

Schenker (NZ Limited General Purchasing Conditions

collectively referred to as the **Agreement**.

1. Definitions

Applicable Law shall mean (i) the Laws of New South Wales when a Purchase Order is issued by Schenker Australia Pty Ltd (with New South Wales courts to have exclusive jurisdiction)).

Consequential Loss shall mean any special, incidental, consequential or exemplary damages of any kind or nature (including but not limited to economic loss, loss of profit or loss of opportunity or loss caused by delay), regardless of whether such loss was reasonably foreseeable or a Party was actually told of the possibility of such loss.

DB Schenker shall mean (i) Schenker (NZ) Limited when a Purchase Order is issued by that legal entity.

Formal Mediation shall mean proceedings according to (i) the Institute of Arbitrators and Mediators New Zealand (the "Institute") in accordance with the Institute's Rules for the Conduct of Commercial Mediations.

General Purchasing Conditions (GPCs) shall mean the terms and conditions contained herein and any amendments agreed to in writing by DB Schenker which are expressly attached and contained within a relevant Purchase Order.

GST shall mean goods and services tax levied in accordance with the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Goods

Parties shall mean DB Schenker and Supplier jointly; **Party** shall mean DB Schenker or Seller separately.

Price shall mean the price, rate or value as agreed and outlined within a Purchase Order or any additional Pricing Schedule.

Purchase Order shall mean any supply agreement, order, purchase order, offer to purchase, scope or statement of work, request for good or services, request for information or any other evidence of an intention or desire to purchase goods or services (regardless of the medium in which the intention is delivered).

Products shall mean any good, product, item, service or thing requested by a Purchase Order.

Supplier shall mean the party identified in the Purchase Order as the supplier, vendor, manufacturer, provider or anything other relevant designation.

Supplier Standard Terms shall mean any Supplier standard terms and conditions of sale, conditions of credit, terms of business or the like.

2. Terms of Purchase

- 2.1. Any Purchase Order issued by DB Schenker shall be deemed to have been accepted by the Supplier if the Supplier acknowledges, confirms, commences processing or acts in anyway consistent with the acceptance of the Purchase order, which without limitation shall include delivery or provision of the Goods or Products as detailed within the Purchase Order.
- 2.2. Upon acceptance of a Purchase Order, the Supplier agrees it shall be bound by
 - (a) The terms of the Purchase Order;
 - (b) The GPCs;
 - (c) The Supply Agreement; and
 - (d) Any additional document agreed to in writing by both Parties (including any Supplementary Terms).

- 2.3. In case of conflict or inconsistency between any of the above noted documents, the order of precedence shall be as outlined above and the superior component shall prevail to the extent of the conflict or inconsistency, but no further.
- 2.4. At no time will any Supplier Standards Terms apply to any Purchase Order unless they are expressly agreed to in writing and noted on a relevant Purchase Order document. The inclusion or printing of any such Supplier Standard Terms on the reverse side of any transport, collection, delivery docket, tax receipt, credit application or any other documentation does not constitute such agreement, regardless if such document is executed by DB Schenker.
- 2.5. If a Purchase Order calls for the provision of Products over a defined period and the Products continue to be provided after such period has elapsed and no additional Purchase Order or extension has been agreed, both Parties agree and acknowledge that these terms shall continue in force and be automatically extended to the provision of any and all Products provided by the Supplier to DB Schenker.

