KiwiRail

PURCHASE ORDER TERMS

The parties agree that the Purchase Order and the following terms will govern the provision of the Goods and/or Services unless KiwiRail and the Supplier have specifically entered into a separate written agreement for the supply of the Goods and/or Services, in which case the terms of that particular agreement will apply.

1 Supplier obligations:

1.1 Supplier Code of Conduct: The Supplier must comply with KiwiRail's Supplier Code of Conduct (see Doing business with us | KiwiRail).

1.2 Comply with law and other obligations: The Supplier must comply with all applicable laws and must obtain and maintain all licences, approvals and consents required to supply the Goods and/or Services and to perform its obligations under this Agreement.

1.3 Health & Safety: The Supplier will consult, cooperate and coordinate with KiwiRail to the extent required by KiwiRail to ensure that KiwiRail and the Supplier will each comply with their respective obligations under the Health and Safety at Work Act 2015 as they relate to this Agreement.

1.4 When on any KiwiRail site, the Supplier (and their personnel) must comply with (i) all applicable site induction, security, operational and documentation rules and requirements (particularly in relation to access to property and information, health and safety, hazardous substances and environmental protection); and (ii) the reasonable instructions of KiwiRail personnel.

1.5 Transfer of rights or obligations: The Supplier must not assign or transfer any of its rights or obligations under this Agreement.

1.6 Subcontracting: The Supplier must not subcontract any of its obligations under this Agreement without KiwiRail's prior written approval. Where KiwiRail approves any subcontracting, the Supplier must: (i) ensure each Subcontractor is appropriately qualified, experienced and resourced to provide the Goods and/or Services (ii) ensure each Subcontractor is fully informed of the Supplier's obligations under this Agreement; and (iii) enter into a subcontract on terms that are consistent with this Agreement (including, without limitation, payment obligations and any applicable policies, standards or requirements). The Supplier remains fully responsible for the acts, omissions and performance of the Subcontractor (and their personnel) as if they were the Supplier's own.

2 Payment:

2.1 Invoicing: The Supplier must provide a valid tax invoice (which includes the applicable Purchase Order number) for all Charges once the Goods and/or Services have been delivered to KiwiRail in accordance with the terms of this Agreement. The invoice must be sent by email to invoices@kiwirail.co.nz.

2.2 Payment: Subject to the invoice being properly issued, valid, and undisputed, payment of the Charges will be made by KiwiRail to the Supplier by the 20th day of the month after the month of invoice date, provided that KiwiRail receives the invoice before the 5th calendar day of the month following the invoice date.

2.3 Withholding tax: The Charges are inclusive of all taxation except goods and services tax (such tax being within the meaning of the Goods and Services Tax Act 1985). KiwiRail is entitled to deduct any withholding tax required to be withheld by law from payments made to the Supplier and will not be required to gross-up or increase any such payments in respect of such amounts withheld.

3 Supply of Goods:

3.1 Goods must satisfy criteria: Where Goods are to be supplied, the Goods must:

a. comply with the description of the Goods on the Purchase Order;

b. be of merchantable quality and free from defects in design, materials or construction;

c. be fit for the purposes for which they are intended to be used;

d. be new and unused; and

e. be packaged so as to protect the contents and keep them clean, dry and in a new condition until they are first used, if appropriate.

3.2 Delivery of Goods: The Supplier must deliver the Goods to the Delivery Address or as otherwise agreed in writing with KiwiRail, within the timeframe specified on the Purchase Order and notify KiwiRail promptly in writing if the Supplier becomes aware of any actual or possible delay in delivery of the Goods.

3.3 Supplier warranties: The Supplier warrants that:

a. the Goods comply with all applicable laws, regulations, standards and industry requirements;

b. the supply, possession and use of the Goods by KiwiRail will not infringe the intellectual property or other rights of any person;

c. full, unencumbered ownership of the Goods will pass to KiwiRail in accordance with this Agreement, and no third party has or will have any right, title or interest in the Goods;

d. all Goods supplied comply with all the specifications, requirements and other criteria set out in the Agreement;

e. all documentation supplied with the Goods is complete, accurate and sufficient to enable KiwiRail to use, operate and maintain the Goods for their intended purpose; and

f. all information provided by the Supplier to KiwiRail in connection with the Goods is true, accurate and not misleading.

