

EARTH SCIENCES NZ PURCHASE ORDER TERMS AND CONDITIONS

1. Application of Terms

- 1.1. By accepting a Purchase Order or delivering any Goods and/or Services that are the subject of a Purchase Order, the Supplier agrees that it will provide the Goods and/or Services in accordance with that Purchase Order and these Terms (and to the exclusion of all other terms and conditions, including any Supplier ones), unless and to the extent EARTH SCIENCES NZ agrees otherwise in writing. In the case of any conflict between the details set out in the Purchase Order and these Terms, the details in the Purchase Order will prevail.
- 1.2. If EARTH SCIENCES NZ and the Supplier have entered into another agreement in writing governing the supply of the Goods and/or Services, then the terms of that agreement will apply, unless the parties expressly agree otherwise.

2. Performance

- 2.1. The Supplier must:
 - (a) Perform its obligations in accordance with Good Industry Practice and all applicable laws, regulations, rules and codes of practice.
 - (b) Have and maintain all relevant consents, authorisations, permits or licences required in relation to its supply of the Goods and/or Services.
 - (c) Comply with all applicable EARTH SCIENCES NZ policies and procedures notified to it, including EARTH SCIENCES NZ's health, safety and security policies, [Supplier Code of Conduct](#) and standard payment verification requirements, and with EARTH SCIENCES NZ's reasonable directions.
 - (d) Notify EARTH SCIENCES NZ of any notifiable event or of any notice issued to it by a regulatory authority that relates to the provision of the Services and/or Goods or otherwise affects the Purchase Order.
 - (e) Ensure that all personnel providing any Goods and/or Services are suitably skilled, experienced and qualified for the tasks they are undertaking.
 - (f) Provide any information and assistance that EARTH SCIENCES NZ reasonably requires in relation to the Goods and/or Services.
 - (g) Provide the Goods and/or Services on or by the applicable date(s) specified in the Purchase Order (or where no delivery date is specified, then within a reasonable time). Time is of the essence for the delivery of the Goods and/or Services.
 - (h) Promptly notify EARTH SCIENCES NZ of any actual or anticipated matters that could affect its provision of the Goods and/or Services or any delay to the delivery of them. Without limiting EARTH SCIENCES NZ's rights, the Supplier must take all reasonable steps to minimise any delay in delivery.

3. Delivery

- 3.1. Where the Supplier is providing any Goods under a Purchase Order, the Supplier must (at its cost):
 - (a) ensure the Goods are properly packed and protected against damage and deterioration during their transport, loading and unloading;
 - (b) deliver the Goods to the delivery address in the Purchase Order or provided by EARTH SCIENCES NZ;
 - (c) ensure the Goods are appropriately labelled and accompanied by a packing slip setting out the details of the Goods being delivered (including their country of manufacture) and the Purchase Order number.
- 3.2. Receipt of delivery of Goods does not constitute acceptance of the Goods by EARTH SCIENCES NZ and confirmation of acceptance of the Goods remains subject to EARTH SCIENCES NZ's other rights under these Terms.
- 3.3. EARTH SCIENCES NZ may reject any non-conforming Goods or Services, and without limiting any rights or remedies, may (at its option):
 - (a) return any rejected Goods to the Supplier at the Supplier's cost and risk; and
 - (b) require the Supplier to reperform any rejected Services at no extra cost or refund EARTH SCIENCES NZ all monies it has paid in respect of the rejected Services.
- 3.4. If any Goods are returned to the Supplier under clause 3.3(a), the Supplier will immediately refund EARTH SCIENCES NZ the cost of returning those Goods and, at EARTH SCIENCES NZ's option, either refund to EARTH SCIENCES NZ all monies it has paid in respect of them (and title to those Goods shall revert to the Supplier) or replace those rejected Goods with conforming ones within a reasonable time.

