

# Terms and Conditions of Purchase Order (Goods and/or Services including Transportation and Minor Works)



## Part A: Standard Terms

### 1. General

Every purchase order ('order') we issue is an offer to buy goods from you or engage your services subject to these terms and conditions ('standard terms'), including Part B ('transport terms') and C ('minor works terms') where applicable, and any written special conditions that we include in or with our order ('Contract'). Where you accept, or take any action in connection with our order, the Contract is formed and is binding. If there are special conditions in the order then they take precedence over the standard terms, transport terms and minor works terms. Any terms and conditions in your quote, offer document, order acceptance, or any other document you supply are excluded, except where this Contract is replaced by a formal agreement for the goods and services that both parties sign.

### 2. Delivery

You must supply the goods and services, where and by the Delivery Date specified in our Order or as otherwise directed by us (at any time) in writing. You must keep us informed of any delays or other matters which may affect the delivery of the goods or the performance of the services. You must properly pack, mark and ship the goods in accordance with our instructions and with industry standards. You must provide us with shipment documentation stating the Order number and sufficient information for us to be able to determine that the correct quantity has been delivered in accordance with the Order. If any of the goods (or any part of them) originates from outside of Australia you must specify the country of origin.

### 3. Cancellations

We may cancel an Order by written notice to you: (a) at any time prior to supply; or (b) after supply, if the goods or services are not in accordance with our Order (including where wrong quantities are delivered) or (c) if you otherwise breach this Contract; and we will have no liability whatsoever to you for cancelling.

### 4. Variations

At any time, we may issue you instructions to make variations to the goods or services (including any additions or reductions to the scope of services), and you must comply with those instructions without delay.

Any additional payment payable to you in connection with a variation will be valued by us at the appropriate rates and prices included in the Order or, in the absence of any appropriate rates and prices, a fair valuation will be made by mutual agreement between us, or (if such agreement is not reached within a reasonable period of time) as determined by us.

You are not entitled to any additional payment if we request you to perform remedial work due to any defect or if the relevant variation is due to any fault on your part.

You must not carry out any variation unless we have issued you a written direction to carry out that variation. You will not be entitled to compensation for variations other than as set out in this clause.

### 5. Quality

You warrant that you hold and will keep all approvals, consents, qualifications, licenses and permits required by applicable law and which are necessary for you to provide the goods and services.

To the extent applicable you must comply with the NET HSEQ Requirements.

You must: (a) ensure that you and all goods and services you supply strictly comply with all laws, regulations, codes and Australian Standards, with our Supplier Code of Conduct, our Contract (including any performance criteria) and all reasonable directions given by us; (b) provide all personnel, materials, resources, equipment, facilities and other things necessary to perform this Contract; and (c) obtain all authorisations required to perform this Contract.

Goods must be new, fit for purpose for which they are acquired, free from damage and defects in workmanship and materials and merchantable quality. Services must be performed in a safe and workmanlike manner to a high standard of professional care and skill by appropriately trained and qualified personnel.

Without limiting the above paragraph, you must assign to us the benefit of any warranty or guarantee given by the manufacturer regarding the goods.

Regardless of whether title and risk have passed to us, we may reject goods or services (including any replacement goods or services) which are defective or otherwise do not comply with the Contract during the defects period, even if we have previously inspected or accepted them. Where goods or services are rejected, you must, at our option within 5 days: (a) replace, repair or resupply the goods or services at your expense; or (b) refund to us any amount we paid for the rejected goods or services.

If you fail to remedy any defective or non-compliant goods or services in accordance with the above timeframe, we may arrange to have the defects or non-compliance remedied by alternative means and may recover the costs of doing so from you.

You will hold all approvals, consents and permits which are necessary under Applicable Law for you to provide the goods and services under this Contract

### 6. Inspection and testing

You are solely responsible for inspecting the site and the requirements of any documentation we may give you and the Contract and ensuring the price in the order is sufficient for you to be able to provide the goods and services. You will be unable to claim a variation for circumstances that a competent contracting provider providing similar goods and services would have been aware of.

We, or any agent appointed by us, have the right to carry out reasonable inspections and testing to ensure that the goods and services comply with this Contract. If requested by us, you must provide all reasonable assistance (including providing access to any premises, including your subcontractor's premises) as required by us to facilitate such inspections and testing. You agree that we may audit your compliance with the Contract and with Applicable Law at any time upon reasonable notice.