3.4 Warranties and maintenance: The Supplier must ensure that KiwiRail is passed the benefit of any warranty or maintenance obligation (including a warranty from a manufacturer or any other person) that applies in relation to the Goods or any part of the Goods.

3.5 Ownership of Goods: Ownership in the Goods passes to KiwiRail on the earlier of:

a. the date KiwiRail has paid the Charges for those Goods; or

b. the date those Goods have been delivered.

3.6 **Risk in Goods**: Risk in the Goods passes to KiwiRail on the date those Goods have been delivered to the Delivery Address.

3.7 **Supply of Services:** Where Services are to be supplied, the Supplier must:

a. meet any milestones, deliverables, or timeframes specified in the Purchase Order;

b. perform the Services with due care, skill and diligence, and in accordance with good industry practice; and

c. ensure that all personnel have the necessary skills, expertise, training and resources to deliver the Services.

3.8 **Acceptance of Goods and/or Services:** Goods delivered and/or Services supplied shall not be accepted by KiwiRail until inspected and approved in writing by KiwiRail.

3.9 **Performance claims:** If any Goods delivered and/or Services supplied by the Supplier are defective or not in accordance with the provisions of this Agreement, the Supplier will promptly remedy the defect or failure to KiwiRail's satisfaction, at the Supplier's cost. If the Supplier fails to promptly remedy the defect or failure, or if KiwiRail determines that an urgent or other situation so justifies, KiwiRail may carry out, or procure the carrying out of, anything required to remedy the defect or failure and may recover the cost from the Supplier.

4 Confidentiality & Privacy:

4.1 **Use of confidential information**: Each party agrees to keep the other's Confidential Information confidential and not use it except: (i) as necessary to provide or use the Goods and/or Services; (ii) with prior written consent; (iii) when required by law or binding regulation; or (iv) if the information is already public (other than due to breach).

4.2 **Security**: Each party will maintain adequate security to protect Confidential Information, promptly notify the other of any suspected or actual breaches and comply with reasonable directions to address such breaches.

4.3 **Protection of Personal Information**: If the Supplier accesses Personal Information, it must only use and protect it as necessary to provide the Goods and/or Services, assist KiwiRail with its Privacy Act 2020 obligations, and comply with the Privacy Act.

4.4 **Privacy Breaches**: If the Supplier becomes aware of any Privacy Breach in relation to this Agreement, it will notify KiwiRail as soon as possible and take all reasonable steps: (i) to identify the person or persons affected; (ii) undertake its own investigation; and (iii) stop, and/or mitigate the impact and prevent its reoccurrence. The Supplier must not notify any person of the Privacy Breach without KiwiRail's prior written approval.

4.5 **Interplay between Personal Information and confidentiality obligations:** The Supplier's obligations regarding Personal Information under this Agreement are in addition to, and do not limit, either party's obligations to protect and secure Confidential Information. Any disclosure of Confidential Information permitted under sub-clause 4.1 is subject to the restrictions set out in sub-clauses 4.3 and 4.4.

5 **Liability:** Neither party is liable to the other for any consequential, indirect or special loss or damage arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence) or otherwise.

6 **Insurance:** The Supplier must, at its own cost, obtain and maintain insurance policies with reputable insurers that are appropriate for the nature of the Goods and/or Services being provided under the Purchase Order.

7 **Termination:**

7.1 **Rights of termination:** This Agreement can be terminated as follows:

a. *Termination for convenience*: KiwiRail may terminate this Agreement at any time by giving not less than 20 working days' written notice to the Supplier.

b. *Termination for cause*: KiwiRail may terminate immediately by written notice if the Supplier: (i) becomes bankrupt, insolvent or subject to external administration; (ii) has an administrator, receiver, liquidator, statutory manager, mortgagee or chargee's agent appointed; (iii) ceases for any reason to continue in business or does something or fails to do something that in KiwiRail's opinion, results in damage to the Supplier's or the Crown's reputation or business; (v) has a Conflict of Interest that in KiwiRail's opinion is so material as to impact adversely on the supply of the Goods and/or Services, KiwiRail or the Crown; or (vi) provides information to KiwiRail that is misleading or inaccurate in any material respect.

c. *Termination for breach*: (i) The non-defaulting party may issue a written default notice specifying the breach and a reasonable remedy period; (ii) If the breach is not remedied within that period, the non-defaulting party may terminate immediately by further written notice; (iii) Upon default notice from KiwiRail, payment may be withheld or reduced to reflect the diminished value of Goods and/or Services until the breach is remedied.