4. Invoicing

- 4.1. The Supplier must ensure that all of its invoices are valid GST invoices and include the relevant Purchase Order number, a description of the Goods and/or Services supplied and any relevant dates of supply.
- 4.2. Unless otherwise specified in the Purchase Order, the Supplier is to invoice EARTH SCIENCES NZ after the successful delivery of the Goods and/or Services. All invoices should be sent to the EARTH SCIENCES NZ contact in the Purchase Order and such other email address as notified to the Supplier by EARTH SCIENCES NZ.

5. Payment

- 5.1. Subject to the Supplier's compliance with these Terms, EARTH SCIENCES NZ will pay the Supplier the agreed price for the Goods and/or Services by the 20th day of the month following the month in which each valid GST invoice is received

provided that invoice is received by the 5th Business Day of that month (invoices received after that date will be paid by the 20th of the following month).

- 5.2. Unless expressly agreed otherwise in writing, the price(s) stated in the Purchase Order is all inclusive, including the costs of customs agents, carrier fees, freight, insurance, tariffs, duties, taxes or any kind, assessments, other levies or expenses incurred by the Supplier in relation to the Goods and/or Services.
- 5.3. EARTH SCIENCES NZ will not be required to pay:
 - (a) any costs in addition to the amount specified in the Purchase Order without its prior written approval; or
 - (b) part of an invoice that is genuinely and reasonably disputed, until the dispute is resolved.
- 5.4. In making payment for the Goods and/or Services, EARTH SCIENCES NZ may withhold, deduct or set-off any amount that was previously overpaid or any amount recoverable by EARTH SCIENCES NZ from the Supplier under these Terms or otherwise.

6. Title and Risk

- 6.1. Title to any Good will pass to EARTH SCIENCES NZ on payment for that Good (and where the Good is paid for in instalments, title to applicable components of the Good will pass on payment for those components).
- 6.2. Risk in any Good will pass on delivery of that Good (or component of that Good) to EARTH SCIENCES NZ.

7. Security interest

- 7.1. Where EARTH SCIENCES NZ pays for Goods (in whole or in part) in advance of delivery, the Supplier holds the Goods as bailee for EARTH SCIENCES NZ, and this bailment will constitute a security interest in favour of EARTH SCIENCES NZ. EARTH SCIENCES NZ reserves the right to register a financing statement under the Personal Property Securities Act 1999 or such equivalent form of asset security that exists in the Supplier's jurisdiction, to secure the Goods for the benefit of EARTH SCIENCES NZ. The Supplier must ensure the Goods are set apart from other goods and materials at the Supplier's premises, are insured by the Supplier, and are clearly identified as being the property of EARTH SCIENCES NZ.

8. Warranties and Indemnity

- 8.1. The Supplier warrants that:
 - (a) the Goods and/or Services will correspond with their description and comply with any specifications and/or requirements supplied or agreed by the Supplier and EARTH SCIENCES NZ and with all applicable laws, regulations, standards, rules and codes of practice;
 - (b) any information it provides is materially accurate and correct and not misleading in any way;
 - (c) the Goods are free of any security interest, lien or other encumbrance on passing of title; and
 - (d) EARTH SCIENCES NZ's use of the Goods and/or the outputs from the Services as contemplated by the Purchase Order will not infringe the property rights (including Intellectual Property Rights) of any third party.
- 8.2. Where the Supplier is providing Goods, then in addition to the warranties above and any other warranties and representations, the Supplier warrants that the Goods:
 - (a) are new, unused (unless expressly agreed otherwise) and of merchantable quality on delivery, and will be fit for the purposes for which such items are normally acquired and for any other purpose EARTH SCIENCES NZ has made known to the Supplier or the Supplier has represented to EARTH SCIENCES NZ (and in such case EARTH SCIENCES NZ relies on the Supplier's skill and judgment); and
 - (b) will be free from defects in design, materials and workmanship under normal use and service for a period of 12 months from the date of delivery (or such longer period agreed by the Supplier or as is reasonable given the nature of the Goods).
- 8.3. The Supplier shall ensure that the benefit of any manufacturer's warranties relating to the Goods and/or Services, or component parts of the Goods and/or Services, is passed on to EARTH SCIENCES NZ. To the extent that the benefit of any warranty is not able to be directly passed on to EARTH SCIENCES NZ, the Supplier will hold the warranty on trust for EARTH SCIENCES NZ and will enforce it as EARTH SCIENCES NZ reasonably requires.
- 8.4. The Supplier indemnifies EARTH SCIENCES NZ against all liabilities, costs, expenses, damages or losses (including but not limited to any direct, indirect or consequential losses and all interest and legal costs) suffered or incurred by EARTH SCIENCES NZ resulting from any breach of the Terms by the Supplier. If EARTH SCIENCES NZ has contributed to any loss or damage covered by this indemnity then the Supplier will only be liable to the proportional extent of its contribution.