# Terms and Conditions of Purchase Order (Goods and/or Services including Transportation and Minor Works)



## 7. Price and payment

The price for the goods and services is the price stated in our order.

Unless the order expressly states otherwise, it includes: (a) any applicable GST; (b) all packing, insurance and delivery charges and all taxes and duties; and (c) all other costs, expenses and liabilities incurred by you in performing this Contract.

You may only invoice us after all goods and services have been delivered or completed to our satisfaction. If you issue the invoice in advance, you agree that the official date of invoice receipt will be the date upon which the goods and services have been delivered or completed to our satisfaction.

Your invoice must: (a) be correctly addressed; (b) identify our Order number; (c) be a valid tax invoice for GST purposes; (d) be emailed to [accounts.payable@netmodular.com.au](mailto:accounts.payable@netmodular.com.au), and (e) where we request it, be accompanied by documentation substantiating the amount claimed. Your invoice will not be receipted until it meets the requirements of this clause.

We will pay all correctly rendered and undisputed invoices within 45 days after the end of the month in which we receive them. All payments by us are on account only and do not evidence our acceptance of the value, quantity or quality of the goods or services or compliance of this Contract.

If we dispute an invoice: (a) payment is suspended until the dispute is resolved; and (b) you must give us any information or document we request in relation to the invoice or the dispute.

As well as any of our other rights, we may deduct from your invoice any amount you owe us on any account (including under any indemnity).

## 8. Title and risk

Title to and risk in goods pass to us on delivery.

You warrant that: (a) you have complete ownership of the goods free of any encumbrances; (b) we will receive clear and complete title to the goods free from any encumbrances, and (c) no claim of infringement of moral rights will be brought against us by your employees or agents.

Any intellectual property rights created from your performance of this Contract vest in and are assigned to us on creation. You do not obtain any intellectual property rights in any documentation, information or media of any type that we provide to you. Such intellectual property rights belong to us.

## 9. Our materials

Any tools, patterns, designs, drawings, dyes, or other material used in supplying or manufacturing goods or otherwise performing this Contract and that are paid for or supplied by us ('our materials') are our property.

While our materials are in your possession, you: (a) hold them solely as our bailee; (b) must store them securely and keep them in good repair; (c) must use them only to perform this Contract; and (d) must return them to us on demand.

## 10. Confidentiality

You must keep our confidential information (which includes information about our clients and employees) confidential and not directly or indirectly disclose, use, record, memorise, reverse engineer or copy it for any purpose other than to perform this Contract without our prior written approval. You must not make any public announcement about this Contract without our prior written approval.

## 11. Privacy

You must comply and must ensure that your representatives (employees, officers, subcontractors, and other agents) comply with all applicable privacy laws.

## 12. Indemnity

You indemnify us, our officers, employees, agents and customers against all loss, damage, claim, expense or liability incurred directly or indirectly in connection with: (a) your performance or breach of this Contract; (b) any goods or services you supply; (c) a claim by a third party that the goods or services infringe their intellectual property rights; (d) any negligent or wilfully wrong act or omission by you, your employees, agents and contractors; (e) any claim by your officers, employees or contractors arising out of or in connection with the goods and services or this Contract.

We are not liable to you, and you waive and release us from any claim for consequential loss arising from, relating to or, in connection with your performance or non-performance of this Contract.

## 13. Insurance

You must effect and maintain all insurance policies required by law, taking into account the goods and services you supply, including the following insurances: (a) comprehensive general liability insurance with a limit of not less than \$20,000,000 per claim, and where requested, noting us as an interested party; (b) workers compensation insurance and employer's liability insurance as required by law; (c) motor vehicle third-party liability insurance as required by law, and motor vehicle third party property damage with an indemnity of not less than \$20,000,000 for any one occurrence; (d) insurance covering your property, equipment, materials owned, hired, leased or used by you for this Contract; (v) product liability insurance not less than \$20,000,000 per claim; and (vi) any additional insurance required by any applicable law.

