

# Standard Terms and Conditions of Purchase

## 1. Interpretations and General Matters

### 1.1 Definitions

**“day”** means calendar day.

**“FIS”** means, in relation to delivery of the Goods, ‘free into store’ and includes the responsibility (and associated costs) for packing, loading, transportation and insurance (for the full replacement value of the Goods) to the nominated delivery point for the Goods.

**“Goods”** means all Goods, Services, equipment, materials, articles, or any other property or parts to be provided to Naylor Love by the Supplier under the Purchase Order and includes, without limitation, all Services including design, manufacture, inspection, testing, expediting, quality assurance and control, painting, packing and delivery as specified or required hereunder.

**“GST”** means goods and services tax in respect of the Goods and Services Tax Act 1985.

**“Naylor Love”** means Naylor Love Enterprises Limited and its subsidiaries as detailed on the Purchase Order form.

**“Price”** means the price of Goods as agreed between Naylor Love and the Supplier, as notated on the face of the Purchase Order, subject to any variation in accordance with these Terms and Conditions and expressed to be exclusive of GST.

**“Purchase Order”** means the purchase order document issued by the Naylor Love to the Supplier, which identifies the Supplier by name and address, includes but is not limited to a brief description of the Goods and a list of the documents comprising the Purchase Order.

**“Site”** means the place or places specified in the Purchase Order to which the Goods are to be delivered and/or Services are to be performed by the Supplier.

**“Supplier”** means the person or entity providing the Goods, as identified on the Purchase Order form.

**“Warranty Period”** means the period commencing on the date of delivery of the Goods and lasting for a minimum period of twelve (12) months thereafter, or such longer period as specified on the Purchase Order.

### Interpretations

**1.2 Words** importing the singular are deemed to include the plural and vice versa. Headings and subheadings are inserted for convenience only and shall not be used to interpret the text. Words denoting a natural person shall include a corporation and vice versa.

### 1.3 Supplier to Inform Itself

The Supplier shall be deemed to have carefully examined all documents furnished by Naylor Love and fully satisfied itself regarding all the conditions, risks, contingencies and other circumstances which might affect the supply of the Goods.

### 1.4 Order of Precedence

Unless otherwise stated, the order of precedence of any of the following documents listed in the Purchase Order shall be as follows:

- i. Any specific terms written on the face of the Purchase Order;
- ii. The Standard Terms and Conditions of Purchase;
- iii. Any specification or drawings attached to the Purchase Order.

### **1.5 Ambiguities**

If the Supplier discovers any ambiguity in the Purchase Order it shall immediately notify Naylor Love in writing. Naylor Love shall then determine the correct interpretation of the Purchase Order. Naylor Love's determination shall be final and binding on the Supplier and have no effect on the Purchase Order Price.

### **1.6 Use of Documentation**

The documents shall not be copied or used for any other purpose than the supply of the Goods, without the prior written approval of Naylor Love.

### **1.7 Confidentiality**

Any information provided by Naylor Love to the Supplier that is noted as confidential shall not be disclosed to any third party without the prior written consent of Naylor Love. This obligation shall continue and survive the completion or termination of the Purchase Order.

### **1.8 Waiver**

No failure or delay on the part of Naylor Love in exercising any of its rights under the Purchase Order shall be construed as constituting a waiver of any such rights.

### **1.9 Subcontracting and Assignment**

The Supplier shall neither subcontract nor assign all or any part of the Purchase Order without the prior written approval of Naylor Love. Approval of Naylor Love to any subcontract shall not relieve the Supplier of any of its obligations under the Purchase Order.

### **1.10 Communications**

Any notice or other communication required under the Purchase Order shall be delivered in writing and shall be in a form which can be read, copied and recorded conveniently. Verbal instructions or directions from Naylor Love shall be confirmed in writing to the Supplier within a reasonable time. The notice shall take effect from the time when it is delivered to or received at the nominated address of the parties.

### **1.11 Licences and Laws**

The Supplier shall comply with all applicable laws, by-laws, ordinances, regulations, proclamations, orders, rules, Health and Safety at Work Act 2015 (including all subsequent amendments), Health and Safety rules and regulations in force on the Site and all reasonable safety related instructions given by Naylor Love, and with the lawful requirements of Public and other Authorities in any way related to the supply of the Goods.

