceptance.
- 2.3. If the Supplier has accepted the Purchase Order, it will be bound to provide the Product and Services specified in the Purchase Order in accordance with the Agreement.

3. Supplier's Obligations and Warranties

Without limiting any other obligation under the Agreement, the Supplier:

- 3.1. shall be responsible for any discrepancies, errors or omissions in specifications, drawings or any particulars supplied by it and shall carefully check information of any kind provided to it by Waikato DHB;
- shall comply with all Privacy Laws in relation to Personal Information, whether or not the Supplier is an organisation bound by the Privacy Act:
- 3.3. shall ensure that it and its Personnel do not make public or disclose any Confidential Information of Waikato DHB except to the extent required by Law to do so and subject to giving Waikato DHB reasonable notice prior to disclosure;
- 3.4. shall ensure that it and its Personnel comply with all Laws including:
 - (a) Laws relating to employees including those governing freedom of association; employment conditions, remuneration and entitlements; minimum working age; equal opportunity and discrimination;
 - (b) competition laws including the Commerce Act 1986; and
 - (c) Laws governing health and safety at work and environmental protection;
- 3.5. warrants, without limiting any other provisions of the Agreement (or otherwise), that:
 - a) all Product will:
 - conform with all specifications specified in the Purchase Order;
 - (ii) be new, of merchantable quality, and fit for its intended purpose;
 - (iii) provide the full functionality and performance claimed for the Product;
 - (iv) operate in accordance with its specifications; and
 - (v) (in the case of software and hardware) when in operation, calculate dates correctly for the period of the useful life of the Product; and
 - (b) all Services will be provided with due skill and care to the standard reasonably to be expected of a person performing the business of the Supplier.

4. Defects

- 4.1 Unless Waikato DHB exercises its rights under clause 4.2, the Supplier shall, at its cost and without prejudice to any of Waikato DHB's other rights and remedies, promptly rectify all defects occurring in the Work within the Defects Liability Period.
- 4.2 If a Product or Service does not substantially meet the requirements of the Agreement (including any specifications), Waikato DHB may reject all or part of the Product or Services. The Supplier shall refund to Waikato DHB, upon request, any payments made by Waikato DHB in respect of such rejected Product and Services. Title and risk in rejected Product shall revert to the Supplier upon receipt by Waikato DHB of the refund.

5. Waikato DHB Property

- 5.1. Legal title to and property in all goods and material supplied by Waikato DHB ("Waikato DHB Material") for the Work shall remain with Waikato DHB and shall not pass to the Supplier under any circumstances. The Supplier may only use Waikato DHB Material to perform the Work and bears the risk of loss or damage. The Supplier shall store and take appropriate care of the Waikato DHB Material and compensate Waikato DHB if any Waikato DHB Material is lost or damaged.
- 5.2. All drawings, specifications, information and samples provided by Waikato DHB shall remain Waikato DHB's sole and exclusive property and are deemed to be Confidential Information. Waikato DHB makes no warranties regarding the accuracy of, and shall not be liable for, any defects, mistakes or inaccuracies in such documents, information or samples.

6. Intellectual Property Rights

- 6.1. Nothing in this Agreement transfers ownership of Background IP Rights. The Supplier grants Waikato DHB an irrevocable, non-exclusive, transferable, royalty-free licence to use Background IP Rights in connection with the Work and for the use, repair, maintenance, upgrade or modification of Product.
- 6.2. Subject to clause 6.1, the Supplier: (a) presently assigns to Waikato DHB all existing and future IP Rights created by the Supplier or the Supplier's Personnel in performing the Work; and (b) acknowledges that by virtue of this clause all such existing IP Rights are vested in Waikato DHB and on their creation, all such future IP Rights will vest in Waikato DHB. The Supplier shall, at its cost, do all things reasonably requested by Waikato DHB to enable Waikato DHB to assure further the rights assigned under this clause.
- 6.3. The Supplier:

