

Each Purchase Order submitted to the Supplier for the provision of Services and/or Goods to the Buyer is subject to the following conditions and/or such terms and conditions as may be listed, attached or included by reference as detailed in this Agreement. No amendment or variation to this Agreement shall be valid unless agreed to in writing by NDA Group Limited or any of its subsidiaries (hereinafter referred to as "the Buyer") in this or a subsequent Agreement. This Agreement supersedes all previously issued terms and conditions and prevail over and cannot be superseded, amended or varied by any terms and conditions contained or referred to in a document supplied by the Supplier or sought to be imposed by the Supplier whether or not such documents expressly provide that they override, amend or vary this Agreement unless such amendment, or variation is agreed to in writing by the Buyer.

DEFINITIONS AND INTERPRETATION

1. In this Agreement, the following words and phrases have the following meaning:

"Agreement" means these terms and conditions, together with the relevant Purchase Order and all other appendices attached;

"Force Majeure Event" means an act of God, nature, war or government, any civil disturbance, or any labour disruption or any other circumstances beyond a party's reasonable control;

"Goods" means the goods described within the Purchase Order, or as mutually agreed to be completed by the parties.

"Intellectual Property" means, in respect of a party, all intellectual and industrial property rights and interests (including common law rights and interests) held by that party, or lawfully used by that party, including without limitation:

- (a) Patents, trademarks, trade secrets, copyright, registered designs, trade names, symbols and logos;
- (b) Applications to register patents, trademarks, service marks and designs; and
- (c) All formulae, methods, plans, data, drawings, specifications, characteristics, algorithms, source and object code, equipment, designs, inventions, discoveries, improvements, know-how, experience, software products, trade information, trade secrets, price lists, costings, brochures and their information.

"Purchase Order" means the form submitted by the Buyer specifying the particulars of the Services to be provided by the Supplier;

"Services" means the services described within the Purchase Order, or as mutually agreed to be completed by the parties.

2. The Buyer will not be liable to the Supplier for any goods, materials supplied or Services unless ordered on the Buyer's Purchase Order.
3. The prices specified in the Purchase Order shall apply without variation or escalation unless such variation or escalation is authorised by the Buyer in writing.
4. No charge shall be made for delivery and transit costs or expenses, wrapping, packaging, cartons, boxing or preparing the Goods for shipment unless authority for such charge is expressly incorporated in the Purchase Order.
5. Delivery shall be made to the place and in the manner and by the date specified in the Purchase Order. If no such dates are specified then delivery shall be made within a reasonable time after receipt of the Purchase Order by the Supplier. The time or times for delivery or completion of this Purchase Order or for any item listed in the Purchase Order is a stipulation the performance of which is essential to the Buyer. Subject to Clause 6, title to and risk in the Goods shall pass to the Buyer upon Delivery.
6. Deliveries:
- (a) A Packing Slip must accompany all Goods;
 - (b) Delivery must be to the address specified on the Purchase Order;
 - (c) The number of the Purchase Order must be quoted on all packing slips, invoices and related documents.
7. The Supplier agrees that acknowledgement of Delivery of any item on this Purchase Order is not to be taken as acceptance of either the quantity or quality of the Goods indicated on the delivery docket. The Buyer has no obligation to inspect Goods or Services supplied. However, if the Buyer does inspect or test the Goods or Services, the Supplier's obligations under these Terms will not be affected nor will the Buyer's rights to claim under or in respect of any warranty or indemnity in these Terms be affected. If the Buyer becomes aware of a defect or non Delivery, the Buyer shall promptly notify the Supplier of such defects and/or non Delivery and, notwithstanding the Buyer's right to cancel the contract for the supply of the Goods and to such other or further relief as may be available to it at law or equity, the Buyer may:
- (a) From the time of notification onwards hold any articles so claimed to be defective for the Supplier's instructions, and at the Supplier's risk for a reasonable period not exceeding 60 days; and/or
 - (b) Withhold any payment due to the Supplier (whether relating to the Goods in question or otherwise) a sum of money representing the reasonable costs of having the defect rectified by a third party at commercial rates, or a reasonable estimate thereof; and/or
 - (c) Permit the Supplier to rectify the defects notified to it within a reasonable time, in which case the Buyer will, upon the Goods being satisfactorily rectified, remit any monies retained in terms of clause 7(b) above to the Supplier less any costs, expenses or losses incurred due to the defect in the Goods; and/or
 - (d) Have the defects rectified by a third party at commercial rates and deduct the cost of same from any monies retained under clause 7(b) above, together with, any additional costs or losses incurred by reason of the defects. The balance (if any) shall be remitted to the Supplier.