9. Termination

- 9.1. EARTH SCIENCES NZ may terminate the Purchase Order immediately on notice in writing if the Supplier:
 - (a) breaches these Terms and that breach is not remediable, or, if remediable, is not remedied within 10 Business Days after receiving notice from EARTH SCIENCES NZ to remedy (or such other period as reasonably specified by EARTH SCIENCES NZ in the notice);
 - (b) is unable to pay its debts as they fall due, goes into receivership, liquidation, statutory management, ceases to carry on business, or otherwise experiences any similar event equivalent to these in its jurisdiction.
- 9.2. EARTH SCIENCES NZ may terminate the Purchase Order by giving not less than 20 Business Days' written notice and EARTH SCIENCES NZ will pay the Supplier for any Goods and/or Services provided in accordance with these Terms prior to termination.
- 9.3. On receiving a notice of termination, the Supplier must immediately do everything reasonably possible to reduce its losses, costs and expenses arising from termination.

- 9.4. Termination of a Purchase Order will be without prejudice to the rights and obligations of the parties which are intended to continue or come into effect after termination.

10. Confidentiality, Publicity and Privacy

- 10.1. The Supplier must keep all Confidential Information confidential and secure and:
- not use, disclose or copy the Confidential Information for any other purpose than for the purpose of, and to the extent necessary for, providing the Goods and/or Services in accordance with these Terms or complying with law;
 - return or destroy the Confidential Information on the earlier of its completion of the Purchase Order or EARTH SCIENCES NZ's request.
- 10.2. Where the Supplier has access to any Personal Information through or from EARTH SCIENCES NZ, the Supplier must protect that Personal Information against any unauthorised use, loss, access, modification or disclosure and only use that Personal Information to the extent necessary to provide the Goods and/or Services and as is authorised by EARTH SCIENCES NZ.
- 10.3. The Supplier must immediately notify EARTH SCIENCES NZ of any suspected or actual unauthorised use, disclosure or copying of or access to the Confidential Information or any Privacy Breach, and comply with any reasonable directions of EARTH SCIENCES NZ in relation to the same.
- 10.4. The Supplier must not, without EARTH SCIENCES NZ's prior written consent:
- use EARTH SCIENCES NZ's name or logos (including to advertise or promote itself or its business); or
 - make any public announcements or statements about EARTH SCIENCES NZ or this Purchase Order.

11. Intellectual Property

- 11.1. All Intellectual Property Rights owned or licensed by a party and existing prior to, or developed independently from, a Purchase Order (**Background IP**) will remain the property of that party or its licensor. The Supplier grants EARTH SCIENCES NZ a royalty-free, non-transferable, non-exclusive, irrevocable and perpetual licence to its Background IP to the extent necessary for EARTH SCIENCES NZ to utilise the Goods and/or Services (including any outputs or deliverables of the Services) as contemplated by the Purchase Order.
- 11.2. Unless otherwise agreed in writing, all Intellectual Property Rights created or produced by the Supplier for EARTH SCIENCES NZ as part of the Services or supply of the Goods (**New IP**), will be owned by EARTH SCIENCES NZ. The Supplier must execute all documents and take all other actions reasonably required by EARTH SCIENCES NZ to give effect to this clause.

12. Insurance

- 12.1. The Supplier will ensure that for the period of any statutory liability it holds appropriate public liability insurance, products liability insurance (if supplying Goods) and professional indemnity insurance (if designing Goods or supplying Services). The Supplier will provide evidence that it holds the insurance required under this clause on request.

