

1. CONTRACT

- 1.1 All purchase orders placed by NMDHB are subject to the following terms and conditions. Where NMDHB and Supplier have a separate signed contract, the terms and conditions of supply within the separate contract take precedence.
- 1.2 The terms and conditions of this contract prevail over the terms contained in the Supplier's standard conditions of sale, invoices, packing slips, delivery dockets or any other communication

2. PURCHASE ORDER

- 2.1 NMDHB will confirm all orders for any good or services (Supplies) by issuing purchase orders. The Supplier will confirm in writing receipt of all purchase orders. NMDHB will not be liable for any Supplies supplied unless ordered on NMDHB's purchase order.

3. PRICE

- 3.1 The Price(s) specified in this purchase order apply without variation.
- 3.2 No charge shall be made for any other item such as freight, insurance, late payment, wrapping, packaging, cartons, boxing or preparing the Supplies for shipment, unless such charge is expressly agreed in writing by NMDHB in its purchase order.
- 3.3 For the avoidance of doubt, the Supplier acknowledges that:
- i) all Supplies are deemed to be sold free into store (FIS)
 - ii) the Supplier's costs and expenses incurred in complying with the Supplier's obligations under this contract are included in the Price
 - iii) NMDHB will not be required to pay any sums in respect of any Supplies other than the Price specified in this purchase order.
- 3.4 All prices are quoted GST exclusive.

4. PAYMENT

- 4.1 Subject to the Supplies complying with this contract, NMDHB will pay for the Supplies in NZ dollars on the 20th of the month following the month of receipt of invoice.
- 4.2 All payments are subject to NMDHB receiving a GST tax invoice complying with clause 5.1 of this contract.
- 4.3 Failure by NMDHB to dispute any invoice prior to payment will not prejudice NMDHB's rights to subsequently dispute the correctness of such invoice.
- 4.4 NMDHB may withhold or deduct or set off the amount of any overpayment or any amount recoverable by NMDHB from the Supplier under this contract from any future payment.

5. INVOICES

- 5.1 Each GST tax invoice must meet all legal requirements and must state the following information:
- i) NMDHB's purchase order number
 - ii) Supplier's legal name
 - iii) Supplier GST number
 - iv) Supplier's invoice number
 - v) Description of Supplies including quantity delivered
 - vi) Date of delivery
 - vii) NZ dollar amount to be paid plus GST (if any)
- 5.2 Invoices must be sent to NMDHB within ten (10) days of delivery of Supplies.
- 5.3 All invoices must be sent to:

**Nelson Marlborough District Health Board (Accounts Payable),
P O Box 7044, Nelson 7042.**

6. DELIVERY

- 6.1 Delivery must be to the address specified in the Purchase Order.
- 6.2 Delivery must be no later than the date specified in the Purchase Order.
- 6.3 A Delivery Note must accompany all deliveries, and must state:
- i) NMDHB's purchase order number
 - ii) Supplier's legal name and contact details
 - iii) Full description of Supplies and quantity delivered
- 6.4 The Purchase Order number must be quoted on all packing slips and related documents.
- 6.5 All deliveries should be accompanied by: applicable datasheets and a certificate of conformance/analysis which must include: Supplier's name and contact details, name and title of authorising signatory, material name, date of manufacture/production, batch/lot number, Supplier's item code, NMDHB item code, expiry date, date of supply to NMDHB, test analysis date, test/analysis results.
- 6.6 Quantities of Supplies delivered must conform to the quantities ordered by NMDHB. NMDHB will only accept part deliveries and interim invoices if agreed in writing by NMDHB prior to delivery by the Supplier.
- 6.7 NMDHB can return any Supplies incorrectly delivered. The Supplier is responsible for the cost of, and arrangements for, the return freight.
- 6.8 Risk in any Supplies and unencumbered title in any Supplies will pass to NMDHB upon signing of the delivery note accompanying the Supplies. The signing of a delivery note or acknowledgement of delivery of any Supplies by NMDHB will not be taken as acceptance of either quantity or quality of the Supplies and acceptance by NMDHB of the Supplies will be subject to subsequently inspection and use of the Supplies.
- 6.9 NMDHB reserves the right to inspect Supplies during and/or after manufacture but before delivery. Any such inspection shall not constitute any acceptance or prejudice any of NMDHB's rights.

7. PACKAGING

- 7.1 The Supplier will ensure packaging and transit packaging are sufficient to retain the original integrity of Supplies.

8. ACCESS TO ANY NMDHB SITE

- 8.1 If access to any NMDHB site is necessary for the supply of Supplies to NMDHB in accordance with this contract, NMDHB will allow the Supplier access at reasonable times, as necessary.
- 8.2 The Supplier will comply with NMDHB's security, operational and site requirements where the Supplier has access to any NMDHB Site.

