

STANDARD TERMS AND CONDITIONS OF PURCHASE

These Standard Terms and Conditions of purchase (“Terms”) apply to the Purchase of all Goods and/or Services (“Works”) by Windsor Engineering Group Limited NZBN: 9429039949783 (“Windsor”) supplied by the supplying party (“Supplier”), unless otherwise agreed in writing between authorized representatives of Windsor and the Supplier (“Parties”).

1. Contract and Acceptance

- (a) The Windsor Purchase Order, a separate contract agreement signed by the Parties (if applicable), these Terms, any Variations agreed in writing, any instructions issued under clause 5(b), the Windsor Specifications and documents referred therein, supplier’s proposal and documents referred therein (in this order of priority) represent the entire Contract (“Contract”) between Windsor and Supplier. Any preliminary or verbal representation or warranty will be of no effect.
- (b) The Contract will become valid and binding on the parties when a Purchase Order from Windsor is accepted by the Supplier, the performance of any of the Works by Supplier or Supplier’s failure to respond to the Purchase Order within 10 days from receipt.
- (c) Any terms or conditions printed or referenced on any correspondence or documentation from the Supplier at any time, including but not limited to any form of order acceptance, correspondence, invoice or packing slip provided by Supplier will not replace, constitute part of or vary the Contract (even if any representative of Windsor acknowledges those terms or annexes those terms to any correspondence).
- (d) Windsor has the right to transfer or assign the whole or any part of this Contract or any benefit or interest in or under this Contract at its sole discretion. Supplier shall not transfer or assign the whole or any part of this Contract or any benefit or interest in or under this Contract without the prior written consent of Windsor, which shall not be unreasonable withheld.

2. Price and Variation

- (a) Windsor shall pay Supplier the Price stated in the Contract (“Price”) and Supplier shall perform the Works.
- (b) The Price is in New Zealand Dollars unless otherwise stated in the contract agreement or Purchase Order.
- (c) The Price is for the whole of the Works inclusive of testing, packing, documentation and freight to the delivery Place and all Warranties. The Price is inclusive of all taxes and charges whatsoever and howsoever incurred but excluding Goods and Services Tax (GST).
- (d) The Works including the Price, scope, requirements, places of manufacture, time and place of delivery and the warranties cannot be varied unless agreed by the parties in writing (“Variation”).
- (e) To the extent that rates and costs are specified they shall be used to calculate the value of a Variation, but otherwise the value of the Variation shall be calculated using the lowest reasonable costs and rates.

3. Payment

- (a) The Supplier shall supply tax invoice(s) to Windsor (including a packing slip signed by Windsor for Goods supplied) before the end of each month for the Works duly completed and Goods supplied in that month, unless otherwise stated in the Purchase Order or the contract agreement.
- (b) Supplier’s invoice shall state the Windsor Purchase Order number (separate invoice per Purchase Order) and each invoice shall be itemised strictly as per the Purchase Order.
- (c) Windsor will pay the undisputed amount for the Works satisfactorily received or completed and accepted by Windsor, up to 45 days from the month end in which Supplier’s compliant tax invoice is received by Windsor.
- (d) Windsor may deduct from such amount due and payable by Windsor pursuant to this Contract, any amounts payable by the Supplier to Windsor on any account whatsoever.

4. Subcontract

- (a) The Supplier may not subcontract any part or the whole of the Works without the prior written approval of Windsor.
- (b) The Supplier must ensure that its subcontractor(s):
 - i. meet the requirements of this Contract (including but not limited to quality, performance, and timeliness);
 - ii. effect and maintain the insurances specified in Item iii below (certificates of currency to be supplied on request);
 - iii. are bound by undertakings to the Supplier in relation to Confidential Information and Intellectual Property no less stringent than those binding the Supplier in this Contract.

5. Inspection

- (a) Windsor's nominated representative may, upon reasonable notice, inspect the Works at any time and examine any documentation to verify compliance with the Contract. Supplier shall ensure Windsor has free access to the Works.
- (b) Any written instructions from Windsor in response to technical or commercial questions or notices will become part of this Contract and should be accepted as lawful instructions for the execution of the Contract.

6. Delivery and Completion

- (a) Delivery of Goods shall be Delivered at Place Unloaded (DPU Incoterms 2020) to the place nominated on the Purchase Order unless other delivery terms are stated on the Purchase Order or Contract Agreement.
- (b) Part deliveries are not allowed unless approved in writing by Windsor before delivery.
- (c) The Supplier shall complete the Works (deliver the Goods and complete the Services, "Completion") on or before the due dates for Completion as stated in the Contract ("Due Dates"). Time is of the essence with regards to Completion. Supplier shall use all reasonable options and at its cost ("Best Endeavours") to achieve Completion by the Due Dates.
- (d) The Supplier shall immediately notify Windsor when becoming aware of an imminent or likely delay in Completion and use Best Endeavours to mitigate any delay.
- (e) The Supplier must report progress of the Works to Windsor at the reasonable times and format Windsor requests.

