

# Ministry of Education

## Terms of Purchase

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 In these terms of purchase:

"**Business Day**" means any day other than a Saturday or Sunday, or a public holiday observed in Wellington, New Zealand (as defined in the Holidays Act 2003) between the hours of 8:30am and 5:30pm New Zealand time.

"**Confidential information**" means information which is either by its nature confidential, is designated by a party as confidential or which the recipient ought reasonably to know is confidential and includes information relating to the business affairs of a party, including any research materials, trade secrets, know-how (including drawings, patterns, gauges, samples, and specifications) and the fact that the Contract or Order exists.

"**Contract**" means the agreement for the purchase of Goods and/or Services, and includes these terms of purchase and the Order, and any other terms which the parties have agreed in writing will apply.

"**Delivery**" means the delivery of the Products in good order and condition to a location nominated by the Ministry, and in the case of Services, means the completion of the Services to the Ministry's satisfaction, and "**Deliver**" has a corresponding meaning;

"**Order**" means a purchase order for Products and/or Services which may be placed by the Ministry from time to time containing a reference to these terms of purchase.

"**Products**" means the goods specified in the Order and all parts or components of those goods.

"**Ministry**" means the Ministry of Education.

"**Price**" means the price for the Products and/or Services specified in an Order.

"**Services**" means the services and deliverables to be carried out or provided by you as specified in the Order.

"**Specification**" means any plans, drawings, data or other information relating to the Products and/or Services.

"**you**" and "**your**" means the person to whom the Order is made.

1.2 References to a statute, or a provision of a statute, include any amendment to, or replacement of that statute and any subordinate legislation made under it.

1.3 Headings appear as a matter of convenience only and will not affect the interpretation of the Contract.

### 2. EXISTENCE OF THE CONTRACT

2.1 An Order constitutes an offer by the Ministry to purchase Products and/or Services. Subject to your acceptance, or purported acceptance, the Ministry agrees to purchase and you agree to supply the Products and/or Services in accordance with the Contract.

2.2 These terms of purchase are incorporated into, and shall govern to the exclusion of all other terms relating to the same subject matter (including any terms appearing on your invoices or other paperwork) relating to the supply of Products and/or Services by you to the Ministry. Any additional terms proposed by you must be accepted in writing by the Ministry to be binding.

2.3 An Order may be withdrawn by the Ministry unless accepted by your written acknowledgment or Delivery within 5 Working Days of the date of the Order.

### 3. SPECIFICATIONS

3.1 The quantity and description of the Products and/or Services shall be as specified in the Order and/or any applicable Specification supplied by you to the Ministry, or agreed in writing by you and the Ministry.

### 4. TERMS OF PAYMENT

4.1 Following Delivery the Ministry will pay the Price by the 20<sup>th</sup> day of the month following the month of receipt of your valid invoice.

4.2 You must, within three months of being entitled to invoice for payment, send a valid tax invoice for GST purposes to the Ministry at [accountspayable@education.govt.nz](mailto:accountspayable@education.govt.nz) and you must mark it with the relevant purchase order number to enable the Ministry to pay the invoice;

4.3 Except as expressly stated in an Order, the Price is exclusive of GST (if any) and licence fees (if any) but is otherwise fully inclusive.

### 5. HEALTH AND SAFETY

5.1 You will comply with all your legal obligations (including under statute, regulation, rules professional codes of conduct and practice) and exercise due diligence in meeting your duties and obligations under the Health and Safety at Work Act 2015.

5.2 You must clearly indicate any substances in the Products which may be released during the handling, installation, use or disposal of the Products which are or may be hazardous to the health and safety of any person or the environment by clearly marking those Products and their packaging and by including appropriate and prominent precautions in documentation accompanying the Products.

### 6. MARKING, PACKING AND DELIVERY

6.1 You will pack and protect the Products against damage and deterioration and you must Deliver the Products and/or Services no later than the time/s specified in the Order, and mark barcodes and other identifying information on the Products and packages and packaging for the Products, as required by the Ministry.

6.2 You must advise the Ministry of likely delays to Delivery and the Ministry reserves the right to cancel an Order pursuant to clause 8 in the event of any material delay to Delivery as determined by the Ministry.

6.3 The Ministry accepts no responsibility for the Delivery of the Products (unless otherwise agreed) nor for packing materials or cases (which is your responsibility).

6.4 The Ministry shall be entitled to reject any Products delivered which are not in accordance with the Specifications.

### 7. PASSING OF TITLE AND RISK, AND LICENSING

7.1 Risk and title to the Products will remain with you until the Products have been Delivered to the Ministry when title and risk will pass to the Ministry.

7.2 Where any Products include software, such Products will be licensed to the Ministry perpetually and on a royalty free basis.

