

NZDF Purchase Order Terms and Conditions

These are the only contractual provisions that apply to the supply of each Deliverable. If any other provision is to apply or prevail, NZDF must agree to it in writing. If an Incoterm is selected, these provisions will not prevail where inconsistent with that Incoterm.

1. Price

The Supplier must supply each Deliverable to NZDF for the price specified. The price is inclusive of all materials, labour, packaging, storage, freight, duty and every tax.

2. Purchase Orders

NZDF will order the Deliverables by issuing a Purchase Order to the Supplier. No contract for the supply of the Deliverables exists until NZDF places a Purchase Order.

3. Changes

NZDF may change its requirements for any Deliverable at any time prior to delivery. If a change affects price or time required for performance, a fair adjustment will be made as agreed between both parties, except if the Supplier does not request an adjustment within five working days after notice of the change, no increase adjustment will be made.

4. Delivery

The Supplier must deliver each Deliverable how, by when and to where specified on the Purchase Order. If any delivery may be or is late, the Supplier will make delivery by the fastest method at its cost. Time is of the essence.

5. Acceptance

NZDF may carry out any acceptance test it wishes before and after delivery at any location to verify compliance of the Deliverables. Final acceptance of the Deliverables is to be completed by NZDF within 30 days of delivery of the Deliverables to their final location as designated by the Purchase Order. The Supplier must promptly remedy any defect at its cost.

6. Payment

Payment will be made by NZDF on the 20th day of the month following the month in which the latter of:

- a. delivery and acceptance of the Deliverable occurs, and
- b. NZDF received a correct tax invoice for the Deliverable quoting the NZDF Purchase Order number.

Invoices are to be sent to the invoice address specified on the Purchase Order.

7. Title

Clear title to each Deliverable purchased by NZDF will pass to NZDF on delivery.

8. Risk

Every risk to a Deliverable remains with the Supplier until completion of delivery and acceptance.

9. Insurance

The Supplier must insure each Deliverable (or any component of it) for its full replacement value until delivery and acceptance of each Deliverable by NZDF.

10. Warranties

The Supplier warrants and guarantees to NZDF that:

- a. each Deliverable will be new and unused on delivery; or
- b. if a shelf life, calendar life or a utilisation life is applicable, at least 95% of each of those lives remain on delivery;
- c. despite any inspection, acceptance or payment by NZDF, or any work done in respect of or use of any Deliverable by NZDF, each Deliverable will, for at least 12 months from the date of acceptance by NZDF:
 - (i) be free from any defect in design, materials and workmanship;
 - (ii) conform as to quantity, quality and description, and satisfy and standard of design, quality and performance specified by NZDF; and
 - (iii) be fit for the use and purpose for which NZDF requires it.
- d. each Deliverable will be free from any latent defect;
- e. ownership, possession, use and resale of each Deliverable by NZDF will not infringe any proprietary right or interest of, or result in any liability to NZDF to, any person; and
- f. no form of inducement or reward has been or will be directly or indirectly provided to any representative of NZDF.

These are additional to any other warranties and guarantees given by the Supplier or implied by custom or law. The Supplier will, to the extent possible, pass on to NZDF the benefit of any warranty or guarantee received from any other person in respect of a Deliverable with the intent that NZDF may have recourse against those persons through the Supplier for a defect.

11. Warranty claims

The Supplier will promptly remedy each warranty claim to NZDF's satisfaction. Warranties start again for the full period on completion of remedying each defect. If any defect results in NZDF not receiving the expected value or performance from the Deliverable, the Supplier will, at its cost, promptly replace the Deliverable with a new and compliant Deliverable with a full warranty, if requested by NZDF.

12. Codification

If required by NZDF, the Supplier will, within the price, promptly supply information to NZDF to enable codification of each Deliverable (or any component) to a NATO Stock Number. Full details on codification requirements are detailed on the NZDF Internet site:

www.nzdf.mil.nz/nato-codification

13. Compliance with laws

The Supplier:

- a. will ensure they, and each Deliverable, complies with every New Zealand relevant jurisdiction's, laws, coeds and standards; and
- b. is responsible for ensuring that every necessary and prudent authorisation (including consents, permits and licences) is obtained to ensure that it can delivery, and NZDF can receive, each Deliverable.