7. Risk and Title

- (a) Title in the Goods will pass to Windsor on the earliest of payment for those Goods or delivery at the Delivery Place.
- (b) When payment for the Goods is received by the Supplier, the Supplier agrees that Windsor has authority to enter Supplier's premises and take possession of the Goods without liability for trespass.
- (c) All risk relating to the Works passes to Windsor upon Completion of the Works, as confirmed in writing by Windsor.

8. Warranty

- (a) The Supplier warrants that:
 - i. the Goods are free of all liens and encumbrances and the Supplier has good and marketable title to the Goods;
 - ii. the Goods will be of merchantable quality, new and free from any defect in workmanship and materials;
 - iii. It will exercise the skill, care, and diligence to the standard acceptable to the trade, industry, or profession of a similar nature;
 - iv. It will perform the Works in a professional manner using appropriately trained and experienced personnel;
 - v. It will perform the Works in accordance with the Contract and to the standard agreed by the parties and in accordance with all applicable standards;
 - vi. It will adhere, and its subcontractors will adhere, to all health and safety regulations, and specific site procedures communicated to the Supplier from time to time;
 - vii. The Works will be fit for purpose;
- (b) The Supplier warrants all Works against any defect for the period stated in the Purchase Order or the contract agreement. Where no period is stated, for a period of 24 months from the date in which the Works were first put into service or 24 months from Completion of the Works, whichever is later ("Warranty Period").
- (c) If any part of the Works is defective and/or not in compliance with the Contract during the Warranty Period, the Supplier must as soon as reasonably possible, at its cost and to the satisfaction of Windsor, repair or replace and re-test the Works which are damaged, defective, or found not to be in accordance with the Contract.
- (d) If the Supplier does not repair or replace the defective Works within a reasonable time, Windsor shall be entitled to (procure a third party to) repair or replace the defective Works on behalf of the Supplier. Such repair or replacement will not remove or limit Supplier's liabilities for the Works.
- (e) The Warranty Period for the section of the Works that was defective and/or not in compliance with the Contract shall re-start upon completion of the repair or replacement.
- (f) Supplier shall assign to Windsor (and its customer and the end user if requested by Windsor) all the usual customary trade warranties (and shall obtain such warranties from its suppliers) and supply copies upon request by Windsor.

9. Suspension and Termination

- (a) Windsor may, at its sole discretion, instruct the Supplier in writing to suspend the Works or amend the due date(s) for Completion. Windsor shall pay to the Supplier all reasonable and direct costs actually incurred by Supplier resulting from such suspension or amendment. Such suspension or amendment shall not set any of the Due Date(s) at large.
- (b) Each party shall immediately notify the other party upon the imminent or likely occurrence of a Force Majeure Event (an event or circumstance beyond the reasonable control of a party directly or indirectly, materially preventing a Party from fulfilling its obligations under the Contract, which could not have been reasonably foreseen and provided against and

insofar they cannot be eliminated or mitigated using all reasonable endeavours). The party affected by a Force Majeure Event shall be excused from compliance with this Contract from the date of the notice until the Force Majeure Event has ceased impacting performance, and to the extent that party is affected in its ability to comply. The Due Date for Completion will be amended accordingly. The Party shall use all reasonable endeavours to minimise any delay in the performance under this Contract.

- (c) Windsor may terminate the Contract in its absolute discretion. Windsor shall pay to the Supplier all reasonable and direct costs actually incurred by Supplier resulting from such termination. Supplier agrees and acknowledges that it will not prosecute any claim in law or in equity against Windsor upon such termination.
- (d) Windsor may terminate the Contract immediately upon notice and without any liability in case of Supplier's default on any of the terms of this Contract, insolvency or change of Supplier's ownership. In case of termination under this sub-clause, Windsor can complete and/or appoint another supplier to complete the uncompleted portion of the Works at the Supplier's cost. Termination under this sub-clause shall be without prejudice to any other rights of Windsor.