Notwithstanding any agreement to the contrary (including any retention of title rights that the Supplier may have), the Supplier shall not be entitled to claim title to or take any steps in reliance upon any such retention of title right merely because the Buyer has exercised its right to withhold payment in terms of clause 7(b) above.

8. Goods supplied in excess of the quantities list in the Purchase Order may, at the Buyer's option, be returned to the Supplier at the Supplier's expense.



SERVICES

9. Performance of the Services shall be made to the place and in the manner and by the date specified in the Purchase Order. If no such dates are specified, then performance shall be made within a reasonable time after receipt of the Purchase Order by the Supplier. The time or times for delivery or completion of the Purchase Order is a stipulation the performance of which is essential to the Buyer.
10. The Services must be performed at the address specified in the Purchase Order, or such other address as notified by the Buyer to the Supplier.
11. The performance of the Services shall include providing any documentation as reasonably requested by the Buyer in the Purchase Order.
12. The Supplier agrees that acknowledgement of performance of any Services in the Purchase Order is not to be taken as acceptance of the quality of the Services performed.

WARRANTIES

13. The Supplier warrants in relation to all Goods to be supplied and all work to be done and all Services to be performed for the Buyer, as the case may be, that:
 - (a) The Supplier has a right to sell the Goods;
 - (b) The Supplier has full legal and equitable title to the Goods free from any encumbrances and securities and the Goods are supplied to the Buyer on that basis;
 - (c) The Buyer has the right to undisturbed possession of the Goods;
 - (d) The Goods are of acceptable quality, fit for all the purposes for which the Goods are commonly supplied, acceptable in appearance and finish, free from defects, safe and durable;
 - (e) The Goods are reasonably fit for any particular purpose made known by the Buyer to the Supplier or for which the Supplier represents they will be fit;
 - (f) The Goods are reasonably fit for any particular purpose for which the Supplier represents that they are or will be fit;
 - (g) Where Goods are supplied by description to the Buyer, the Goods correspond with that description;
 - (h) Where Goods are supplied to the Buyer by reference to a sample or demonstration model, the Goods correspond with the sample or demonstration model in quality and the Buyer will have a reasonable opportunity to compare the Goods with the sample;
 - (i) The Buyer is not liable to pay to the Supplier more than a reasonable price for the Goods, work or services in any case where the price for the goods, work or services is not determined by the Purchase Order or corresponding confirmation by the Supplier, left to be determined in a manner agreed to by the parties, or left to be determined by the course of dealing between the parties;
 - (j) The Supplier will take reasonable action to ensure that facilities for repair of Goods and supply of parts for Goods are reasonably available for a reasonable period after the Goods are supplied;
 - (k) Services will be carried out with reasonable care and skill;
 - (l) Any product resulting from Services will comply with clauses 13(a) to (k) above; and
 - (m) Any Service will be completed within a reasonable time where the time for the service to be carried out is not fixed by this Purchase Order, left to be fixed in a manner agreed by the parties, or left to be determined by the course of dealing between the parties; and
 - (n) Any Service will conform to all specifications forming part of this Purchase Order.