3. Supplier's General Obligations

- 3.1. The Supplier must supply the Products according to the Purchase Order and in line with all other reasonable directions of DB Schenker.
- 3.2. The Supplier warrants that its performance of the Services under the Purchase Order will be with the degree of skill, diligence and care expected from an experienced supplier in the trade, industry or profession relevant to the Products.
- 3.3. The Supplier warrants to DB Schenker that:
 - (a) the Goods;
 - i. conform with the description and specification as tendered by DB Schenker in the Purchase Order;
 - ii. are of merchantable quality, are new fit for the purpose for which they are sold and for the specific purposes of which DB Schenker has advised the Supplier;
 - iii. are free of defects in materials, workmanship and design;
 - iv. are free from all liens and encumbrances; and
 - v. Comply with all applicable laws, regulations, standards and codes.
 - (b) the Services;
 - i. conform with the description and specification as tendered by DB Schenker in the Purchase Order;
 - ii. the Services will be rendered with due care and skill by competent and trained personnel;
 - iii. any materials supplied in connection with the Services will be of merchantable quality, new and will be fit for the purposes for which they are supplied; and
 - iv. Comply with all applicable laws, regulations, industry standards and codes.
- 3.4. The Supplier acknowledges that the obligations in this clause 3 are essential conditions of the Purchase Order.
- 3.5. The Supplier warrants that it will comply with any DB Schenker compliance policy, Non-compliance with any DB Schenker compliance policy will result in immediate termination of the Agreement.
- 3.6. Without limiting DB Schenker's rights in the event of a failure to supply, the Supplier will, at its own cost, arrange supply from an alternate supplier in the event that it is unable to supply on time.

4. Price & Payment

- 4.1. The Price shall be fixed and without variation unless prior written agreement of DB Schenker has been given;
- 4.2. The Price shall include all relevant packaging, packing, loading, delivery, unloading and discharge requirements (unless specifically noted as a separate cost in the Purchase Order or Pricing Schedule);
- 4.3. Where GST is charged by the Supplier, the Supplier's invoice shall be in the form of a tax Invoice. GST must be charged at the legislated rate prevailing at the time of invoicing;
- 4.4. The terms of payment by DB Schenker, unless otherwise stated or agreed in writing, are to be in accordance with the relevant Purchase Order. Payment will be made in New Zealand dollars and by electronic funds transfer to nominated domestic accounts as nominated by the Supplier;
- 4.5. DB Schenker reserves the right to set-off any amount owing under a Purchase Order or any other contract against any amount due from the Supplier to DB Schenker for any reason whatsoever; and
- 4.6. DB Schenker shall only make payment on invoices;
 - (a) Where the Products have been delivered and accepted or the Services have been completed and accepted;
 - (b) A correct tax invoice has been lodged;
 - (c) The tax invoice references the relevant;
 - i. Purchase Order Number;
 - ii. A description of the Products;
 - iii. The date the Products were delivered or completed;
 - iv. The site(s) at which the Products were delivered or completed;
 - v. A copy of the relevant acceptance from a Buyer's representative or agent is attached.
- 4.7. Payment by DB Schenker does not prejudice its rights under a Purchase Order or at law.

5. Taxes

- 5.1. DB Schenker must reimburse the Supplier for the amount of any GST payable in respect of any supply made under or in connection with the Purchase Order, provided that the Supplier provides DB Schenker with a tax invoice in respect of that supply.
- 5.2. If there is an adjustment event in relation to the supply:
 - (a) the Supplier must refund to DB Schenker the amount by which the amount reimbursed pursuant to clause exceeds the adjusted GST on the supply; or
 - (b) DB Schenker must pay to the Supplier the amount by which the adjusted GST on the supply exceeds the amount reimbursed pursuant to clause 4.1.

6. Delivery, Completion and Testing

- 6.1. In respect of Products, except as agreed and evidenced in writing on the relevant Purchase Order, delivery shall be deemed to have occurred and risk in the Products shall pass to DB Schenker when:
 - (a) Products are delivered in full, to the place on the date specified in the Purchase Order;
 - (b) DB Schenker has signed a formal delivery receipt; and
 - (c) The Products have passed any acceptance tests as outlined in the Purchase Order, or if none is required or specified, when the Products have been formally inspected and approved by DB Schenker as correctly in line with the Purchase Order.