You must provide us with proof of your insurances upon request. In the event you fail to take out any of the required insurances then you agree that we may do so on your behalf and the costs of doing so will be a debt immediately due and owing from you to us.

## 14. Personnel, Subcontracting and Labour Hire

You agree that you are responsible for the wages, salaries, paid public holidays, annual leave, sick leave, superannuation, PAYE and other taxes, workers' compensation and other insurance costs for your employees and all other obligations that arise from your activities in performing this Contract.

# Terms and Conditions of Purchase Order (Goods and/or Services including Transportation and Minor Works)



You must not subcontract the whole or any part of your obligations under this Contract without our prior written approval, which we may grant or withhold at our sole discretion. You will remain principally liable for the performance of this Contract and the acts and omissions of any subcontractor.

You will comply with the *Labour Hire License Act 2017* (Qld) or the equivalent in the jurisdiction where the goods or services are provided ('Labour Hire Law'). To the extent applicable, you will provide us with a copy of your labour hire license and any other information we reasonably request in relation to your compliance with the Labour Hire Law.

## 15. Termination

As well as our other rights, we may terminate this Contract where: (a) you fail to supply goods or services by the Delivery Date or achieve any other dates specified in our order; (b) you breach this Contract, or (c) you become or threaten to become insolvent or bankrupt or enter into a compromise or arrangement with creditors or any form of external administration.

In addition, we may terminate this Contract at any time for our convenience at our sole discretion and without compensation to you. We may then complete the goods and services ourselves or engage a third party to do so.

In the event of termination, you will be entitled to payment as set out in this Contract for the part of the goods or services you have completed under this Contract up to the date of termination, provided that such payment will not become due to you until the costs of completing the goods and services and all other costs arising as a result of such default, breach or insolvency event have been finally ascertained, and the part completed goods or services are provided to us.

Any termination under this Contract will be without prejudice to any accrued rights.

If this Contract is terminated, you agree you will take all available steps to mitigate any cost or expense that you or your contractors might incur in connection with the Contract. You also agree that you will remove any plant or equipment on our site or our client's site(s).

## 16. Modern Slavery and Antibribery

You must provide us with any information that we request regarding our obligations under modern slavery and anti-bribery laws.

You warrant that if you become aware of any activity that may breach modern slavery or anti-bribery laws, you will let us know immediately.

If you use subcontractors or consultants, you must obtain similar commitments to those in this clause from them.

## 17. Miscellaneous

This Contract may only be varied with our written agreement.

You may not assign this Contract without our prior written consent, which we grant or withhold at our sole discretion. You

agree that we may assign or novate this Contract to a third party. You appoint us as your attorney to execute any documentation in connection with such a transaction if you have failed to sign.

This Contract constitutes the entire agreement between us and you in relation to its subject matter.

The parties are independent contractors and no relationship of employment, agency, partnership, or joint venture is created by this Contract.

Our delay or failure to exercise a right under this Contract is not a waiver of that right or other rights. Our consent to a breach of this Contract does not consent to any subsequent breach.

If a provision of this Contract is unenforceable for any reason, it shall be read down to the point of severance. This Contract must not be construed to our disadvantage merely because we prepared them.

The law of Queensland, Australia, governs this Contract. You submit to the jurisdiction of the courts of Queensland and waive any right to claim that those courts are inconvenient forums.

## 18. Definitions and interpretation

In these Standard Terms: (a) the singular includes the plural and vice versa; (b) a person includes a firm, body corporate, unincorporated association or authority and reference to a person includes their executors, administrators, successors, substitutes and assigns; (c) a reference to '\$' is a reference to Australian dollar;

(d) 'Including' and similar expressions are not words of limitation; (e) 'consequential loss' means consequential or indirect loss including loss and/or deferral of production, loss of product, loss of use, loss of revenue, profit or anticipated profit (if any); (f) 'defects period' means the period commencing on delivery and ending 12 months later; (g) 'goods' means goods set out in our order; (h) 'services' means services set out in our order and includes any deliverable resulting from a service and 'works' where applicable;

(i) 'Us', 'we' or 'our' means New England Trading Pty Limited ABN 98 002 195 262; (j) 'You' or 'your' means the supplier of goods and/or services set out in our Order; (k) 'NET HSEQ Requirements' means any of our health and safety requirements or those of our clients which are made known to you (whether by way of provision of policy documentation, through a prequalification process, or site inductions or site sign posting or otherwise) including but not limited to personal protective equipment usage requirements and use of safety zone waiting facilities; (l) 'applicable law' or 'law' means all state and commonwealth legislation, regulation and guidance and includes but is not limited to all health and safety legislation, public health orders, the Modern Slavery Act 2018 and the Privacy Act 1988, the Environmental Protection Act 1994 (Qld) or the equivalent law in the jurisdiction where the goods and services are provided.