INTELLECTUAL PROPERTY

14. All Intellectual Property (together with, but subject to clause 15 in the case of the Supplier, all modifications, adaptations or developments to such Intellectual Property) which is owned by, or is proprietary to, a party at the date of the relevant Purchase Order shall remain owned by that party unless otherwise agreed in writing by the parties.
15. Any new Intellectual Property (including, in the case of the Supplier, any modifications, adaptations, or developments to the Supplier's Intellectual Property as contemplated by clause 14) which is created, modified, adapted or developed as a result of, or in connection with, the provision of Goods or Services to the Buyer (including, without limitation, as they come into existence, all reports, results, outcomes, processes, data, notes, drawings, records, memoranda and other writings, computer programs, graphics or data in whatever form or format (including supporting data) related to the Goods and Services) shall be owned by the Buyer, and shall not be used by the Supplier for any purposes other than to comply with the Supplier's obligations under this Agreement without the prior written consent of the Purchaser.
16. The Supplier shall promptly disclose to the Buyer any idea, invention or other intellectual property created in the course of providing the Services and where requested will sign all documents and do all things necessary to vest ownership of such ideas, inventions or intellectual property in the Buyer as the sole beneficial owner.
17. The Supplier hereby appoints any director from time to time of the Buyer to be the Supplier's attorney and in the Supplier's name and on the Supplier's behalf to sign any documents and do anything necessary to give full effect to the provisions of clause 16 above.
18. Nothing in clauses 14 to 20 confers on a party any right or interest in, or licence to use, or permit to be used, any of the other party's Intellectual Property, except that each party shall have a non-exclusive licence to use the other party's Intellectual Property to the extent required to meet that party's obligations under the Agreement. Any licence granted pursuant to this clause will expire immediately on Delivery of the Goods pursuant to the Agreement.
19. All technical specifications, drawings, designs, concepts or other property provided by the Buyer to the Supplier or created for and paid for by the Buyer and part of this Agreement remain the property of the Buyer and are to be treated as confidential. Such property must be sent immediately on demand and may not be copied without the Buyer's written consent. The provisions of these clauses 14 to 20 and the requirement of confidentiality shall survive following the Delivery of the Goods pursuant to the Purchaser Order or the termination of this Agreement.
20. Where the Goods or Services supplied by the Supplier are manufactured or supplied substantially or wholly on the Buyer's specifications, drawings, concepts or property then the intellectual property in such Goods or Services shall be the sole property of the Buyer and the Supplier shall have no right to sell such Goods or Services to any third party without the Buyer's written consent which may be withheld at its sole discretion.



HEALTH AND SAFETY

21. When the Supplier is on any site owned or under the control of the Buyer ("Site"), the Supplier must comply, with all the Buyer's reasonable instructions and the Health and Safety at Work Act 2015. If the Supplier is providing Services, the Supplier must comply with the obligations set out in schedule 1 to this Agreement.
22. Upon request the supplier will provide any of the following:
 - (a) Information concerning the purpose for which the goods are to be used and of risks associated with any foreseeable activity for which the goods are to be used;
 - (b) The results of any calculations, analysis, testing, or examination that may be necessary to ensure the goods were manufactured without risk;
 - (c) Any conditions necessary to ensure that the plant, substance, or structure is without risks to health and safety when used for a purpose for which it was designed or manufactured or when carrying out any foreseeable activity; and
 - (d) Evidence that the goods have been manufactured to the applicable Australian and/or New Zealand Safety Standard.

INDEMNITY AND INSURANCE

23. By accepting the terms of this Agreement, the Supplier agrees to indemnify, protect and save harmless the Buyer, its successors, assigns, customers and the users of its Goods or Services and the Buyer's officers, employees, agents, contractors and subcontractors ('Representatives') against all suits, at law or equity and from all damage claims, and demands, for actual or alleged infringement of any intellectual property rights of any person in connection with this Agreement. If a finding in any such action is made against the Supplier in a court of competent jurisdiction then this Agreement may forthwith be cancelled by the Buyer. The Buyer holds this indemnity on trust for its successors, assigns, customers and Representatives.
24. All warranties and indemnities provided in this Agreement survive the delivery of the Goods and the performance of the Services pursuant to the Agreement or the termination of the Agreement.
25. In the event that either party is placed in voluntary or involuntary bankruptcy or insolvency or has a receiver appointed over its assets or makes or endeavours to make any composition assignment or other arrangement for the benefit of creditors or breaches any essential term hereof including the warranties given by the Supplier the other party shall be entitled to terminate this contract forthwith. Upon termination, the Supplier's sole and exclusive right in respect of the termination is limited to the payment of the price for any Goods and Services which have been completed or supplied in accordance with this Agreement and delivered to the Buyer up to the date of termination.
26. The Supplier has taken out and will maintain all insurance required by law as well as sufficient public liability and goods, service liability or professional indemnity insurance (as applicable).
27. This Agreement shall not be assigned by the Supplier without the prior written consent of the Buyer.
28. The Supplier shall not, without first obtaining the written consent of the Buyer, in any manner advertise or publish the fact that the Supplier has contracted to furnish the Buyer the Goods or services herein mentioned. The Buyer shall also be entitled to approve the form and content of any such advertisement prior to its publication.

BUYER'S OBLIGATIONS

29. The Buyer shall provide a working environment on its site that complies with the Health and Safety at Work Act 2015.
30. If the Buyer receives any personal information, it shall comply with the Privacy Act 1993.