### **1.12 Entire Agreement**

The Purchase Order constitutes the entire agreement between Naylor Love and the Supplier. The parties shall not be bound by or liable for any statement, representation, promise or understanding not set forth therein. Nothing contained in proposals, correspondence, discussions or negotiations prior to the date of the Purchase Order has any effect on the Purchase Order unless specifically incorporated therein.

## **2. Performance and Quality**

- 2.1 All Goods shall be suitable for the purpose for which they are required. The Supplier shall use new and undamaged materials, unless otherwise specified in the Purchase Order and the workmanship shall be of the highest quality and standard. The work shall be carried out in accordance with good engineering practice and comply with all applicable New Zealand

Standards and/or other referenced codes, the requirements of the relevant Statutory Authorities and the Law.

- 2.2 The Supplier represents and warrants to Naylor Love that it has the necessary skills, resources and experience to successfully supply the Goods in accordance with the requirements of the Purchase Order.
- 2.3 The Goods must be tested in accordance with the requirements of the Specification. Unless otherwise set out elsewhere in the Purchase Order, any tests and the costs thereof shall be the responsibility of the Supplier. The results of tests shall be promptly supplied to Naylor Love in writing, if requested.
- 2.4 Naylor Love shall have the right to inspect, expedite and monitor the Goods prior to delivery and the Supplier shall give Naylor Love access to the Supplier's premises for such purpose during its normal working hours. The Goods will not be accepted by Naylor Love until inspected and approved by Naylor Love. Any inspection by Naylor Love shall not relieve the Supplier from its obligations to comply with the requirements of the Purchase Order and shall in no way impair the Naylor Love's right to require subsequent correction of non-conforming Goods.
- 2.5 The Supplier shall comply with the standards of quality specified in the Purchase Order. If no standards are specified the Supplier shall comply with the best quality standards applicable to the Goods.
- 2.6 The Supplier warrants that the Goods shall be:
  - i. Free from liens, charges, encumbrances, mortgages or other defects in title;
  - ii. Free from defects in design, materials and workmanship;
  - iii. Conform to the conditions and specifications of the Purchase Order;
  - iv. Conform to all applicable laws and regulations to which the Goods are subject;
  - v. New and made to the specified quality.

The warranties noted above are in addition to any statutory warranties applicable to the Goods.

- 2.7 During the Warranty Period, Naylor Love shall give written notice to the Supplier of any failure or defect in the Goods. The Supplier shall without delay and at no cost to Naylor Love correct any defect or failure in the Goods covered by the warranty by way of repair, replacement, modification or other means acceptable to Naylor Love.
- 2.8 If the Supplier fails to correct any defects and failures of which it has been notified by Naylor Love within the time specified in the notice (which shall not be unreasonable), Naylor Love shall have the right to rectify the Goods itself or have the rectification undertaken by a third party. All costs so incurred shall be a debt due and payable by the Supplier or deducted from moneys otherwise owing to the Supplier. Any Goods repaired during the warranty period (including those repaired in accordance with clause 2.8) may be subject to a further full Warranty Period, if required by Naylor Love, commencing on the date of completion of any such repair.

## 3. Delivery

- 3.1 Unless otherwise specified in the Purchase Order, the Goods shall be delivered FIS, adequately packaged and protected to ensure safe delivery, to the delivery point and by the delivery date(s) specified on the Purchase Order form. The Goods shall be accompanied by a delivery docket which shall be signed by a duly authorised representative of Naylor Love at the point of delivery.
- 3.2 The Goods shall become the property of Naylor Love upon delivery of the Goods to Naylor Love as evidenced by the signature on the delivery docket by the duly authorised representative of

Naylor Love. Notwithstanding that Naylor Love has taken delivery of the Goods, the Supplier shall remain responsible for any loss or damage to the Goods, which may have occurred prior to delivery, and for any non-compliance of the Goods with the requirements of the Purchase Order.

