

Form No: PRO-FM-017

Process Area: Procurement & Subcontractor Management

TERMS & CONDITIONS FOR THE SUPPLY OF GOODS & SERVICES

1. ORDERS FOR THE SUPPLY OF GOODS & SERVICES

- 1.1 You agree to supply Us with the Goods and/or Services set out in the Order.
- 1.2 Each Order incorporates, and is subject to, these terms and conditions (“**Terms and Conditions**”) and You agree that these Terms and Conditions shall prevail over any other terms and conditions asserted by or on behalf of You or any other person in respect of the supply of any Goods and/or Services.
- 1.3 If a Supply Agreement or Services Agreement exists between You and Us, and to the extent of any inconsistency between the terms of these Terms and Conditions and the Supply Agreement or Services Agreement, the terms of each will apply in the following order of precedence:
 - a) the Supply Agreement or Services Agreement; and
 - b) these Terms and Conditions.

2. PROVISION OF THE GOODS & SERVICES

- 2.1 We engage You as an independent supplier on a non-exclusive basis.
- 2.2 You must provide the Goods and/or Services in accordance with Good Industry Practice, these Terms and Conditions, all Legal Requirements, the OHS Requirements and Our reasonable directions.
- 2.3 You must ensure the provision of the Goods and/or Services does not interfere with the day-to-day business activities at the Sites.
- 2.4 If You fail to comply with Your obligations under these Terms and Conditions and You do not remedy the non-compliance within any reasonable period (as notified by Us) then We may:
 - a) withhold payment of any Fees until the failure has been remedied;
 - b) require the Goods and/or Services to be provided again, at no cost to Us; or
 - c) require You to reimburse any Fees paid by Us.

3. VARIATION OR CANCELLATION OF ORDERS

- 3.1 We may vary an Order by giving You written notice at any time after placing the Order.
- 3.2 We may at any time cancel an Order for the supply of Goods and/or Services and We will not be required to pay You or any third party for the cancelled Order if:
 - a) You breach these Terms and Conditions or the Order and fail to remedy the breach within 7 days of receiving notice to do so;
 - b) You become Insolvent;
 - c) The Goods are not delivered by the delivery date specified in the Order; or
 - d) The delivery date is varied by arrangement and the Goods are not delivered by that varied date.

- 3.3 We may at any time cancel an Order for the provision of Goods and/or Services and We will only be required to pay You or any third party for the Goods and/or Services provided up to the date upon which We cancel the Order.

4. MATERIALS & EQUIPMENT

- 4.1 You must:
 - a) provide all materials and equipment necessary to provide the Goods and/or Services, subject to our rights under clause 4.2;
 - b) ensure that all materials and equipment you provide for the provision of the Goods and/or Services (including spare or replacement parts) are fit for purpose, free from defects and must be consistent with the manufacturer’s specifications; and
 - c) ensure that all spare or replacement parts you provide are installed in accordance with the manufacturer’s recommendations or standard operating procedures.
- 4.2 We reserve the right to supply or recommend certain materials (including spare or replacement parts) for use in the Services and you agree to use any materials supplied by Us and comply with any recommendation that We make in accordance with this clause 4.2.
- 4.3 Title in the parts supplied by You passes to Us when the parts have been installed. Title in any goods supplied by Us will remain with Us.
- 4.4 You will be responsible for any loss of, or damage to, any parts supplied or recommended by Us.

5. GOODS

- 5.1 You must ensure that the Goods:
 - a) are loaded and transported in accordance with the Order and Our instructions and all requirements of the carrier to ensure that no damage occurs to the Goods whilst in transit;
 - b) comply with the description specified in the Order in all material respects;
 - c) are fit for the purpose for which the Goods are commonly supplied and for any other purpose which We make known to you in an Order;
 - d) are of merchantable quality and comply with any manufacturer’s specifications;
 - e) are labelled, packaged and comply with all Legal Requirements; and
 - f) are delivered to Us in accordance with any Order.
- 5.2 Unless otherwise agreed, we may keep any packaging or packing materials for the Goods whether or not the Goods are accepted by Us.
- 5.3 Title to the Goods passes to Us on delivery of the Goods in accordance with any Order.