- 6.2. In respect of the Services, except as otherwise provided within a Purchase Order, completion shall be deemed to have occurred when:
 - (a) The Services have been completed by the Supplier in full (including all installation, testing and the provision of training or instruction manuals) at the place and at the time specified in the Purchase Order;
 - (b) DB Schenker has inspected the completed Services and satisfied itself that they are apparently in conformity with the requirements of the Contract.
- 6.3. If the Supplier fails to comply with either clause 0 or clause 6.2 herein, DB Schenker may withhold any payment otherwise due on delivery or completion until the Supplier has fully completed or delivered.
- 6.4. The Supplier must immediately notify DB Schenker upon notice of any loss or damage to Products or any event which has a material effect on the provision of the Services.

7. Insurance and Indemnity

- 7.1. At all times, the Supplier shall at its own cost maintain the following insurance with a local and reputable insurer:
 - (a) Workers compensation insurance in accordance with the applicable regulations. Where the Supplier is a 'sole trader' they are required to provide evidence of at least an equivalent level of Personal Accident Insurance;
 - (b) Insurance to cover Supplier owned plant, equipment and vehicles for their replacement value;
 - (c) An occurrence based public and product liability insurance covering liability arising out of any injury to or death of any person or any loss of or damage to any property, including any loss of use, for an amount not less than NZ\$10,000,000 in respect of any one occurrence;
 - (d) If the supply of the Products involves the provision of professional services (such as design, engineering or consulting services), a professional indemnity insurance to a minimum value of NZ\$10,000,000 for each and every claim in respect of liability arising by reason of any act, omission or error of the Supplier in performance of the professional services; and
 - (e) If the Purchase Order involves transportation of Products, a transit insurance covering loss of or damage to the Products during transit by any means.
- 7.2. At any time DB Schenker may request the Supplier evidence that the required insurances have been affected.
- 7.3. If after being so requested by DB Schenker, the Supplier fails promptly to do so DB Schenker may withhold payment until such evidence is produced by the Supplier.
- 7.4. DB Schenker agrees to indemnify, defend and hold harmless the Supplier from and against any damage, loss, expense, claim or injury to individuals, including injury that results in death and/or damage to the Products, to the extent that the damage, loss, expense, claim or injury was caused solely by DB Schenker negligence and or wilful misconduct. At all times DB Schenker's indemnity as provided herein shall be limited to:
 - (a) Exclude any and all Consequential Losses; and
 - (b) Shall not exceed the value of the Purchase Order.
- 7.5. The Supplier agrees to indemnify, defend and hold harmless DB Schenker from and against any damage, loss, expense, legal fees, claim or injury to individuals, including injury that results in death and/or damage to the Products, to the extent that the damage, loss, expense, claim or injury was caused or contributed to by Supplier negligence and or wilful misconduct. At all times the Suppliers indemnity as provided herein shall be limited to:

- (a) Exclude any and all Consequential Losses; and
- (b) NZ\$20,000,000 in respect of any one occurrence.

8. Defects Liability

- 8.1. Without limiting DB Schenker's rights under the Purchase Order or at law,
- (a) The Supplier hereby guarantees the Products against any omissions, defects or failures (whether or not apparent) at any time from the date of delivery and/or completion of the Products until 24 months from such date or 18 months from the date the Products are put into commercial use (whichever occurs later).
 - (b) If the Supplier breaches its obligations as outlined at clause 0(a), the Supplier shall, at the option of DB Schenker:
 - i. Refund the Purchase Order Price and where applicable, remove the Goods;
 - ii. Repair, modify or replace, at the Supplier's expense, the Goods; and/or
 - iii. Resupply or remedy the Services;
 - (c) If, in DB Schenker's reasonable opinion and after written notice to this effect, the Supplier has failed to take prompt corrective action pursuant to clause 0(b), DB Schenker may, at its option, have any repair, modification or replacement of the Goods or resupply of the Services undertaken by a third party or undertake the repair, modification, replacement or resupply itself, and all resulting costs and expenses shall be borne by the Supplier on an indemnity basis.

