



Bank of New Zealand and related companies ('BNZ') Standard Terms and Conditions of Purchase

Terms and Conditions

July 2022

1. Terms Applying

- 1.1** By accepting any Purchase Order from BNZ the Supplier acknowledges that these Terms and Conditions apply to the exclusion of the Supplier's conditions (if any), including those which may be included on the Supplier's delivery notes and invoices. Notwithstanding any provision in these Terms and Conditions, where a Purchase Order is subject to a contract in writing which has been signed by or on behalf of BNZ and the Supplier, the terms and conditions of that contract shall take precedence.

2. Performance, delivery and acceptance

- 2.1** The Supplier will provide the products and/or services set out in the Purchase Order in accordance with these Terms and Conditions and all relevant laws.
- 2.2** Delivery will only be acceptable if:
- 2.2.1** the complete order as specified by BNZ arrives on time and as a single delivery (unless otherwise specified or agreed to by an authorised BNZ purchasing officer);
 - 2.2.2** all products are securely packed and identified as required from time to time by BNZ so as to prevent damages and to allow proper storage and stock control;
 - 2.2.3** each delivery is accompanied by a delivery note detailing contents of delivery and the Purchase Order number; and
 - 2.2.4** each delivery contains all user documentation containing information to enable BNZ to operate, make full use of and maintain the product(s) supplied or, where relevant, contain the manufacturer's warranty.
- 2.3** Risk and title to the product pass to BNZ when the products are delivered to BNZ. The products will only be accepted after they have been unpacked and inspected by BNZ. BNZ will be deemed to have unpacked and inspected the products within a reasonable period of time from delivery. Payment of any invoice does not constitute acceptance of the products to which it relates and is made subject to the Supplier's obligations under these Terms and Conditions to immediately repair the product or refund payment for any products.
- 2.4** The Supplier will notify BNZ of the purposes for which the products were designed or manufactured.
- 2.5** The Supplier will give BNZ information about the conditions, and the results of any calculation, analysis, testing or examination relating to the products, that are necessary to ensure BNZ can use and handle the products without risk to health and safety.
- 2.6** The Supplier warrants to BNZ that:
- 2.6.1** all products supplied shall be of merchantable quality and fit for the relevant purpose, comply with any specifications, design, quality, and quantity agreed to by the parties and conform with any samples of the products provided by the Supplier, including any previous deliveries, and conform to the Supplier's or manufacturer's published specifications and any other specifications or requirements notified by BNZ;
 - 2.6.2** the Supplier has the right to sell the products and ownership, possession, use or resale of any product supplied by the Supplier will not infringe any property right or other intellectual property of any third party;
 - 2.6.3** the products will be free from any defect (including any latent defect) in design, materials and workmanship and not emit any contaminant or hazardous substance;
 - 2.6.4** the products are free from any liens, charges, security interests and encumbrances, including any retention of title; and
 - 2.6.5** no financing statement (as defined in the Personal Property Securities Act 1999) has or will be registered on the Personal Properties Securities Register in respect of the products.

- 2.7 Without limitation to any other provision of these Terms and Conditions, if any defect (which is a breach of any warranty) results in BNZ not receiving the expected performance or value from the product or service, the Supplier will, at BNZ's request and choice:
- 2.7.1 once BNZ has returned the faulty product to the Supplier, promptly refund BNZ for the product or service, repair or replace the product or re-perform the service (each with a full warranty) to BNZ's satisfaction; or
 - 2.7.2 provide a full refund to BNZ in relation to a product order if BNZ cancels the entire order and returns all products to the Supplier (and the Supplier will be responsible for all costs associated with the return of such products).

3. Purchase Order Number, Pricing, Payment

- 3.1 If the Supplier is unable to, or does not wish to, comply with every aspect of these Terms and Conditions (including the supply of the total order or the exact products specified by the required delivery date/s), the Supplier should immediately reject the Purchase Order by notifying the authorised BNZ purchasing officer. Unless BNZ expressly reserves the right to require written acceptance of any Purchase Order, the supply of products or services which are subject to the Purchase Order shall be deemed to be acceptance of these Terms and Conditions set out in the Purchase Order.
- 3.2 Unless otherwise agreed, BNZ will only pay invoices by the 20th day of the month following the month of receipt of a suitably detailed, valid and accurate invoice. To be valid and accurate an invoice must separately itemise any product or service supplied, the price for each product and it must be in the form of a tax invoice as agreed between BNZ and Supplier and note the Purchase Order reference number. Invoices which do not quote the Purchase Order reference number will not be accepted for payment by BNZ. The Supplier should address the invoice to the address as shown on the face of the Purchase Order.
- 3.3 The prices, where listed in the Purchase Order, will be in New Zealand dollars subject to variation only as mutually agreed by the Supplier and BNZ.
- 3.4 The prices are exclusive of goods and services tax but are inclusive of freight, all other taxes, duty, packaging or insurance to be payable.
- 3.5 Unless agreed by BNZ, each invoice must refer to one order only, and a separate invoice is required for each delivery.