- 5.4 If the Goods are delivered:
- Free in Store (FIS), you must deliver the Goods to the address, and on the date, specified in the Order during Our usual business hours or within the period and in the manner set out in the Order; or
 - Free on Board (FOB), then We will take delivery of the Goods at Your premises, or You must engage a carrier to take delivery of the Goods at Your premises and at Our cost.
- 5.5 If the Goods are delivered FIS, then the risk of damage to or loss of the Goods passes to Us when the Goods are delivered to the address specified in the Order.
- 5.6 If the Goods are delivered FOB, then the risk of damage to or loss of the Goods passes to Us when We, or our carrier, obtain possession of the Goods.
- 5.7 You agree that You will not register a security interest in respect of any Goods supplied under these Terms and Conditions in accordance with the Personal Property Securities Act 1999 unless expressly agreed in writing between You and Us.
- 5.8 You must immediately advise Us of any problems with the Goods when You become aware of them.
- 5.9 We may check the Goods for compliance with the Order. If the Goods do not comply with the Order in any respect, We may:
- pay only for the Goods delivered, if the quantity is less than the quantity Ordered; and/or
 - reject any Goods that do not comply with the Order or these Terms and Conditions and Claim against you in respect of those Goods including and the cost of returning the Goods.
- 5.10 If the non-compliance becomes apparent later, we may still reject the Goods and make a Claim.
- 5.11 The rejection of a delivery will not affect the validity of the remainder of the Order.

6. FEES, INVOICING AND PAYMENT

- 6.1 You may Invoice Us for payment of the Goods and/or Services on or after completion of the Services and/or delivery of the Goods.
- 6.2 Invoices must be accompanied by proof of the Services and/or delivery of the Goods and must comply with Our invoicing instructions, as may be modified and provided to You from time to time.
- 6.3 Standard payment terms are 30 days from end of month upon receipt of a correct Invoice, unless otherwise agreed in writing with Us.
- 6.4 Our payment of an Invoice does not constitute Our acceptance of, or acknowledgment that, the Goods and/or Services have been provided satisfactorily.
- 6.5 Goods will be considered paid when We send, and you receive, such funds.
- 6.6 If We are required by law to make any deduction or withholding from any amount payable to You (in relation to an Order or otherwise), We shall make such deduction or withholding and will not be required to pay an additional amount to You equal to the amount deducted or withheld.

7. GOODS & SERVICES TAX

- 7.1 All Invoices should show the Fees for the Goods and/or Services and separately itemise the applicable GST (if any).
- 7.2 We will pay the full amount of each correctly issued Invoice, being the amount for the Taxable Supply plus the GST (if any).

- 7.3 Where a Taxable Supply (or the consideration payable for a Taxable Supply) is cancelled or varied as described in section 25(1) of the GST Law, You shall issue us a credit note or debit note (as those terms are defined in the GST Law) as applicable.

8. COMPLIANCE WITH LAWS & POLICIES

You must:

- comply with all Legal Requirements and any other requirements of government authorities applicable to the provision of the Services and/or manufacture, packaging, packing and delivery of the Goods;
- comply with the OHS Requirements and Our security, administrative and other policies whilst You or Your employees or subcontractors are on the Sites or using any of Our equipment or property;
- ensure that all Your employees and subcontractors (and their employees) are appropriately qualified and licensed as required by relevant legislation or industry codes of practice;
- hold and maintain (at your own cost) all consents, permits and licences necessary to supply the Goods and/or Services; and
- comply with the Health and Safety at Work Act 2015 and all other regulations, legislation and codes of practice relating to employment and ensure that all Your employees and subcontractors (and their employees) are legally entitled to work in New Zealand.