SUSPENSION

31. Should the Supplier fail to comply with the requirements of this Agreement, in the Buyer's sole discretion, the Buyer may immediately suspend the operation of this Agreement by issuing notice in writing to the Supplier. In such case, any current work being completed by the Supplier shall be immediately stopped, and not re-commenced until the Buyer has lifted such suspension.
32. The Buyer may require the Supplier to complete any remedial work it deems necessary to rectify the failure to comply, at the Suppliers sole expense.
33. The Supplier will comply with all applicable tax, duty and levy legislation pertaining to the supply of Goods pursuant to this Purchase Order, including any goods and services tax or other value added tax legislation, in whatever jurisdiction may apply.
34. The remedies herein reserved shall be cumulative and additional to any other or further remedies provided in law or equity. No waiver of a breach of provision of the contract shall constitute a waiver of any other breach or of such provision.
35. The Delivery of Goods pursuant to this Purchase Order shall be deemed to have taken place in the country or region where the party receiving Goods on behalf of the Buyer is located. These Terms are governed by the laws of that country or region and the courts of that country or region shall have exclusive competence and jurisdiction to hear any application in respect of this Purchase Order.

SERVICE OF COURT

36. Service of any Court or other documents may be effected on either party, unless agreement is reached to the contrary regarding service, by sending the same by ordinary or registered mail, fax or delivery to the address (whether in New Zealand or overseas) recorded on delivery or other documentation provided by either party at the time of providing the Goods in terms of this Purchase Order, or in the absence thereof to the party's last known address whether in New Zealand or overseas, and shall be deemed to have been received five New Zealand working days after being sent, faxed or dispatched for delivery as the case may be.
37. Subject to clause 37 below, any dispute arising out of or in connection with this Purchase Order including any question regarding its existence, validity or termination shall be referred to a single arbitrator, to be appointed by the parties. If the parties cannot agree on the identity of the arbitrator, either party may apply to the President or holder of such similar office for the time being of the relevant national or regional Law Society or other national or regional association of lawyers of the country or region where the party receiving Goods on behalf of the Buyer is located (irrespective of where the Purchase Order was sent from) to appoint an arbitrator. The place for arbitration shall be the nearest capital city to where the party receiving Goods on behalf of the Buyer is located and the arbitration shall be conducted according to the Rules of Arbitration of the International Chamber of Commerce in force at the time of the application for arbitration. In all cases the language of such arbitration shall be English.



38. If the Supplier is located in China, any dispute arising out of or in connection with this Purchase Order including any question regarding its existence, validity or termination shall be submitted to arbitration in Shanghai, China before the China International Economic and Trade Arbitration Commission ("CIETAC") in accordance with CIETAC Arbitration Rules in force at the time of the application for arbitration. The arbitration tribunal shall consist of three arbitrators, one appointed by each party, provided that if either of the parties fails to appoint an arbitrator within the time specified in the CIETAC Arbitration Rules, the Chairman of CIETAC shall make such appointment. A third arbitrator ("Presiding Arbitrator") shall be appointed by agreement between the Parties, provided that if the Parties fail to jointly appoint the Presiding Arbitrator within the time specified in the Arbitration Rules, the Chairman of CIETAC shall make such appointment.

TERMINATION

39. Either party may terminate this Agreement or any Purchase Order, without cause, by giving the other party 7 days' notice in writing.
40. The Buyer may terminate this Agreement immediately in writing if the Supplier:
- (a) commits a material breach of this Agreement, and if such breach is capable of remedy, fails to rectify such breach within 14 days' notice from the Buyer identifying such breach;
 - (b) is prevented by illness, injury or otherwise from providing the Goods or Services for more than 10 days in any period of 30 days;
 - (c) does or omits to do anything while providing the Goods or Services likely to bring the Buyer and/or any associated Buyer or any of its business interests into disrepute or which damages or is likely to damage those interests;
 - (d) commits any breach of the Buyer's health and safety policy, or related procedures or regulations, that the Buyer deems to be serious (in the Buyer's sole discretion);
 - (e) enters into any employment or other engagement which the Buyer considers is a conflict of interest;
 - (f) enters or in the Buyer's opinion, is likely to enter, into any compromise, scheme of arrangement with any of its creditors, enters receivership, bankruptcy, administration or liquidation, is wound up, or a meeting is called for the purpose of considering the appointment of a liquidator, the Supplier is, in the Buyer's sole opinion, unable to pay its debts as they fall due; or
 - (g) the Supplier commits a criminal offence.
41. Upon termination of this Agreement (for whatever reason) the Supplier shall deliver up to the Buyer's Representative within 7 days of termination, all documents, records, papers intellectual property or other Buyer property whether Confidential Information or otherwise in the Supplier's possession or control. No copies shall be retained by the Supplier without the Buyer's prior written consent.
42. Termination of this Agreement shall be without prejudice to any rights or remedies available to the parties at the time of termination.