### 8. REPRESENTATIONS

8.1 In addition to all other representations, conditions or other terms express or implied by law or otherwise, you represent to the Ministry that:

(a) all information supplied by you under an Order is true, complete and accurate;

(b) the Products and/or Services will be provided in a timely manner and to a standard of skill, care and diligence which would reasonably and

ordinarily be expected from a skilled, reasonable and experienced operator in the same or similar circumstances;

(c) at the time of Delivery the Products will be new and unused (unless otherwise agreed by the Ministry) and of merchantable quality, fit for the usual purposes for which they are intended and fit for any particular purpose made known to you;

(d) the Products and/or Services will comply with the Specifications and applicable statutory requirements;

(e) Products will be free of any security interest, lien or other encumbrance;

(f) the Products or deliverables will not infringe nor violate any intellectual property rights;

(g) the Products will be Delivered on the Delivery date specified in the Order or where no such date is specified within a reasonable time of the Ministry placing the Order;

(h) you have the right to supply the Products and/or Services.

### 9. DEFAULT AND CANCELLATION

9.1 If you breach any of the representations contained in clause 8.1 or in any Contract then at the sole option of the Ministry and without prejudice to any other remedy or right, the Ministry may:

(a) reject the Products and/or Services in whole or in part and return the Products to you at your risk and expense and you must immediately reimburse the Ministry for any money paid in respect of the returned Products; or

(b) require you to replace, repair, reinstate or resupply the Products at your expense so they conform to the Contract; or may have the Products replaced, repaired, or resupplied by another person and recover the cost of doing so from you,

and suspend payment for the Products until the breach has been remedied.

9.2 The Ministry may cancel any Order at any time on 30 days written notice, or immediately on written notice if you have materially breached the Contract and failed to remedy the material breach within 7 days after written notice has been given specifying the material breach and requiring it to be remedied. Breach of any representation by you can be treated by the Ministry as a material breach of the Contract whether or not the Ministry elects to accept any of the Products and/or Services.

9.3 Either party may cancel any Order immediately if the other party becomes bankrupt, ceases business, goes into liquidation, becomes insolvent, appoints a receiver or enters into a formal proposal for a compromise with creditors under the Companies Act 1993.

9.4 No failure or delay on the part of the Ministry to exercise any of its rights in respect of any default under the Contract by you will prejudice its rights in connection with that default or any subsequent default.

9.5 If an Order is cancelled you will return to the Ministry all payments made in relation to that Order. However if upon cancellation the Ministry elects to keep or take any Products it will pay you for them but otherwise no compensation will be payable to you upon cancellation of an Order.

9.6 Cancellation of an Order does not affect any obligations or responsibilities which are intended to continue or come into effect under the Contract.

9.7 You may cancel any Order by giving the Ministry notice in writing with immediate effect where the Ministry has committed a material breach.

### 10. INDEMNITY AND LIABILITY

10.1 You will indemnify and hold the Ministry harmless against all actions, proceedings, losses, damages, liability, costs and expenses (including reasonable legal expenses) suffered or incurred by the Ministry in relation to any actual or threatened claim by or on behalf of any person/s for a breach of any of the representations in clause 8.1.

10.2 Neither party will be liable to the other (under the law of contract, tort (including negligence), equity or otherwise) for any damages of any kind arising out of or in connection with this Agreement that are indirect or consequential.

### 11. THE RELATIONSHIP BETWEEN YOU AND THE MINISTRY

11.1 Nothing in a Contract will be deemed to constitute either party as agent, partner or joint venturer of the other. A Contract does not authorise either party to pledge the credit of the other or bind or commit the other party to anything other than Products and Work specified in an Order.

11.2 The Ministry's relationship with you is not exclusive, you are free to supply goods to other purchasers and the Ministry is free to purchase goods (including goods equivalent to yours) from other suppliers.

11.3 You acknowledge that for the purposes of each Contract the Ministry are to be treated as a "consumer" in terms of the Consumer Guarantees Act 1993.

### 12. CONFIDENTIALITY

12.1 Each party undertakes to the other that neither it nor its officers, employees, agents and or subcontractors will divulge the other party's Confidential Information to others, without the prior written consent of the other party, otherwise than as required in the ordinary course of performing its obligations under the Contract or as may be necessary for the Ministry to promote, sell or service the Products or as required by law.

12.2 All Confidential Information provided by the Ministry will be and will remain the property of the Ministry, and you must use the Confidential Information only for the purpose of a Contract and/or Order, and return the Confidential Information to the Ministry upon the Ministry's request at any time or if no request is made, upon completion or termination of a Contract.

### 13. GENERAL

13.1 You may not assign or otherwise transfer any of the rights, benefits or obligations under the Contract, without the Ministry's prior written consent.

13.2 You must not sub-contract or otherwise arrange for another person to discharge any of your obligations (excluding couriers) under the Contract without the prior written consent of the Ministry. If consent is given, you remain fully responsible for all obligations to the Ministry under the Contract.

13.3 The Contract is governed by New Zealand law

13.3 These terms of purchase will prevail to the extent of any inconsistency between them and any other terms.

13.4 Clauses 7, 9, 10, 12, and 13.3 will survive the termination or expiry of a Contract.

### 14. NOTICES

14.1 Any notice to be given under the Contract must be in writing and must be sent by email, or delivered or sent by post or to the Ministry or to the registered office, or if you have no registered office, your usual address.

14.2 The party who receives a notice will be deemed to have received the notice:

(a) if sent by post, 2 Business Days after it has been posted; or

(b) if sent by email, no later than when the recipient's email server acknowledges receipt.