9. INTELLECTUAL PROPERTY RIGHTS (IPR)

- 9.1 Ownership of the IPR in any item which exists prior to the date of the Order will not be altered, transferred or assigned by using that item for the purposes of supplying the Goods and/or Services.
- 9.2 You must not use any of Our or Our customer's trade marks for any purpose without the prior written consent of the registered trade mark owner.
- 9.3 You agree that You will not do anything which may infringe any IPR of Ours or a third party.
- 9.4 Any new intellectual property that is created as a result of, or in connection with, the supply of Goods and/or Services, or otherwise in connection with these Terms and Conditions, will be exclusively owned by Us.
- 9.5 Nothing in these Terms and Conditions confers on either party any licence to use any of the other party's intellectual property except to the extent required to give effect to these Terms and Conditions.

10. YOUR WARRANTIES

- 10.1 In addition to any other warranties implied by law, whether statutory or otherwise, in respect of each Order, You warrant that:
- You have full capacity and all necessary licences, permits, consents and authorisations to contract with Us and supply the Goods and/or Services;
 - You will comply with the Order and all Legal Requirements and provide the Goods and/or Services in accordance with Good Industry Practice;
 - all information You provide with the Goods and/or Services is true, comprehensive, current and accurate;
 - the Goods and all materials You provide under the Order are free of any encumbrance, safe, free from defects, are fit for the purpose they were supplied and comply with all specifications and relevant standards and recommendations of the original manufacturer of the Goods;
 - the Goods are of merchantable quality and free of any fault or defect;

- f) all Your employees and subcontractors (and their employees) are legally entitled to work in New Zealand;
- g) if You provide us with a sample, the Goods correspond with the most recent sample We approved;
- h) the ownership, possession, use or resale of any Goods and/or Services supplied by You will not infringe any third party IPRs;
- i) any Services will be performed with due skill and care by an appropriately qualified person to a standard reasonable expected of a skilled and experienced person engaged in providing the same or similar service; and
- j) You are not aware of any Claims in relation to the Goods and/or Services and have made reasonable enquiries to determine if there are any Claims if the Goods are imported from a third party.

11. INDEMNITIES

11.1 You indemnify Us against and agree to hold us harmless in respect of all Claims made against, or Costs incurred by, Us arising out of or in connection with:

- a) any breach by You of an Order or these Terms and Conditions, any Legal Requirement or OHS Requirement;
- b) any loss of, or damage to, tangible property caused by any act, omission or negligence of You or Your employees, agents or subcontractors;
- c) any injury to or death of any person caused by any act, omission or negligence of You or Your employees, agents or subcontractors;
- d) use or possession by Us of any material provided by You under an Order;
- e) any breach of warranty or negligence or other Claim with respect to Goods and/or Services provided by You;
- f) any defects in the parts or Goods provided by You, or the recall or withdrawal of those parts or Goods;
- g) any Claim of infringement of IPR by any person in respect of the Goods and/or Services or the material You provide under the Order;
- h) the supply, importation, promotion, sale, resale of the Goods by Us or You;
- i) the use of the Goods by Us or any of Our Customers or use of the material You provide under the Order; and
- k) the steps taken, or omitted to be taken, by You in Your discharge of Your obligations under the OHS Requirements, except to the extent that the Claim made against or Cost incurred by Us is directly attributable to Our negligence or wrongful act or omission.

11.2 The indemnity in clause 11.1 includes:

- a) any loss of or damage to any property (including IPR);
- b) the injury or death of any person; and
- c) any costs or liabilities incurred in respect of a Claim by a third party.

12. INSURANCE

12.1 Prior to providing the Goods and/or Services You must obtain and maintain (with insurers acceptable to Us) a:

- a) public liability insurance policy of \$5,000,000 per occurrence and unlimited in the aggregate, indemnifying You against liability for property damage, personal injury or death arising from the Services or the Goods manufactured, distributed or sold by You;

- b) product liability insurance policy of \$5,000,000 per occurrence;
- c) statutory liability insurance policy of \$2,000,000 per occurrence;
- d) employers' liability insurance of \$2,000,000 per occurrence; and
- e) professional indemnity insurance policy of \$5,000,000 per occurrence and unlimited in the aggregate, which must be maintained for two years following the completion of the Order.