4. Personnel

- 4.1 The Supplier acknowledges that:
 - 4.1.1 all of its personnel are and will remain at all times the Suppliers responsibility and will not be, or be deemed to be, employees or contractors of BNZ;
 - 4.1.2 the Supplier is responsible for the acts and omissions of all of its personnel while they are on BNZ premises or are involved in providing the goods or services, and it will ensure that they: act lawfully, diligently, ethically, soberly and honestly; are adequately supervised; are not involved in any other business apart from the provision of the BNZ services while on BNZ premises or while providing the services; do not commit any criminal offence, or otherwise breach any law or regulation; do not represent in any way that they are employees of BNZ; carry and display at all times appropriate identification; do not otherwise act in any manner which could disrupt or adversely affect BNZ's reputation, interests or goodwill; and comply with BNZ's Code of Conduct and any of BNZ's other policies, procedures, codes of conduct and standards that are advised or provided to the Supplier by BNZ provided that if the Supplier does not agree to such policies, procedures or codes of conduct or standards, the Supplier may, without liability to BNZ, terminate the Purchase Order within 10 Business Days from the date of BNZ's notification.
- 4.2 On request from BNZ the Supplier will:
 - 4.2.1 before arranging any of its personnel to perform the services, provide BNZ with evidence reasonably satisfactory to BNZ as to the probity of its personnel, to demonstrate that each of the personnel is of good standing. If

required, BNZ may carry out additional checks on the Supplier's personnel and the Supplier will procure from the relevant personnel any consent required to enable BNZ to do this. BNZ acting reasonably may in its sole discretion determine whether to agree to a particular person being assigned to perform the services; and

- 4.2.2 promptly remove or replace any of its personnel on BNZ's request, provided that BNZ will not make this request arbitrarily or unreasonably, and replace such personnel with replacement personnel satisfactory to BNZ.

5. Health and Safety

5.1 The Supplier will:

- 5.1.1 comply with the Health and Safety at Work Act 2015 (HSW Act);
- 5.1.2 have, implement, comply with and maintain, an adequate health and safety operational risk management system and processes to ensure the Supplier can comply with its health and safety-related obligations under law and these Terms and Conditions;
- 5.1.3 promptly notify BNZ of any Notifiable Incident; and
- 5.1.4 with the level of BNZ's involvement that BNZ requests, investigate each Notifiable Incident and take whatever actions are reasonably necessary to prevent or minimise the risk of any similar Notifiable Incident occurring again.

5.2 If the Supplier is issued an infringement, improvement or prohibition notice by a regulator (as "regulator" is defined in the HSW Act), the Supplier will notify BNZ promptly and, to the extent the Supplier is legally permitted to, provide a description of the contents, reasons for, and any consequences for the Supplier and/or BNZ of such a notice if:

- 5.2.1 the notice was received in relation to the Services; or
- 5.2.2 it would be prudent to give that notice and description to ensure the health and safety of workers and others under or in relation to these Terms and Conditions.

5.3 If the Supplier breaches any health and safety-related obligation under these Terms and Conditions or law, BNZ may give the Supplier written notice to suspend the performance of the Supplier's obligations and exercise of its rights under these Terms and Conditions, as set out in that notice, and the Supplier will comply immediately with that notice.

5.4 Unless agreed otherwise, for works carried out on BNZ's premises, BNZ's health and safety policy will apply. However, if the work being carried out is in the Supplier's specialist area of expertise and is in an area that is under the Supplier's immediate control, the Supplier's health and safety policy will have priority over BNZ's health and safety policy in the event of any inconsistency.

5.5 Without lessening BNZ's obligations under these Terms and Conditions or at law the exercise or non-exercise of BNZ's rights in relation to health and safety and in relation to these Terms and Conditions will not affect or limit the Supplier's obligations under these Terms and Conditions or at law.

A "Notifiable Incident" means an incident that must be reported to a health and safety regulator (or any near miss of such an incident), which occurs at BNZ's premises, involves a BNZ employee and/or (in the course of carrying out work under these Terms and Conditions) involves a contractor, customer or visitor of BNZ.

6. Reservation of Rights and Laws

6.1 BNZ reserves the right to:

- 6.1.1 cancel all or part of the Purchase Order if the Supplier fails to meet the Bank's delivery requirements as shown on the face of the Purchase Order, or where the Supplier fails order acknowledgement obligations; and
- 6.1.2 cancel the Purchase Order at any time prior to the specified date of delivery of the products. Where BNZ cancels the Purchase Order within 14 days prior to the specified date of delivery of the products, the Bank shall pay the Supplier's reasonable verifiable costs and expenses directly incurred in relation to the Purchase Order.