10. Confidentiality

- (a) Any drawings, information, illustrations, concepts, designs, specifications, proprietary information, know-how, logics and software, intellectual property, or any other information, whether annotated in writing or otherwise (even when provided for the purpose of obtaining or issuing a proposal by Supplier or for the performance of the Works) provided by Windsor to the Supplier ("Confidential Information") shall remain Windsor's property and copyright and is confidential. The Supplier shall:
 - i. Only use the Confidential Information for the Purpose (issue a proposal or design, manufacture, procure, transport, install, test, commission, operate, maintain, and warrant the Works, "Purpose");
 - ii. maintain the confidentiality of the Confidential Information and not divulge in full or in part, and treat the same with a degree of care and confidence at least equivalent to that which the Supplier treats their own confidential information; and
 - iii. not disclose the Confidential Information, directly or indirectly, to any third party without Windsor's prior written consent (except for Supplier's employees, officers, and professional advisors) and ensure any third party will keep the Confidential Information confidential;
- (b) Neither party shall misuse either party's confidential information.
- (c) Publications of any articles or photos relating to any Windsor's projects will require Windsor's prior written approval.

11. Intellectual Property

- (a) All intellectual property rights in Confidential Information developed outside this Contract and/or owned by a party at the date of this Contract ("Pre-existing Intellectual Property") remains the exclusive property of that party.
- (b) Supplier grants to Windsor, Windsor's customer, and the End User a perpetual, irrevocable, non-exclusive, royalty free, transferable licence and right to use the Pre-existing Intellectual Property provided by the Supplier for the issue of a proposal or the performance of work related to the Works and to obtain the full benefits of the Works (including operate, maintain, and use the Works) by Windsor, Windsor's customer, and the End User.
- (c) All intellectual property rights in the Confidential Information created or modified by the Supplier or Windsor in connection with the Works ("New Intellectual Property") shall become and remains the exclusive property of Windsor.
- (d) Windsor grants to the Supplier a non-exclusive, non-transferrable, royalty free licence and right to use the Pre-existing Intellectual Property provided by Windsor and the New Intellectual Property solely for use by Supplier for the Purpose.
- (e) The Supplier warrants that:
 - i. the Works and licence granted by it to Windsor do not infringe any intellectual property rights of any third party; and
 - ii. the Works are not subject to any intellectual property rights of any third party that in any way restrict the rights of Windsor, Windsor's customer, and the end user.

12. Personal Property Securities Act 1999 (“PPSA”)

- (a) Words and expressions in this clause, which are defined in the PPSA have the same meaning as in the PPSA.
- (b) The Supplier acknowledges that Windsor or its customer have a purchase money security interest in the Goods including, but not limited to, where Windsor has paid the Supplier (in whole or in part) for the Goods prior to delivery.
- (c) The Supplier acknowledges and grants Windsor a security interest in the Goods (and any parts thereof) and any proceeds of those Goods:
 - i. as security for payment of that part and/or of each other part/s of the Goods;
 - ii. for any other amounts owing by the Supplier to Windsor from time to time; and
 - iii. for the performance by the Supplier of all the Supplier's other obligations to Windsor from time to time.
- (d) For the purposes of section 36(1)(b) of the PPSA, and to ensure maximum benefit and protection for Windsor by virtue of section 36(1)(b)(iii), the Supplier grants to Windsor, as security for the Supplier's Indebtedness and Obligations, a security interest in all the Supplier's present and after-acquired property other than that which comprises items or kinds of personal property:
 - i. in or to which the Supplier has rights; and
 - ii. which has not been supplied by the Supplier to Windsor.
- (e) The Supplier agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to the Contract and that it irrevocably and unconditionally waives all its rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131.
- (f) The Supplier irrevocably and unconditionally waives its right to receive a copy of any verification statement received in connection with any financing (change) statement that is registered at any time in relation to the Contract.
- (g) The Supplier agrees to do all things which Windsor reasonably requires to:
 - i. ensure that Windsor has a perfected security interest and a perfected purchase money security interest in each part of the Goods to the extent of the price for that part; and
 - ii. enable Windsor to exercise any of its rights or powers under the Contract.
- (h) Nothing in the Contract shall be construed as:
 - i. an agreement to subordinate the security interest created under the Contract in favour of any person;
 - ii. a consent by Windsor to any other security interest attaching (as that term is used in the context of the PPSA) to, or any other security interest subsisting over, any Goods; or
 - iii. a consent by Windsor to any property that is not Goods becoming an accession to any Good.

13. Indemnity

- (a) The Supplier shall indemnify Windsor and keep Windsor harmless from and against all liabilities, losses, damages, actions, suits, proceedings, claims, costs, and expenses (including legal cost) in respect of:
 - i. injury to (including illness or disability), or death, of any person;
 - ii. loss or destruction of or damage to or loss of use of any property, caused or contributed to by the act or omission of the Supplier or its directors, officers, employees, agents, or contractors or by any breach of this Contract by the Supplier (including any breach of a warranty), except to the extent that it has been caused or contributed to by the wilful default or unlawful or negligent act or omission of Windsor;
 - iii. failure to meet any of the obligations under this Contract or at law (whether by statute, regulation, bylaw etc.);
 - iv. any breach in confidentiality by the Supplier, its employees, officers, advisors or Subcontractor unless such Confidential Information was already in the public domain (other than information which has been made public in breach of this Contract);
 - v. any claim alleging an infringement of any intellectual property rights, moral rights and ownership rights in any information provided by the Supplier to Windsor or used by the Supplier in connection with the Works; and
 - vi. Delivery of any Goods after a Due Date(s) for delivery or completes the Works after a Due Date for Completion.