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- (a) warrants that Waikato DHB's use of the Products will not infringe any copyright under the Copyright Act 1994; and
- (b) shall indemnify Waikato DHB and Waikato DHB's Personnel against any claims, or costs, expenses, liability, losses or damage suffered or incurred by Waikato DHB and Waikato DHB's Personnel arising out of, or in any way in connection with, any actual or alleged infringement of any copyright under the Copyright Act 1994.
- 6.4. For the purposes of this clause 6, Waikato DHB's use of the material provided by the Supplier under this Agreement includes Waikato DHB's right to reproduce, publish, copy, adapt, communicate to the public, destroy or in any way change the materials or part of the Work:
 - (a) with or without attribution of authorship;
 - (b) in any medium; and
 - (c) in any context and in any way it sees fit.
- 6.5. The Supplier warrants that Waikato DHB's use of the Products shall not infringe any third party IP Rights. The Supplier shall indemnify Waikato DHB against any loss, costs (including legal fees) and expenses arising from any claim by a third party in respect of the Work including a claim that the use of the Product or any part of the Product constitutes an infringement of any third party IP Rights. The Supplier shall at Waikato DHB's option and at the Supplier's expense either replace such infringing part with a non-infringing part, or modify such part so as to render it to be non-infringing (in either case, to deliver the same functionality and performance as the infringing part), or procure for Waikato DHB the right to use such a part.

7. Time and Delivery

- 7.1. The times and dates stated in the Purchase Order for delivery or completion (including any extension of such time or date granted in writing by Waikato DHB) shall be binding and are of the essence of the Agreement.
- 7.2. The Supplier shall deliver Product without additional charge to Waikato DHB, to the address stated in the Purchase Order by the stated dates for delivery.
- 7.3. The Supplier shall not charge Waikato DHB for wrapping, packing, cartons, boxing or preparing the Products for shipment unless authority for such charge is expressly incorporated in the Agreement.
- 7.4. The Supplier must ensure that:
 - (a) All cases, crates and packages to be used in packaging the goods shall be protected against corrosion, weather damage, condensation, distortion, damage by vermin and the ingress of foreign matter;
 - (b) All packaging material shall comply with all legal requirements in New Zealand which are relevant to such materials, including the requirements of the Ministry of Primary Industries and the Ministry of Agriculture and Fisheries. The Supplier shall take all necessary steps to ensure that the packing materials comply with such rules and the Supplier indemnifies Waikato DHB against all losses, claims or expenses suffered or incurred by it as a result of such packing material not so complying;
 - (c) A packing slip is provided with all goods;
 - (d) The number on the Purchase Order must be quoted on all packing slips, delivery dockets, invoices and related documents, and shown clearly on all consignments.
- 7.5 The Supplier shall ensure that prior to the delivery or use of any Hazardous Substance on Site, the Supplier:
 - (a) applies appropriate labelling;
 - (b) provides Waikato DHB with a copy of the current Safety Data Sheet for such Hazardous Substance that complies with any relevant Code of Practice;
 - provides Waikato DHB with a completed risk assessment if Services include the use of such Hazardous Substances; and
 - (d) complies in all respects with the requirements of the Hazardous Substances and New Organisms Act 1996 and related regulations.

8. Risk and Title

- 8.1. Risk of loss or damage in the Product shall pass to Waikato DHB on receipt of delivery by Waikato DHB. Title in Product shall pass to Waikato DHB upon payment.
- 8.2 The Supplier warrants that at the time of delivery of Product:
 - the Supplier has complete ownership of the Product free of any liens, charges and encumbrances and provides the Product to Waikato DHB on that basis; and
 - (b) Waikato DHB is entitled to clear, complete and quiet possession of the Product.

9. Price and Payment

- 9.1. Prices are, unless otherwise specified, fixed and not subject to variation except as permitted under the Agreement. Unless otherwise stated in the Purchase Order, prices include all Government taxes and charges.
- 9.2. The Supplier shall submit a valid GST tax invoice specifying the Purchase Order number, Product item number and other relevant details required by Waikato DHB.
- Invoices are to be addressed to: Waikato District Health Board, Accounts Payable, PO Box 1001, Hamilton, 3240, New Zealand.