- 8.3 When required by NMDHB, the Supplier must complete a NMDHB Site specific induction programme before supplying Supplies to NMDHB in accordance with this contract.

9. WARRANTY

- 9.1 The Supplier warrants to NMDHB that all Supplies are:
- i) of commercial standard and conform with all specifications
 - ii) fit for their intended purpose, of merchantable quality and comply with all laws and standards relevant to the Supplies both in New Zealand and overseas.
 - iii) free from any defect (including any latent defect).
 - iv) new and unused (unless otherwise agreed with NMDHB) and have a remaining shelf life in excess of 95% upon delivery (where applicable).
 - v) free from all encumbrances.
 - vi) if applicable, registered in New Zealand with Medsafe.

10. INDEMNITY

- 10.1 The Supplier shall fully protect and indemnify NMDHB against any claim, damage, loss, expense or liability incurred directly or indirectly by NMDHB in connection with or as a consequence of the Supplier's failure to comply with its obligations under this contract or any act or omission by the Supplier's employees, agents or representatives.

11. FAILURE TO COMPLY

- 11.1 If any Supplies fail to comply with the requirements of this contract the Supplies may be rejected without payment. Rejected Supplies must be collected by the Supplier by the date advised by NMDHB and at the Supplier's risk and expense. On such rejection or if the Supplier defaults in delivering any Supplies or if any Supplies are required to be recalled by the government or any other authority, the Supplier will use its best endeavours to provide replacement Supplies to NMDHB as soon as possible, provided that NMDHB reserves its right to purchase alternative Supplies elsewhere.
- 11.2 Any reasonable additional costs incurred by NMDHB in purchasing such alternative supplies will be met by the Supplier on demand by NMDHB and will be recoverable from the Supplier as a debt due to NMDHB. In the event any Supplies are rejected or recalled pursuant to this clause 10, the Supplier shall immediately refund all money paid by NMDHB for the Supplies and such money will be recoverable from the Supplier as a debt due to the Customer, unless the Supplier has provided replacement Supplies to NMDHB's satisfaction.

12. TERMINATION

- 12.1 In the event of any suspension of payment, or a shareholders' resolution for the appointment of a receiver, or a voluntary filing in insolvency, bankruptcy or for winding up, or the institution of proceedings by or against either party for a declaration of bankruptcy or insolvency, or for the appointment of a receiver or trustee or an assignee for the benefit of creditors, of the property of either party, or in the event of the breach of any material terms hereof, including the warranties of the Supplier, the other party shall be entitled to cancel this contract forthwith.

13. FORCE MAJEURE

- 13.1 Neither party will be liable to the other for any delays nor non-performance of contractual obligations under this contract caused by a Force Majeure, provided each party has taken reasonable steps to minimise any loss, damage or delay resulting from a Force Majeure event. A Force Majeure event includes fire, outbreaks of war, acts of hostility and acts of God. The expression does not include financial management difficulties or problems caused by contractual relations between the Supplier and its employees, agents, sub-contractors or suppliers or any risk or event the effects of which the party affected could have prevented or overcome by taking reasonable care.

14. INTELLECTUAL PROPERTY

- 14.1 Where the Supplier makes Supplies (including intellectual property) solely for NMDHB or based substantially or wholly on the NMDHB's specifications, drawings, designs or property then such Supplies shall be the property of NMDHB and may not be offered for sale or license by the Supplier without the prior written consent of NMDHB.
- 14.2 The Supplier must ensure that the Supplies do not breach the intellectual property rights of any third party.

15. CONFIDENTIALITY

- 15.1 All technical specifications, drawings, designs, concepts or other property or information provided by NMDHB to the Supplier remain the property of NMDHB and are to be treated as confidential. They must be returned immediately on demand and may not be copied without NMDHB's written consent. This requirement of confidentiality shall survive the term of this contract.

16. MISCELLANEOUS

- 16.1 If the Supplies result through a competitive tender the provisions of sub-section 41 (3) of the Consumer Guarantees Act 1993 shall not apply and the provisions of that act shall apply as though sub-section 41 (3) had not been enacted. No waiver of any breach of this contract shall be deemed to be a waiver of any other or subsequent breach. This contract shall not be assigned by the Supplier without the prior written consent of NMDHB. The Supplier shall not in any way advertise or make statements to the media in relation to this contract without the prior written consent of NMDHB. For any amendments or variations of this contract to be binding they must be in writing and executed by both parties. This contract shall be governed by, and construed according to, the laws of New Zealand.