9. Intellectual Property

- 9.1. The Supplier hereby grants to DB Schenker a perpetual, irrevocable, non-exclusive, royalty-free, transferable licence (with the right to sub-license to an end-user) to use all intellectual property (whether owned by the Supplier or not) associated with the Products for the installation, use, support, repair, maintenance or alteration of the Products.
- 9.2. The Supplier warrants that:
- (a) The supply of the Products by the Supplier to DB Schenker and the licence granted by the Supplier pursuant to this clause do not infringe the intellectual property rights of any third party; and
 - (b) The Products are not subject to any intellectual property rights of any third party that in any way restrict the rights of DB Schenker or its customers.

10. Suspension and termination

- 10.1. DB Schenker may cancel or suspend a Purchase Order at any time subject only to written notice to the Supplier. Upon such cancellation or suspension, DB Schenker shall compensate the Supplier for all Services rendered or Goods delivered to date and shall be entitled but not obligated to take legal possession of any work in progress for which the Supplier is seeking compensation.
- 10.2. If the Supplier fails to carry out, breaches or repudiates the conditions pursuant to the Agreement, or losses or calls into question any relevant law, code or licensing requirement, or if the Supplier becomes insolvent, commits an act of bankruptcy, stops payments of debts, calls a meeting of or enters into composition with or for the benefit of its creditors, or has a receiver, manager, administrator, controller or liquidator (or any like person) appointed to its undertaking or assets or any part thereof, or a winding up petition is presented against the Supplier, or the Supplier goes into liquidation (except for the purpose of reconstruction or amalgamation), DB Schenker may at its

discretion and regardless of any default or failure, and without prejudice to its other rights under the Purchase Order or otherwise, forthwith cancel or suspend the Purchase Order in whole or in part.

- 10.3. In the event of cancellation or suspension of a Purchase Order by DB Schenker pursuant to clause 10.2 herein, DB Schenker shall not be liable for any loss, damages, costs or expenses howsoever arising from such cancellation or suspension. The only liability of DB Schenker to the Supplier in the circumstances set out in this clause shall be for payment of Goods delivered to DB Schenker or Services performed for DB Schenker which remain unpaid.

11. Extension of time

- 11.1. If the Purchase Order calls for a specific defined delivery or completion date and the Supplier is delayed in the supply of the Products and the delay is;
- (a) solely due to an act or omission of DB Schenker, the Supplier will be granted an extension of time as may be considered fair and reasonable in light of the circumstances.
 - (b) in no way contributed to by DB Schenker, DB Schenker shall be compensated by a five percent (5%) discount on the Purchase Order Price for each seven (7) calendar day period, or part thereof that Products are delayed. The discount shall be capped at a maximum twenty percent (20%). Any delay beyond this point shall be grounds for immediate termination by DB Schenker and the only liability of DB Schenker to the Supplier in the circumstances set out in this sub clause shall be for payment of Goods delivered on time to DB Schenker or Services performed for DB Schenker which remain unpaid.
- 11.2. The Supplier shall notify DB Schenker of any intention to submit a claim for an extension of time within two (2) days of the delaying event. The notice shall be followed by the claim with full supporting details within five (5) days of the delaying event.
- 11.3. The Supplier shall not be entitled to an extension of time if the Supplier can perform its obligations to supply the Goods or provide the Services by the completion date without an extension of time even though to do so may require the Supplier to commit extra resources or incur extra expenditure to make up the time lost.
- 11.4. Regardless of whether the Supplier has not claimed or is not entitled to an extension of time, DB Schenker may, in its sole discretion, extend the time for performance at any time and for any reason.