9.4. Subject to any contrary term of the Agreement, payment will be made in accordance with the Purchase Order. Waikato DHB may set-off any amount due and payable by Waikato DHB to the Supplier against any amount owing by the Supplier, however or whenever incurred (including under an indemnity).

10. No Inducement

If the Supplier either directly or indirectly provides to an employee of Waikato DHB any benefit which might reasonably be construed as an inducement for the employee to show favour to the Supplier then Waikato DHB may at its option give notice to the Supplier that the Agreement is void and of no force or effect.

11. Liability, Indemnity and Insurance

- 11.1. The Supplier shall indemnify Waikato DHB and Waikato DHB's Personnel against all loss, actions, liabilities, proceedings, claims, demands, damages, costs or expenses (including legal fees and disbursements) suffered or incurred by Waikato DHB and Waikato DHB Personnel arising out of personal injury (including death) and damage to property to the extent caused or contributed to by an act or omission of the Supplier.
- 11.2. 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:
 - (a) Waikato DHB's liability arising out of or in connection with the Agreement shall be limited to payment of the prices due and owing for the Work under clause 9; and
 - (b) in no event shall Waikato DHB 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.
- 11.3. The Supplier shall at its expense effect and maintain:
 - a public liability policy for an amount not less than \$5 million per occurrence; and
 - (b) 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.
- 11.4. The policies in clause 11.3 must name Waikato DHB as an additional insured and include a cross-liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons comprising the insured. All insurance policies must be on terms and with an insurer reasonably acceptable to Waikato DHB. The Supplier shall provide satisfactory evidence of such insurance to Waikato DHB upon request.

12. Site Access

- 12.1. The Supplier will be given access to the Site for a period sufficient to enable it to execute its contractual obligations under the Agreement. Access shall be at a mutually convenient time.
- 12.2. Unless otherwise agreed in writing the Supplier shall provide at its own expense all Site facilities, constructional plant and other amenities as may be necessary for the performance of the Work.
- 12.3. When on Site, the Supplier shall comply with and shall ensure that its Personnel comply with all reasonable instructions from Waikato DHB, Policies and Laws applicable to the Site.

13. Termination

- 13.1. If the Supplier:
 - (a) breaches clause 3.4;
 - (b) does not remedy any other breach of the Agreement within 14 days of being requested to do so;
 - (c) has a liquidator, administrator, receiver, receiver and manager, controller, trustee, inspector under any companies or securities legislation or other like officer appointed over some or all of its assets: or
 - (d) has a change in its ultimate shareholding,
 - then Waikato DHB may, at its option and without prejudice to any other rights it may have, by notice in writing terminate the Agreement with immediate effect and retain or enforce any security given. Waikato DHB may apply such security to any loss and damage incurred by it arising from such termination. The Supplier shall immediately refund any amounts paid by Waikato DHB in respect of Work partially or not yet performed and, upon request, shall deliver to Waikato DHB any of the Work completed, as at the date of termination (subject only to payment of agreed costs, or failing agreement, direct costs and normal overheads for such Work).
- 13.2. Waikato DHB may at any time without cause, vary, cease or suspend the Work or terminate the Agreement by giving notice in writing to the Supplier. On receipt of a notice from Waikato DHB, the Supplier shall immediately, vary, cease or suspend Work in accordance with and to the extent specified in the notice. If such notice is given, Waikato DHB shall only be liable for the amount of any direct cost and normal overheads falling within the scope of the Agreement, as have accrued to the date of receipt of the notice from Waikato DHB up to a maximum of the amounts that would otherwise have been payable under the Agreement.