- 6.2 To the extent permitted by law, the Sale of Goods Act 1908 does not apply to these Terms and Conditions or the supply of any goods in accordance with these Terms and Conditions.
- 6.3 The Purchase Order, the transactions contemplated by the Purchase Order and these Terms and Conditions are governed by the laws of New Zealand.

7. Intellectual property and confidential information

- 7.1 Where any licence or other authorisation from any person is required to possess, use or resell any product or service or any component, the Supplier will, at no extra cost to BNZ, procure an irrevocable and unrestricted royalty free licence on a non-exclusive and transferrable basis for BNZ to own, possess, use and resell the product.
- 7.2 All property rights in any intellectual property (including any data, design, specifications, know-how or other form of intellectual property) that is specifically developed for BNZ as part of the provision of services or products will become BNZ property.
- 7.3 Subject to 7.2 all intellectual property owned by a party prior to entering into this Purchase Order will at all times remain owned by the applicable party, or its third party licensors, exclusively.
- 7.4 All confidential information and intellectual property provided by BNZ in connection with an order shall remain BNZ's property and confidential to BNZ and shall be used solely to complete the relevant order and for no other purpose. Any such confidential information and intellectual property must be returned to BNZ.
- 7.5 The Supplier will not use or reproduce BNZ's confidential information or intellectual property other than in performing the relevant services or providing the relevant goods under this Purchase Order.
- 7.6 The Supplier will not disclose BNZ's confidential information or intellectual property to any person without BNZ's prior written consent.
- 7.7 If there is any actual or alleged breach of this clause 7 by a Representative of the Supplier, the Supplier will:
 - 7.7.1 enforce its rights to injunctive or other relief to the fullest extent possible, or, if requested by BNZ, assign such rights to BNZ; and
 - 7.7.2 assist BNZ in every way in enforcing those rights.

"Representative" means an employee, officer, director, auditor or advisor of the Supplier (except that the Supplier will not be taken to be a Representative of BNZ) and includes its personnel.

8. BNZ's rights and liabilities

- 8.1 If the Supplier fails to comply with any obligation in these Terms and Conditions, and fails to properly remedy the situation to BNZ's reasonable satisfaction within 5 working days after BNZ gives notice to the Supplier of the breach or failure, or if the Supplier is or becomes insolvent or bankrupt, goes into receivership or liquidation, or enters into any compromise with its creditors, or amalgamates with any other person, then BNZ may, without limitation to any other right or remedy under these Terms and Conditions or at law:
 - 8.1.1 withhold any payment otherwise due to the Supplier;
 - 8.1.2 return any product at the Supplier's risk and expense without any obligation to pay any further sum and/or, if paid for, BNZ shall receive a full refund.
- 8.2 Except to the extent required by law, the parties have no liability whatsoever (including, but without limitation, in equity, contract or tort including negligence) to each other or any other person for any loss of profits, income or savings, or for indirect or consequential damage, loss, cost or expense suffered by the other party or any other person.
- 8.3 Without limiting 8.2 above, the liability of each party arising out of or in connection with these Terms and Conditions will not exceed \$2 million in aggregate.

9. Miscellaneous

- 9.1 These Terms and Conditions may only be amended in writing and signed by both parties.
- 9.2 Subject to 9.1 above, these Terms and Conditions represent the entire agreement between the parties relating to the products or service and replaces all earlier negotiations, representations, warranties, understandings and agreements between them (whether written or oral) relating to the products or services.
- 9.3 Neither party will be liable for any failure or delay in performing an obligation if it is due to a cause reasonably beyond its control and reasonable endeavours have been used to perform these Terms and Conditions or any Purchase Order despite the cause. A party whose performance has been affected by such a cause will notify the other party of the cause and the likely delay as soon as it becomes aware or ought to have become aware of it.
- 9.4 The Supplier may not assign or subcontract any of its rights or obligations in respect of a Purchase Order or these Terms and Conditions.
- 9.5 Nothing in these Terms and Conditions evidences any partnership, joint venture agency or employer/employee relationship between the parties.
- 9.6 To the extent practicable, any unlawful provision in these Terms and Conditions will be severed and the remaining provisions will be enforceable.
- 9.7 No delay or failure to act shall be deemed to be a waiver of that right or obligation. No waiver is effective unless it is in writing.
- 9.8 Notices are to be in writing addressed to the other parties registered office and will be deemed to be received when:
 - 9.8.1 if delivered by hand, when delivered;
 - 9.8.2 if sent by post, on the 3rd business day following posting;
 - 9.8.3 if sent by email, on the business day on which the email was sent or, if the email was sent after 5.00pm on a business day or sent on a non business day, on the first business day after the email was sent.