7.2 **Effect of Termination:**

a. *Supplier's obligations:* (i) On giving or receiving a notice of termination, the Supplier must comply with any conditions in the notice, act promptly to minimise losses, and if requested, return or securely destroy all KiwiRail Confidential Information and property.

b. *KiwiRail's rights:* KiwiRail will only pay for Goods and/or Services delivered before termination and may recover or set off any pre-paid amounts for undelivered Goods and/or Services.

8 **Disputes:** If either party considers that a dispute has arisen in connection with this Agreement, that party must give the other party written notice outlining the nature of the dispute. Within 10 working days of receiving a dispute notice, the parties must meet and use reasonable efforts to resolve the dispute in good faith. If the dispute is not resolved within that period, the parties must escalate the matter to senior representatives for further good-faith negotiations. If the dispute remains unresolved after escalation, either party may pursue any remedies available at law.

9 General:

9.1 Entire contract: This Agreement constitutes the entire agreement between KiwiRail and the Supplier in relation to the supply of the Goods and/or Services. Any Supplier terms and conditions do not apply. Any variation to this Agreement must be in writing and signed by an authorised signatory of KiwiRail.

9.2 Independent contractor: Nothing in this Agreement constitutes a legal relationship between the parties of partnership, joint venture, agency, or employment. The Supplier acts as an independent contractor at all times.

9.3 No representing: Neither party has any authority to bind, commit or represent the other party in any way.

9.4 The Supplier must not use KiwiRail's name or logo without prior written consent and approval.

9.5 Conflict of Interest: The Supplier warrants that, as at the Order Date, neither it or any Subcontractor has any Conflict of Interest, except as previously disclosed in writing to KiwiRail. If the Supplier or any Subcontractor becomes aware of any Conflict of Interest during the term of this Agreement, the Supplier must notify KiwiRail immediately. Where a Conflict of Interest is identified, the Supplier shall, at its own cost, comply with all reasonable directions from KiwiRail to manage or resolve the Conflict of Interest, and ensure any affected Subcontractor does the same.

9.6 Governing law: This Agreement is governed by, and must be interpreted in accordance with, the laws of New Zealand and the parties submit to the jurisdiction of the courts of New Zealand.

10 Definitions:

In this Agreement, the following terms have the stated meanings:

Agreement: together the Purchase Order and these Purchase Order Terms.

Charges: the total amount payable by KiwiRail to the Supplier for the Goods and/or Services as stated in the Purchase Order.

Confidential Information*:* all information, including data and Personal Information that: (i) is confidential by its nature; (ii) is marked by either party as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence'; (iii) is disclosed by either party or a third party 'in confidence'; or (iv) a party knows or ought reasonably to know is confidential.

Conflict of Interest: when the Supplier or its personnel (including any Subcontractors) personal or business interests or obligations conflict, or could reasonably be perceived to conflict, with their obligations under this Agreement, in a way that may compromise or appear to compromise their independence, objectivity or impartiality.

Delivery Address: the address for delivery set out on the Purchase Order.

End Date: the date when all the Goods and/or Services have been delivered or performed to KiwiRail's satisfaction, unless otherwise agreed in writing by the parties or terminated earlier in accordance with clause 7.

Goods: the goods as set out in the 'Description' on the Purchase Order**.**

Order Date: is the order date set out on the Purchase Order.

Personal Information: has the meaning given to that term in the Privacy Act 2020.

Privacy Breach: unauthorised or accidental access to, use, disclosure, alteration, loss, or destruction of Personal Information; including any action that prevents the Supplier from accessing Personal Information temporarily or permanently. This applies regardless of whether the breach: (i) is caused by a person inside or outside the Supplier; (ii) is wholly or partly attributable to any or omission of the Supplier; or (iii) is ongoing.

Purchase Order: the purchase order form issued by KiwiRail setting out the details of the Charges and Goods and/or Services.

Services: the Services as set out in the 'Description' on the Purchase Order.

Start Date: the "Order Date" set out on the Purchase Order.

Subcontractor A person, business, company or organisation contracted by the Supplier to deliver or perform part of the Supplier's obligations under this Agreement.

Supplier: the Supplier that will supply the Goods and/or Services as set out on the Purchase Order.