# Terms and Conditions of Purchase Order (Goods and/or Services including Transportation and Minor Works)



## Part B: Transport Services Terms

### 19. Application of Part B

If the Order relates to transportation or carrier services of any type, this Part B ('Transport Terms') shall also apply to the Order in addition to the Standard Terms.

Where the Transport Terms apply: (a) the terms' applicable law' and 'law' also includes the HVNL; (b) 'HVNL' means the law titled Heavy Vehicle National Law (including all associated regulations) and any amendments or updates to such law; and (c) 'Transport Services' means the transport services set out in the order which you are to provide.

### 20. Provision of Transport Services

In providing the Transport Services, you will: (a) ensure that each driver completes and signs any transport manifests we direct before any transport movement; (b) maintain all vehicles used in providing the Transport Services in a legally compliant, roadworthy and safe condition and provide us with maintenance records within a reasonable time of our request to do so; (c) ensure that heavy vehicles do not have loads that exceed vehicle mass or dimension limits; (d) ensure all loads are appropriately secured and at a minimum complies with any of our load restraint guides we provide to you, Applicable Law and best industry practice; (d) ensure drivers do not exceed speed limits or regulated driver hours, observe minimum rest requirements and do not drive while impaired by fatigue; (e) assist us as we reasonably require to ensure we comply with our obligations under the HVNL; (f) undertake any audits or monitoring that we reasonably request to demonstrate compliance with this Contract; (g) put in place and maintain appropriate policies, procedures, and ongoing training programs for your personnel for the HVNL; (h) notify us immediately of any accident, injury, death, property or environmental damage that happens during the provision of the Transport Services and subsequently ensuring each relevant driver provides us with additional information that we reasonably request with respect to the incident; (i) attend any inductions or workplace health and safety meetings requested by our clients or us when present on our sites or client sites; (j) comply with our directions, site specific requirements and any health and safety requirements that we notify you from time to time and always wear personal protective equipment while on premises belonging to us or our clients, other delivery sites and during loading and unloading; (k) provide a safe working environment for drivers; and (l) maintain goods in transit insurance covering the replacement value of any cargo to a minimum of \$1,000,000.

### 21. Transport Services Warranties

You represent, warrant and undertake to us that you are familiar with and have the capability and resources to comply with Applicable Law and ensure that your personal and subcontractors also comply.

### 22. Transport Services Obligations

It is agreed the amounts set out in the Order are sufficient to include a reasonable allowance for waiting time. Waiting time

will not be paid unless otherwise agreed in writing by us at our sole discretion. If we do agree to pay waiting time, any amounts payable will be reduced to the extent that you have contributed to the delay or failed to take steps to mitigate the delay. If you wish to claim waiting time due to delays at our client sites, you must obtain a written confirmation from that client at the client site that the client has accepted the waiting time.

We will provide you sufficient access at our site to carry out the Transport Services. However, if required, we may restrict your access to the site at any time at our discretion.

Unless specified otherwise in the Order or other scope of work, then we will provide appropriate lifting equipment at our site without cost and without any warranty or liability on our part.

We may restrict your access to site at any time in our discretion.

We may refuse to load any of your vehicles if we reasonably consider it unsafe to do so. In such case, you fully release us, hold us harmless and indemnify us from any cost, claim, damage, expense, or loss that we suffer from taking such action.

### 23. Risk in Transport Services

You are liable for and indemnify us for any loss or damage to any goods, equipment or ancillary items that are the subject of the Transport Services, that occurs while those items are in your custody, possession, or control or because of the actions or omissions of yourself or your subcontractors. This includes where you may have left items unattended without our written authority to do so.