14. Failure to comply

If:

- a. any Deliverable is destroyed or damaged prior to acceptance, or is not delivered how, when or where required by NZDF, or fails any acceptance test, or otherwise does not comply with NZDF's requirements;
- b. any warranty claim is not promptly dealt with in accordance with the warranty clause;
- c. the Supplier breaches and fails to properly or promptly perform any of its obligations to NZDF's satisfaction within five working days after notice from NZDF of the breach;
- d. any direct or indirect change of control of the Supplier occurs; or
- e. the Supplier is or becomes insolvent or bankrupt, goes into receivership or liquidation, or amalgamates with any other person(s);

then NZDF may:

- f. withhold any payment due to the Supplier until the matter is resolved to NZDF's satisfaction;
- g. cause the Supplier to remove any rejected Deliverables from NZDF's premises, at the Supplier's risk and expense, and no longer be obliged to pay for that Deliverable, or, if paid for, receive a refund from the Supplier or set-off the amount paid against any amount NZDF may owe the Supplier. If the rejected Deliverables are not removed by the Supplier within 20 working days of the notification of the rejection, NZDF will return the Deliverables to the Supplier at the Supplier's own risk and expense;
- h. suspend or cancel (in whole or in part) this contract by written notice to the Supplier and/or recover or deduct from or set-off against any amount NZDF may owe the Supplier, amounts for any direct or indirect damage, loss or cost (including legal cost) to NZDF relating to the non-performance by the Supplier or any Deliverable.

15. Supplier indemnity

Unless prohibited by law, the Supplier will indemnify NZDF for any physical, direct and indirect damage, loss or cost (including lawyer/client costs) to NZDF or any other person, and protect NZDF from any claim or proceedings against NZDF to the extent caused or contributed to by the Supplier or its representatives or visitors.

16. No advertising

The Supplier will not advertise in any newspaper, magazine, journal or other advertising medium, or broadcast on radio or television or on the internet that it supplies Deliverables to NZDF without NZDF's written approval.

17. Force majeure

The Supplier is not liable for any failure or delay in performing if it is due to a cause reasonably beyond the control of the Supplier, and the Supplier has used its best endeavours to perform on time despite the cause. For the purposes of this clause, a circumstance reasonably beyond the control of the Supplier shall not include industrial action on the part of the Supplier or the Supplier's personnel, or inability by the Supplier to supply the Deliverables due to disputes with its third party suppliers, or the Supplier or its suppliers not having taken all reasonable steps to ensure systems do not fail due to digital date recognition errors.

18. Security

The Supplier, its representatives and sub-contractors will comply with NZDF's security and operational requirements where it has access to any Defence Area, NZDF property or information for the purpose of supplying the Deliverables.

19. Managing security

The Supplier may need to be accredited under the Defence Industry Security Programme (DISP). If accreditation is required, there are Government and NZDF standards the Supplier must meet to protect NZDF information and assets. If the Supplier will be creating, accessing or storing classified materials at the Supplier's premises, the Supplier may need to make physical changes, at the Supplier's own cost, to fulfil the security requirements of the Supplier's contract with NZDF. As well as DISP accreditation, any individual accessing NZDF classified material or facilities during a contract with NZDF will need a National Security Clearance. The clearance vetting process can take some months.

20. Disputes

If any dispute between the parties arises, the parties will endeavour to resolve the dispute promptly by negotiation. If the parties cannot resolve the dispute by negotiation, the dispute will be referred to mediation and any associated costs will be shared equally between the parties. Pending resolution of the dispute, the parties will continue to perform all their obligations except where it is impracticable to continue performing any obligations being the subject of the dispute, and such obligations will be suspended during the dispute.

21. General

All amounts are in New Zealand dollars unless otherwise specified. New Zealand time and dates apply. All documentation is to be in English. New Zealand law applies and Zealand Courts have exclusive jurisdiction.

22. Interpretation

In this contract, unless the context otherwise requires or specifically otherwise stated:

- a. "Deliverable" means the goods and/or services to be supplied to NZDF under this contract.
- b. "NZDF" means the Sovereign in right of New Zealand acting by and through the Chief of Defence Force (the Crown). NZDF is used only for convenience.
- c. "Purchase Order" means an official numbered form specifying details of the Deliverables requested by NZDF.