VARIATION TO AGREEMENT

43. This Agreement may only be amended by a variation in writing signed by both parties.

DISPUTES

44. In the event of any dispute between the parties in relation to this Agreement, the parties shall first seek to resolve such dispute by promptly giving notice of the dispute to the other party and co-operatively endeavouring to resolve such dispute. If the dispute remains unresolved the parties shall then seek a resolution using mediation prior to seeking resolution through the Courts. The parties acknowledge that an actual or threatened breach of this Agreement may cause damage to the other that is unable to be adequately compensated for by monetary damages. In such circumstances a party may seek urgent injunctive relief from the Court.

EVENTS BEYOND CONTROL

45. Should any event occur (such as a Force Majeure Event, but not being personal to a party such as ill-health, lack of funding or similar) which is beyond the control of either party and prevents the performance of the Services (in whole or in part) then those Services will be suspended and any relevant timeframes adjusted until it become practicable to recommence the Services. Should the suspension continue for a period of more than 3 months, the non-affected party may terminate this Agreement by providing notice to the other party.

GENERAL PROVISIONS

46. The Supplier will comply with all applicable tax, duty and levy legislation pertaining to the supply of Services pursuant to this Agreement, including any goods and services tax or other value added tax legislation, in whatever jurisdiction may apply.
47. The remedies herein reserved shall be cumulative and additional to any other or further remedies provided in law or equity. No waiver of a breach of provision of the contract shall constitute a waiver of any other breach or of such provision.
48. This Agreement is governed by the laws of that country or region in which the party receiving the Goods or Services on behalf of the Buyer is located and the courts of that country or region shall have exclusive competence and jurisdiction to hear any application in respect of this Agreement.



SCHEDULE 1

HEALTH AND SAFETY COMPLIANCE

1. The Supplier shall comply with all of the Buyer's current health and safety requirements relating to the site which are notified in writing to the Supplier from time to time.
2. Prior to providing services the Supplier shall notify the Buyer of risks to health and safety arising from the site which are reasonably foreseeable to the Supplier and which may affect the Buyer's or the Supplier arising out of or in any way connected with the activities of the Supplier in connection with this Agreement, and the Supplier shall have due regard to such risks in performing its obligations under this Agreement.
3. Without prejudice to its obligations above, the Supplier must:
 - a. upon the request at any time of the Buyer, submit to, and fully co-operate with, any safety vetting process required by the Buyer and provide a written statement of the Suppliers own safety requirements;
 - b. notify the Buyer immediately in the event of any incident involving employees, agents and representatives of the Supplier occurring in the performance of this Agreement on the site where that incident causes any personal injury or damage to property which could give rise to personal injury;
 - c. assess all reasonably foreseeable risks to health and safety that may affect the Buyer or any third party arising out of or in any way connected with the performance of this Agreement, and provide a copy of such assessment to the Buyer upon request, and promptly take all reasonable steps to eliminate or adequately control such risks and shall notify and co-operate with the Buyer accordingly;
 - d. fully co-operate with the Buyer and any other parties as necessary to ensure that all reasonably foreseeable risks to health and safety (including fire) connected with the Site are eliminated or adequately controlled;
 - e. take all practicable steps to ensure that no act or omission is a breach of any duty or obligation of the Supplier under the Health and Safety at Work Act 2015 and associated regulations or any safety requirements as may reasonably be required by the Buyer; and
 - f. ensure that all its employees, agents and representatives associated with provision of the obligations under this Agreement are adequately trained and supervised in the safe use of all machinery, tools, processes, substances, protective clothing and other equipment, which may be required to be used in relation to this Agreement.
4. The Buyer may direct the Supplier to remove from the project any employee of the Supplier (or of a sub -Supplier) who by reason of serious misconduct, incompetence or negligence in the proper performance of his or her duties is a danger to safety or welfare. An employee required to be removed shall not again be employed on the Project without the consent of the Buyer.
5. The Supplier shall immediately remove any Tools and Equipment, or any other item brought onto the Buyer's site, if the Buyer deems it to be unsafe and requests such removal.