14. Force Majeure

The Supplier shall not be responsible for delays or defaults in deliveries, nor Waikato DHB for failure to receive, if occasioned by war, strike, fire, pestilence, the acts of God or the public enemy, riot or civil commotion, or

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any other cause reasonably beyond the control of the Supplier or Waikato

15. Dispute Resolution

- 15.1. If any dispute or difference occurs between the Parties arising out of or in connection with the Agreement ("Dispute"), either Party may give written notice of that Dispute to the other Party, giving details of the subject-matter of the Dispute ("Notice of Dispute").
- 15.2. Upon the giving of a Notice of Dispute, the following shall apply:
 - the Dispute shall be submitted for negotiation by the respective Chief Executive Officers of the Parties or their respective nominees;
 - (b) if within 21 days of the giving of the Notice of Dispute, the Dispute has not been resolved, then either party may submit the Dispute to arbitration in accordance with the Arbitration Act 1996 (excluding clauses 4 and 5 of the Second Schedule);
 - (c) if the Parties fail to agree on the appointment of an aribtrator within 5 days of submitting the Dispute to arbitration, the appointment will be made by the President of the Auckland District Law Society for the time being or their nominee;
 - (d) the award of such arbitration shall be final and binding on both Parties;
 - (e) a reference to arbitration under this clause shall not relieve the Supplier of any obligations under the Agreement, including, if and so far as is reasonably practicable, the obligation to take steps necessary during arbitration proceedings to ensure that the progress of the Agreement will be maintained; and
 - (f) the seat of Arbitration shall be Auckland, New Zealand. The language to be used in the arbitration shall be English.

16. Health and Safety at Work and Environmental Protection

- 16.1. Without limiting any other provision or the obligation under the Agreement, the Supplier shall ensure that the Work and workplace are safe, adequately managed and shall take all practicable steps to ensure that the Work and workplace are free from risks to health, safety and the environment and in doing so shall:

 (a) have a safety and environmental management system that
 - have a safety and environmental management system that ensures compliance with health and safety at work and environmental protection Laws;
 - (b) prepare safe work method statements for the Work which: (i) describe how the Work is to be performed and the equipment to be used; identify (ii) the work activities assessed as having safety and environmental risks and the control measures that will be applied to such risks, (iii) the standards or codes to be complied with, (iv) the qualifications of the Personnel doing the Work and (v) the training required to do the Work;
 - ensure the Work is adequately supervised at all times to ensure workplace health and safety and protection of the environment;
 - (d) ensure that it and its Personnel performing the Work are qualified, have undertaken the relevant training for the Work and hold relevant current qualifications, licences, permits, authorisations and certifications in accordance with applicable Laws including the Health and Safety at Work Act 2015;
 - (e) ensure that all Personnel are provided with all relevant information and instruction to ensure safe performance of the Work;
 - ensure that all plant, equipment and substances used in performing the Work are safe and limit, as far as reasonably practicable, risks to health, safety and the environment (when properly used); and
 - (g) if requested by Waikato DHB, provide evidence of compliance with this clause 16.
- 16.2. Waikato DHB may, upon reasonable notice to the Supplier, audit the Supplier's compliance with this clause 16 and the Supplier shall cooperate with any reasonable requests of Waikato DHB in connection with such audit.

17. General

- 17.1. For the purpose of service of any document or notice in connection with the Agreement it shall be sufficient for either Waikato DHB or the Supplier to forward such document or notice by hand, prepaid post or facsimile to the registered office of the other party.
- 17.2. If the whole or any part of these Conditions is or becomes or is held to be illegal invalid or unenforceable, then the whole and each part of the clauses of these Conditions shall (to the extent necessary to avoid such illegality invalidity or unenforceability) be interpreted read down or severed without affecting the operation of the remaining clauses.
- 17.3. The Supplier shall not, without the prior written consent of Waikato DHB, assign, transfer or subcontract the performance of any or all of the Supplier's obligations or benefits under the Agreement to a third party.
- 17.4. The Agreement may only be amended in writing signed by both parties.
- 17.5. The Agreement shall be governed by and construed in accordance with the laws of New Zealand and subject to clause 15, the parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand.

- 17.6. In the event of any inconsistency between the terms of the Purchase Order, these Conditions and any separate written agreement signed by the parties in relation to the Work, the following order of precedence applies:
 - (a) the Purchase Order;
 - (b) the written agreement;
 - (c) these Conditions.

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