13. General

- 13.1. **Transfer:** The Supplier must not transfer or assign any of its rights or obligations for the Purchase Order without EARTH SCIENCES NZ's prior written approval.
- 13.2. **Independent contractor:** Nothing in these Terms constitutes a legal relationship between the parties of partnership, joint venture, agency or employment.
- 13.3. **Extraordinary event:** A party is not liable for any failure or delay in performing its obligations under these Terms to the extent such failure or delay is caused by a circumstance outside its reasonable control (**Extraordinary Event**), provided that party has notified the other party, uses its best endeavours to mitigate the effect of that Extraordinary Event and continues to perform its obligations as far as is reasonably practicable.
- 13.4. **Non-waiver:** Non-enforcement by EARTH SCIENCES NZ of any of its entitlements or rights under these Terms does not amount to a waiver of those entitlements or rights by EARTH SCIENCES NZ.
- 13.5. **Variations:** No variation to these Terms will be binding unless agreed in writing by both parties.
- 13.6. **Disputes:** The parties will use their reasonable endeavours to resolve any dispute or difference that may arise under these Terms through negotiation in the first instance.
- 13.7. **Severability:** If any part of these Terms is held to be invalid or unenforceable, that part will be severed or modified to the minimum possible extent necessary to ensure the enforceability of the remainder of the Terms.
- 13.8. **Clauses that remain in force:** The terms that are intended to stay in force despite termination or expiry of the Purchase Order, will stay in force, including clause 8.1(c) and clauses 10 - 13.
- 13.9. **New Zealand law, currency and time:** These Terms and the Purchase Order will be governed and interpreted in accordance with the laws of New Zealand, and New Zealand courts have exclusive jurisdiction. Unless agreed otherwise by EARTH SCIENCES NZ in writing, all money is in New Zealand dollars and dates and times are New Zealand time.

14. Definitions

- 14.1. Capitalised words in these Terms have the meaning given below unless otherwise required by the context.
Business Day means any day other than a Saturday, Sunday or public holiday in New Zealand between the hours of 8:30 am and 5:30pm.

Confidential Information includes the terms of the Purchase Order and any confidential or commercially sensitive information of or about EARTH SCIENCES NZ, its clients or other suppliers but excludes information that is public knowledge.

Good Industry Practice means the exercise of that degree of skill, diligence, prudence and foresight which would ordinarily be expected from a skilled and experienced supplier engaged in the same type of undertaking in accordance with all relevant codes or standards of practice and in the same or similar circumstances as that of the Supplier.

Goods means the goods or equipment specified in the Purchase Order or otherwise agreed in writing to be supplied by the Supplier.

GST means the goods and services tax payable in accordance with the Goods and Services Tax Act 1985.

HSWA means the Health and Safety at Work Act 2015.

Intellectual Property Rights means all industrial and intellectual property rights whether conferred by statute, at common law or in equity, including but not limited to, copyrights, trademarks, designs and patents.

EARTH SCIENCES NZ means the New Zealand Institute for Earth Science Limited and/or, as applicable, its related companies (as that term is defined in the Companies Act 1993) in New Zealand as set out the Purchase Order.

Personal Information has the meaning given to that term in section 7 of the Privacy Act 2020.

Privacy Breach has the meaning given to that term in section 112 of the Privacy Act 2020.

Purchase Order (or PO) means the written purchase order submitted by EARTH SCIENCES NZ for the provision of the Goods and/or Services (and includes information supporting the Purchase Order which is separately provided in another format, for example, separate specifications, and agreed by EARTH SCIENCES NZ).

Services means all services specified in the Purchase Order or otherwise agreed in writing to be provided by the Supplier, including any outputs or deliverables of those Services. Services may include training, support, maintenance or installation services in relation to Goods.

Supplier means the party providing the Goods and/or Services to EARTH SCIENCES NZ.

Terms means these terms and conditions and includes the corresponding Purchase Order.