13. CONFIDENTIALITY

13.1 During and after the term of the Order You must:

- a) keep all the Confidential Information strictly confidential and not disclose it to any third party without Our prior written consent;
- b) only use the Confidential Information to perform the Order; and
- c) immediately return or permanently delete or destroy all records of the Confidential Information in Your possession or control upon (i) completion; or (ii) cancellation of an Order; or (iii) otherwise when We direct you to do so.

13.2 Disclosure of the Confidential Information must be limited to those officers, employees or subcontractors who need to know, except for disclosure required by law, in which case You must use reasonable endeavours to provide Us with prior notice of the disclosure.

14. ASSIGNMENT & SUBCONTRACTING

14.1 You will not in whole or in part assign, transfer or novate any of Your obligations under an Order or these Terms and Conditions without Our prior written consent.

14.2 If You subcontract the provision of the Goods and/or Services, you must ensure the subcontractor complies with the Order and these Terms and Conditions.

14.3 You are liable to Us and responsible for the acts, defaults and omissions of Your subcontractors and employees and agents of subcontractors as if those acts, defaults and omissions were Yours.

15. FORCE MAJEURE EVENT

15.1 A party (for the purposes of this clause 15, the "affected party") will not be in breach of these Terms and Conditions because of any failure to perform its obligations as a direct result of a Force Majeure Event, provided it complies with the requirements of this clause 15. The parties acknowledge that both of them may be affected by the same Force Majeure Event, in which case both parties will constitute an "affected party" for the purposes of this clause 15.

15.2 As soon as reasonably practicable, the affected party must give written notice to the other party specifying the nature of the Force Majeure Event and the obligations that the affected party is precluded from performing (including, where relevant, detail regarding the extent to which such obligations are affected).

15.3 The affected party's obligations will be suspended to the extent that such performance is precluded by, and for the duration of, the relevant Force Majeure Event, provided that the affected party:

- a) takes reasonable steps to mitigate the effect of the Force Majeure Event;
- b) keeps the other party updated as to the extent to which its performance of these Terms and Conditions are affected; and
- c) takes all reasonably practicable steps to overcome the Force Majeure Event as quickly as possible.

- 15.4 Where either party or both parties are affected by a Force Majeure Event, the parties will discuss whether it is possible to vary the obligations which are affected by the Force Majeure Event, on a temporary basis, such that both parties can continue to perform these Terms and Conditions. Any such variation must:
- be agreed between the parties and recorded in writing;
 - specify the period for which the variation applies (for the purposes of this clause 15, the “**Variation Period**”); and
 - expressly specify whether clause 15.6 is suspended during the Variation Period, and/or the extent to which clause 15.6 shall apply during or after the Variation Period.
- 15.5 Subject to any agreement to the contrary pursuant to clause 15.4, We may, at Our discretion, suspend all or any part of these Terms and Conditions and contract with one or more third parties for the supply of goods and/or services the same as, or similar to, the Goods and/or Services.
- 15.6 Subject to any agreement reached between the parties pursuant to clause 15.4, if any Force Majeure Event continues to prevent one party from performing its obligations under these Terms and Conditions (whether partially or wholly) for a period of or exceeding **20** consecutive business days, the non-affected party shall have the right to terminate any Order on 10 business days’ written notice. If both parties’ performance of these Terms and Conditions are affected by the same Force Majeure Event, either party may terminate any Order pursuant to this clause 15.6.

16. GENERAL PROVISIONS

- Set-Off:** Any amount You owe Us may, if not paid to Us within 14 days of request, be offset by Us against any amounts We owe You, until the full amount owed has been offset.
- Severance:** If any part of these Terms and Conditions is illegal or unenforceable for any reason, that part will be regarded as removed, and the remainder of the Terms and Conditions will remain effective.
- Survival:** Any obligations in these Terms and Conditions which continue, or which are not fully discharged on fulfilment or termination of an Order, continue to apply.
- Waiver:** If either party fails to insist on strict performance of any condition by the other, it is not a waiver of any later breach or default. A waiver is only valid or binding on the party granting that waiver if made in writing.
- Variation:** We may vary these Terms and Conditions at any time by written notice to You and any such variation to these Terms and Conditions will take effect from **7** days of the variation being updated on our website www.cityfm.com.au.
- Relationship:** These Terms and Conditions do not create any relationship between the parties of principal and agent, partnership, joint venture, or employer and employee. Neither party will have authority to act for or incur any obligation on behalf of another party, except as expressly provided for in these Terms and Conditions.
- Governing Law:** These Terms and Conditions are governed by New Zealand law and the parties irrevocably submit to the non-exclusive jurisdiction of the New Zealand courts in relation to any dispute arising out of or in connection with these Terms and Conditions.