14. Insurances

- (a) The Supplier shall take-out and maintain the following insurances, unless otherwise stated in the Purchase Order or the contract agreement.
 - i. Professional indemnity for an amount not less than \$500,000;
 - ii. Product liability of not less than \$2 million per occurrence;
 - iii. Public liability of not less than \$2 million per occurrence;
 - iv. Motor vehicle of not less than \$5 million per occurrence;
 - v. Transit insurance for the replacement value of the Goods.
- (b) Certificates of currency shall be supplied to Windsor promptly upon request.

15. Dispute Resolution

- (a) In the event of a dispute arising the parties shall actively and openly endeavour to amicably settle such dispute themselves, with a view to achieving prompt resolution.
- (b) Where the parties are not able to settle the dispute within 10 working days, either party may, by notice in writing to the other, refer any dispute under this Contract to mediation, in which case the following shall apply:
 - i. The mediation shall be conducted by a single mediator.
 - ii. The parties shall endeavour to agree on a mediator within 10 Working Days of service of the notice. Either party may request the Arbitrator's and Mediator's Institute of New Zealand to appoint a sole mediator.
 - iii. All discussions in the mediation shall be without prejudice and shall not, save in the case of proceedings to enforce settlement concluded by mediation, be referred to in any later proceedings.
 - iv. Each party shall bear their own costs in mediation and shall pay the cost of the mediator in equal shares.
- (c) If the parties cannot resolve the dispute by mediation, then either party may by written notice to the other refer the dispute to arbitration in accordance with the Arbitration Act 1996 on the following terms:
 - i. A single arbitrator shall be appointed.
 - ii. If the parties fail to agree on an arbitrator, then the Arbitrator's and Mediator's Institute of New Zealand shall appoint the arbitrator.
 - iii. The parties agree that the arbitrator's decision shall be final and binding.
- (d) Pending the settlement of a dispute, the Parties shall continue to perform all their obligations under the Contract.
- (e) Neither Party shall commence any court proceedings relating to a dispute unless it has complied with the clauses above relating to dispute resolution (except where the party seeks urgent interlocutory or injunctive relief).
- (f) The Parties expressly agree that they shall hold confidential, unless otherwise required by law or at the direction of a Court of competent jurisdiction, all information relating to the subject matter of the dispute as disclosed during or for the purposes of the dispute resolution.

16. General

- (a) Limitation of Liability
Notwithstanding any other provision of this Contract and to the full extent permitted at law, the total cumulative liability of Windsor to the Supplier arising out of or in connection with this Contract for all loss, damage, cost, or expense suffered or incurred whether in contract or tort (including negligence), in equity, in restitution, by way of warranty or indemnity or under statute shall be limited to no more than the Price.
- (b) Consequential Loss excluded. Windsor will have no liability to the Supplier for any indirect loss, consequential loss or damage however arising including, but not limited to, loss of profits, loss of revenue, loss of productivity, loss or denial of opportunity, loss of goodwill, remote, abnormal, or unforeseeable loss.
- (c) Proportionate Liability. Subject to clauses (a) and (b) above, Windsor shall be proportionately liable to the extent that Windsor caused or contributed to such claim, demand, proceeding, cost, expense, loss, liability, or damage.
- (d) Severability. If any provision of this Contract is unenforceable, such unenforceability shall not affect any other provision or any other part of the Contract.
- (e) No waiver. Any waiver by Windsor of strict compliance with any provision of this Contract shall not be effective unless in writing and signed by an authorised officer of Windsor.
- (f) Law and courts. This Contract is governed by the laws of New Zealand and Parties submit to the exclusive jurisdiction of those Courts.
- (g) Consumer Guarantees Act. The parties agree that the Consumer Guarantees Act 1993 does not apply to the Works and this Contract.
- (h) Survival. All provisions that remain in force due to its nature and including indemnification, warranty, liability and limits thereon, and confidentiality and/or protections of proprietary rights shall survive the termination or expiry of this Contract.
- (i) Claims. Supplier must assert any claim against Windsor within fifteen (15) days of the circumstances giving rise to the claim, or otherwise such claim shall be forever waived and barred.

(Dated 06/2022)