- 3.3 The Supplier shall take all reasonable steps to minimise and prevent any delay to the delivery of the Goods.
- 3.4 If the Supplier fails to deliver the Goods by the specified delivery date(s), Naylor Love shall be entitled to terminate the Purchase Order for default, either in whole or in part, in accordance with the provisions of Clause 7.1 and/or deduct from monies due to the Supplier as liquidated damages, representing a genuine pre-estimate of Naylor Love's damages and not as a penalty, the amount specified in the Purchase Order form, for each week or part thereof by which delivery exceeds the specified delivery date.

## 4. Price and Payment

- 4.1 All Purchase Orders presented for payment must have a valid Purchase Order number. Purchase Orders without a valid number will be returned to the Supplier for revalidation and resubmission.
- 4.2 Unless otherwise stated in the Purchase Order, Prices shall be fixed and not subject to any variation, including but not limited to variations in the cost of labour, materials, plant, transport or exchange rates.
- 4.3 Unless otherwise agreed, all Prices quoted to Naylor Love in New Zealand currency, fixed and not subject to escalation, inclusive of any taxes (except GST unless specifically stated as GST inclusive), levies, duties, insurance, freight (including all packaging, tagging, delivery to the Site), revenue or other charges whatsoever relating to the delivery.
- 4.4 The Supplier must in any such case issue to the recipient at the time of claiming payment a valid tax invoice for the purpose of obtaining an input tax credit for any GST so paid.
- 4.5 Before becoming entitled to receive payment (and unless otherwise specified in the Purchase Order), the Goods must be delivered together with any certificates or warranty documents in relation to the Goods. Subject to clause 4.8, the Price indicated on the Purchase Order will be paid by Naylor Love no later than thirty (30) days from the end of the month in which the invoice is received.
- 4.6 The Supplier shall be responsible for the payment of all relevant government and overseas taxes, duties and charges payable with respect to the Goods. The Purchase Order Price shall be deemed to be inclusive of all such taxes, duties and charges.
- 4.7 Naylor Love may deduct from moneys due to the Supplier any money due from the Supplier to Naylor Love under or in respect of this Purchase Order or otherwise.
- 4.8 In the event the Supplier refers any claims for payment to adjudication under applicable legislation that has amongst its objectives the creation of a statutory entitlement to progress payments for the performance of work or supply of Goods or provides procedures for determining or securing payment of that entitlement, pending any final assessment under the relevant construction contract, then the amount of any determination by an adjudicator appointed under the relevant legislation in respect of that claim will be the maximum amount of the Supplier's entitlement in respect of that claim under this Purchase Order.

## 5. Risk, Title & Insurance

- 5.1 Risk and liability for loss or damage to the Goods ordered pursuant to this Purchase Order will pass to Naylor Love only on acceptance of the Goods.
- 5.2 Title to and ownership of the Goods shall pass to Naylor Love on delivery of the Goods to Site, except where payment is made prior to delivery, in which case property in the Goods will pass to Naylor Love on payment.
- 5.3 Naylor Love reserves the right to cancel the Purchase Order or any part of it at any time prior to delivery of the order or any part of it.
- 5.4 In providing the delivery of the Goods the Supplier must maintain transit insurance or carrier's risk insurance and third party liability insurance for a sum equal to the full replacement value of the Goods (including delivery costs) and in respect of third party liability insurance two million dollars (\$2,000,000).

## 6. Variations

- 6.1 Naylor Love may vary the work under the Purchase Order or any condition thereof and the Supplier shall carry out any such variation as directed by Naylor Love. The Supplier's Price (addition or reduction) for any variation and any effect on the delivery date(s) of the Goods shall preferably be agreed between Naylor Love and the Supplier prior to the Supplier carrying out any such variation. However, if agreement cannot be reached, Naylor Love shall determine the Price for the variation and its effect on the delivery date(s) of the Goods.
- 6.2 The Supplier shall not vary the work under the Purchase Order or any condition thereof, except as directed and approved by Naylor Love in writing. No variation shall invalidate the Purchase Order.