17. DEFINITIONS

The following terms have these meanings:

City Group means City Facilities Management Holdings (NZ) Limited (company number 7780504) and each of its subsidiaries.

Claim means any claim made by allegation, demand, suit, action or other proceeding of any nature, whether arising under contract, tort, equity or otherwise.

Confidential Information means all information (including without limitation, information relating to Us and Our customer’s, and business dealings, customers, operations and other sensitive corporate information) which should reasonably be regarded in all the circumstances as confidential to City Group or Our customers.

Costs means any, cost, loss, liability, damage charge, outgoing or expense, including any costs and disbursements on a full indemnity basis.

Fees means the fees for the Goods and/or Services set out in an Order and includes all taxes, levies and duties and all insurance costs.

FIS means Fee into Store wherein You will deliver the Goods into the store specified in the Order, including procuring storage, loading, freight and transportation of the Goods and/or Services as required.

FOB means Fee on Board wherein You will deliver the Goods to Us at any agreed delivery point, from which point We are responsible for the freight.

Force Majeure Event means any circumstance or event that is not reasonably within the control of either party, including any:

- act of God, flood, fire, tsunami, explosion, or earthquake;
- epidemic or pandemic disease;
- war, civil commotion, or act of a public enemy;
- nation or industry wide strike, lock-out or other industrial disturbance; or
- regulation, ordinance, demand or other requirement of any government or government authority,

but excluding any lack of funds and any event or circumstance that the party affected could have prevented or overcome by exercising a reasonable standard of care or by reasonable endeavours.

Good Industry Practice means that degree of skill, care, judgement and foresight that would reasonably be expected of a skilled and experienced person, engaged in the same type of activities as You under the same or similar circumstances.

Goods means the goods described in an Order and includes samples, packaging and labelling and any accessories and documentation pertaining to the Goods.

GST means goods and services tax chargeable under section 8(1) of the GST Law.

GST Law means the Goods and Services Tax Act 1985 as amended or replaced from time to time.

Insolvent means a party:

- is in receivership, liquidation, administration or statutory management;
- is unable to pay its debts as they fall due;
- seeks an arrangement with creditors; or
- any analogous event under the laws of any jurisdiction, unless occurring as part of a solvent reconstruction, amalgamation, merger or consolidation.

Invoice means a valid tax invoice issued in accordance with the requirements of the GST Law.

IPR means intellectual property rights and includes all present and future rights including any applications for such rights in respect of copyright, trademarks, patents, designs, protection of confidential information, inventions, know how, product or business concepts, the right to object to the passing off of goods or services or misleading or deceptive conduct in relation to goods or services, and any other identifiable result of intellectual endeavour, whether arising under statute, contract or otherwise.

Legal Requirements means all applicable laws, regulations, and standards and codes of practice, including all applicable health and safety and environment laws, in New Zealand.

OHS Requirements mean the requirements set out in the Occupational Health & Safety Obligations which is subject to change from time to time (as notified to you) and available at www.cityfm.com.au/governance/.

Order means any order for the purchase of Services and/or Goods submitted by Us to You from time to time. **Services** means the services described in an Order.

Services Agreement means any agreement between You and Us in relation to the provision of services provided by You to Us.

Sites means any premises identified in the Order where the Services are provided and/or the Goods are delivered, and any other locations required by Us from time to time.

Supply Agreement means any agreement between You and Us in relation to the supply of Goods.

Taxable Supply has the meaning given by the GST Law.

Terms and Conditions means these terms and conditions for the supply of Goods and/or Services.

Us or We or Our means, the relevant entity in the City Group, as stated in the Order.

You means the supplier of the Services and/or Goods, as stated in the Order.