## Part C: Additional Terms and Conditions Provision of Works

### 15. Application of Part C

If the Order relates to provision of any work or services on our site or our client's site(s), then in addition to the Standard Terms and Transport Terms (if applicable), this Part C (the 'Minor Works Terms') will also apply and form part of the Contract.

In these Minor Works Terms the phrase (a) 'works' means any work and/or services that are to be carried out and completed by you that takes place on our site or our client(s) sites; and; (b) 'Completion, Complete and Completed' is the point at which the Works are completed except for minor defects or omissions that do not prevent or unreasonably interfere with work to still be carried out or handed over and that you have given us all certificates, approvals, warranties, drawings, manuals and guarantees required by the Contract and any documentation necessary for the reasonable and lawful use of the works for their intended purpose; and (c) 'date for completion' means the agreed date by which the works are to be Completed and is listed in the 'Delivery Date' section of the order; and (d) 'date of completion' means the date the works are completed; and (e) 'defect' is any part of the works that is defective, incomplete, or not otherwise carried out as per the Order; and (f) 'Code' means the *Code for the Tendering and Performance of Building Work 2016*

# Terms and Conditions of Purchase Order (Goods and/or Services including Transportation and Minor Works)



and the NSW Government Code of Practice for Procurement; New South Wales Industrial Relations Guidelines: Building and Construction Procurement any update to such requirements; and (g) 'defects period' has the meaning given to it in Part A standard terms.

## 16. Head Contract

If the terms of our agreement with our client (the 'Head Contract') are inconsistent with the Contract, you must follow the terms of the Head Contract to the extent we have made it available to you.

You agree that you will do everything required to support us in meeting our obligations under the Head Contract and not do anything or allow anything to be done that would cause us to breach the Head Contract.

## 17. Site

You will be granted a non-exclusive limited license to access the part of the site where the works are to be performed for the sole purpose of carrying out the works.

While attending the site, you will ensure that all your employees, agents, and your subcontractors and sub-subcontractors comply with all site policies and procedures and the directions of our client and ourselves, including any Covid-19 vaccination requirements.

You may only access the site on the agreed working days and hours we have notified to you in writing.

You acknowledge and agree that our client or we may immediately remove any person from the site who fails or is reasonably suspected of failing to comply with Applicable Law, this Contract or any directions or policies and procedures of ours or our clients.

You must ensure that you keep any sites you work on clean and tidy. If you don't, then we can engage others to tidy up, and the cost of doing so will be a debt immediately due and payable from you to us.

## 27. Provision of Works

You will start the works and complete the works on the dates specified in the Order and do so: (a) in the manner and standard expected of a competent subcontractor carrying out works of a similar type; (b) using materials that comply with the Contract, are of good quality, fit for the purpose and are new unless the Contract expressly provides otherwise; (c) ensuring any goods provided have manufacturer warranties that expire no sooner than the end of the Defects Period; (d) following our reasonable directions; (e) in compliance with all applicable law; (f) following our reasonable directions; and (g) in compliance with Applicable Law

You will supply everything required to complete the works at your cost and expense and will not be paid any travel expenses or allowances of any type unless expressly stated otherwise in the Order.

You agree that you are responsible for the care of the works until the works are completed. You will promptly make good and indemnify us for any loss or damage to the works, our property or any third-party property caused by your acts or omissions or those of your agents, employees or subcontractors or subsubcontractors.

## 28. Completion of the Works

You must give us written notice at least 5 days before you expect to complete the works, advising us of the date you expect to complete them. We will arrange for an inspection of the works. If we agree the works are completed to our satisfaction, we will issue you with a written notice confirming completion and the date of completion. If acting reasonably, we consider the works are not completed. We will issue you a written notice advising you of the further work or information necessary to achieve completion, and then the process in this paragraph will commence again.

Unless specified in the Order, if the works are not completed by the date for completion, we will be entitled to liquidated damages at a rate of 0.1% of the total price (exclusive of GST) specified in the Order accruing daily, for every day after the date for completion until the date the works are completed, in addition to any damages payable by us under the head agreement. You agreed that this amount is a genuine pre-estimate of the loss that will be suffered by us if you do not finish the works by the date for completion.

## 29. Extensions

Within 2 business days after you become aware, or ought to have been aware that the works will be delayed for any reason, you must give us written notice of the delay. Your notice must set out the cause of the delay, the expected length of the delay and the extension of time you seek to the date for completion due to the delay.