## 7. Warranty

- 7.1 Without limiting any of Naylor Love's other rights and remedies available under these Standard Terms and Conditions of Purchase or at law, the Supplier guarantees the Goods against any omissions, defects or failures whether due in whole or in part to faulty design, materials or workmanship or any other cause which occurs (whether or not apparent) at any time during the Warranty Period.
- 7.2 If the Supplier breaches its obligations under the warranty in clause 7.1 of these Standard Terms and Conditions of Purchase, the Supplier will, at Naylor Love's option and at the Supplier's expense:
  - a. Refund the Price for and, where applicable, remove such of the Goods that are non-conforming and/or
  - b. Repair, modify or replace such Goods, and/or
  - c. Resupply the Services.
- 7.3 Any Goods repaired/replaced or Services resupplied will be subject to a further full Warranty Period.

## 8. Indemnity

- 8.1 The Supplier shall indemnify Naylor Love from and against any action, suit, claim, demand, loss, damage, cost or expense (including, but not limited to, damaged property, plant or equipment)

arising as a direct or indirect result of any act or omission by the Supplier or its employees, agents or subcontractors howsoever caused in relation to the Goods supplied by the Supplier.

- 8.2 Neither party shall have any liability (under statute, contract or tort, including negligence) to the other party or any other person for any loss of profits, income or savings, or any loss of a financial nature, or for any indirect or consequential damage, loss, cost or expense suffered by the other party or any other person.
- 8.3 The provisions in clause 8 (Indemnity) will remain in full force and effect until all the obligations under the Purchase Order and these Standard Terms and Conditions of Purchase have been fully satisfied by the Supplier.

## 9. Termination

- 9.1 In the event of a substantial breach by the Supplier of any of the Standard Terms and Conditions of Purchase, which in the opinion of Naylor Love significantly delay the completion of the Purchase Order and which is not remedied within five (5) days of Naylor Love notifying the Supplier in writing of any such breach, Naylor Love may terminate the Purchase Order in whole or part.
- 9.2 If, in the opinion of Naylor Love, the Supplier is unable to effectively perform its obligations under the Purchase Order due to insolvency, bankruptcy or related reasons, Naylor Love shall be entitled to terminate the Purchase Order.
- 9.3 Notwithstanding any other provisions of the Purchase Order, Naylor Love may terminate the Purchase Order by giving ten (10) days written notice to the Supplier.
- 9.4 In the event of insolvency of the Supplier or its default under Clause 9.1, Naylor Love shall immediately suspend any further payment to the Supplier. Any additional monies required by Naylor Love to complete the Purchase Order in excess of what Naylor Love would have paid under the Purchase Order shall be a debt due and payable by the Supplier to Naylor Love.
- 9.5 In the event of termination by Naylor Love, under Clause 9.3 and provided the Supplier is not in default, Naylor Love shall pay the Supplier for the work carried out prior to termination and all reasonable costs associated with the cancellation of any orders placed by the Supplier prior to termination.

## 10. Disputes

- 10.1 Notwithstanding any dispute between Naylor Love and the Supplier, the Supplier shall ensure that the progress of the work under the Purchase Order is continued without any effect on the specified delivery date.
- 10.2 Disputes or differences arising between Naylor Love and the Supplier shall preferably be settled quickly and by negotiation at senior management level if required.
- 10.3 Failing such agreement, the parties agree that the dispute shall be resolved by mediation conducted in accordance with the rules of the Arbitrators' and Mediators' Institute of New Zealand.
- 10.4 In the event that the dispute has not been settled within twenty one (21) days (or such other period as may be agreed to in writing between the parties) after the appointment of the mediator, the dispute shall be referred by either party to arbitration in accordance with the provisions of the Arbitration Act 1996. In any arbitration both parties shall be entitled to be legally represented. Unless the parties agree upon an Arbitrator, a single Arbitrator shall be

appointed by the President, for the time being, of the Arbitrators' and Mediators' Institute of New Zealand, taking into account the nature of the dispute.

## 11. Applicable Law

This Purchase Order shall be governed by and construed in accordance with New Zealand law. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand for the purpose of hearing and determining any disputes or proceedings arising out of or in connection with this Purchase Order and these Standard Terms and Conditions of Purchase.