12. Compliance Policies

- 12.1. The Supplier must;
- (a) Maintain and ensure safe working conditions at all times;
 - (b) Comply (and ensure that its subcontractors comply) with the relevant occupational and compliance laws and regulations;
 - (c) Comply with DB Schenker's compliance policies;
 - (d) Immediately notify DB Schenker of any compliance issue which arises during the provision of Products under a Purchase Order;
 - (e) Upon request provide documentation to highlight compliance policies of the Supplier in order to evidence a culture of safe work within the Suppliers operations;
 - (f) Participate as reasonably required by DB Schenker in on site safety meetings; and

- (g) During the provision of Services of the Delivery of Goods, maintain a list of all Supplier personnel who are present on any Buyer site in order to allow for a complete and accurate list of persons on site in case of any compliance incident which may require site evacuation;
- 12.2. The Supplier must at its own cost, ensure at all times that necessary protective equipment is provided to Supplier personnel (including subcontractors) and that any equipment and tools used for the supply of the Products are in safe working condition.

- manufacturing activities any name, trade name, trademark, service mark or other designation of the other Party.
- 14.3. Both Parties agree this document shall not be construed against either Party on the grounds that such Party drafted it. Both Parties agree that they have sought independent advice on the terms contained herein.
- 14.4. No amendment or variation of the GPCs is valid or binding on a Party unless made in writing and executed by both Parties

-- End of General Purchasing Conditions --

13. General

- 13.1. **Entire Contract.** The Purchase Order and its components as outlined at clause 2 constitutes the entire Agreement between the Supplier and DB Schenker and supersedes all previous communications, whether oral or written, relating to the subject matter of the Purchase Order.
- 13.2. **Severance.** If any provision or part of any provision of the Purchase Order is invalid, illegal or unenforceable, such provision or part shall be severed from the remainder of the Purchase Order, and the remainder shall continue in full force and effect.
- 13.3. **Confidentiality.** The existence, the terms and all information gathered by either Party as a result of a Purchase Order is at all times confidential in nature. Both Parties agree that under no circumstance should such information be made publicly available to any third parties with the express written approval of the disclosing Party.
- 13.4. **Force Majeure.** Neither Party shall be responsible for non-compliance with any of the obligations under a Purchase Order, if said non-compliance is fully or partially due to an act of God or force majeure. If a force majeure event continues for more than thirty (30) days, either Party may terminate with cost or expense.
- 13.5. **Exclusivity.** DB Schenker in no way warrants the exclusivity of supply for the Supplier or guarantees any minimum volume or purchase commitment.
- 13.6. **Waiver.** Any waiver by DB Schenker of strict compliance with the Purchase Order shall not (i) be deemed a waiver unless it is in writing and signed by an authorised officer of DB Schenker; (ii) be deemed a continuing waiver of compliance.
- 13.7. **Governing Law & Dispute Resolution.** The Purchase Order shall be governed by the Applicable Law. In case of dispute, the Parties agree initially to meet in good faith within thirty (30) days of notice from either Party in order to seek amicable resolution. If settlement cannot be reached at this initial point and so long as both Parties made genuine efforts to seek initial resolution, either Party shall have the right to commence Formal Arbitration. This clause in no way seeks to limit either Party's right to seek interim orders or injunctive relief from a court pending resolution.
 - 14. **Assignment and subcontracting.** The Supplier must not assign or subcontract any of its rights or obligations or transfer any of its liabilities under the Purchase Order to any person without DB Schenker's prior written consent. DB Schenker shall be able to assign the Purchase Order to any entity within the DB Schenker group subject only to reasonable notice to the Supplier.
- 14.1. **INCOTERMS.** Delivery acronyms such as EXW, FOB, CIF, DDP etc. used in the Contract shall be interpreted in accordance with INCOTERMS 2010 edition as published by the International Chamber of Commerce.
- 14.2. **Relationship.** The relationship between the Parties is that of independent contractors. The General Purchasing Conditions do not evidence or create an agency, partnership or similar relationship between the parties. Neither Party hereby acquires any rights to use in advertising, publicity or other marketing or