If you have issued us a delay notice as required by this Contract and the delay was caused by any act, default or omission by us or any of our employees or agents or the delay otherwise would be beyond the control of a reasonable, competent and experienced subcontractor completing the works then you will be entitled to a reasonable extension of time to the date for completion.

Regardless of the above, if there is more than one event causing the delay and one or more of the events does not entitle you to an extension of time, you will not be entitled to an extension of time.

In addition, at any time, we may, for any reason, grant an extension of time regardless of whether you issued a claim under this clause.

## 30. Payment Claims

If this Part C is applicable, then this clause will apply instead of the 'Price and Payment' clause in Part A.

The price for the works is the price stated in our Order.

# Terms and Conditions of Purchase Order (Goods and/or Services including Transportation and Minor Works)



Unless the Order expressly states otherwise, it includes: (a) any applicable GST; (b) all packing, insurance and delivery charges and all taxes and duties; and (c) all other costs, expenses and liabilities incurred by you in performing this Contract.

You must claim payment progressively by submitting written payment claims on the 25<sup>th</sup> day of each month (a 'Reference Date') on months in which the works are carried out. If you submit your payment claim early, it will be deemed to have been submitted on the relevant Reference Date.

Your payment claims must be compliant with GST legislation and must include:

- (a) Details of the value of work done up to and including the relevant Reference Date;
- (b) Details of any other money due to you under the Contract (if any);
- (c) Any other information we reasonably request; and
- (d) A signed statutory declaration stating that all of your suppliers and employees have been paid all amounts due (including superannuation and statutory payments) in respect of the Works up to the Reference Date and evidence of such payments (in each case if we request it).

If your payment claim complies with the requirements of this Contract then we will respond to it within 10 business days, with a payment schedule identifying the amount of the payment we propose to make and explaining any differences between the payment schedule amount and the amount of the payment claim. Within 3 business days of issuance of the payment schedule you will issue us an invoice for the amount specified in the payment schedule.

Your invoice must: (a) be correctly addressed; (b) identify our Order number; (c) be a valid tax invoice for GST purposes; (d) be emailed to, and (e) where we request it, be accompanied by documentation substantiating the amount claimed. Your invoice will not be receipted until it has complied with the entirety of this sub-clause.

Provided we have received your invoice on time, we will pay the invoice within 25 business days after receipt of your payment claim. This applies regardless of the payment terms in the Order.

If any amounts in the payment claim relate to items not yet incorporated into the works or delivered to the relevant client site or our site then we may require additional security in an amount equal to the relevant claimed amount at the time of submission of the payment claim.

## 31. Suspension

We may direct you to suspend the carrying out of the works at any time, and you will comply with such direction at no cost or expense to us. You will recommence works when we direct you to do so.

## 32. Defects Period

If a defect is identified within the Defects Period and we direct you to remedy that defect, you must complete the rectification work at your cost and expense within a reasonable timeframe from our direction to you.

If you do not comply with our direction to remedy a defect, we may arrange for someone else to rectify it, and that cost will be a debt immediately due and owing from you to us.

If a defect is identified and we do not direct you to remedy it, you agree that we may adjust the price in the Order to reflect the difference in value between the works with the defect and works if the defect had not existed.

## 33. Security

At our request, you must provide us security in the form of two bank guarantees, each up to a maximum value equal to 2.5% of the price specified in the Order. You must provide this within 7 business days of our request.

If you provide us with security, we will release one of the bank guarantees within 10 business days from the date of completion and the other once you have fixed all defects that have been notified during the Defects Liability Period.

We may use the security to set off any amounts you owe to us under the Contract or on any other basis or use it to complete any works that you have failed to complete.

## 34. Code Compliance

You must always achieve code compliance on the site and in carrying out the works and be compliant with the code at all times when performing works for us.

If we request that you do so then you must submit signed declarations as to your code compliance to us within 3 business days of our request.

You declare and warrant that as at the date of the Contract you and all your subcontractors and subsubcontractors are: (a) compliant with the code; (b) not subject to any exclusion sanction under the code; and (c) not excluded from undertaking work funded by a state or territory government.