



## Purchase Order Terms Conditions - NZ

The following Terms and Conditions (“**Terms**”) apply to all Purchase Orders issued by the Entity for the Supply of Goods and/or Services to the Entity by the Supplier to whom the Purchase Order is addressed, to deliver the items specified, being the goods (“**Goods**”) and/or services (“**Services**”) for the site indicated in the Purchase Order, for the Price specified within the Purchase Order.

### 1 ACCEPTANCE OF CONDITIONS

- 1.1 The Supplier is taken to have accepted the Purchase Order if it notifies the Entity that it accepts the Purchase Order, a reasonable period of time passes from the Supplier’s receipt of the Purchase Order without rejection, or the Supplier delivers the Goods and/or Services.
- 1.2 By accepting the Purchase Order, the Supplier acknowledges and agrees to be bound by these Terms and any other specific terms and conditions referred to in the Purchase Order.
- 1.3 In the event of any inconsistency between these Terms and any specific terms and conditions stated on the relevant Purchase Order, the terms and conditions of the relevant Purchase Order shall prevail.
- 1.4 In the event that the parties have signed or do sign a written agreement for the provision of Goods and/or Services, the terms and conditions of that agreement will apply and not these Terms. In addition, where this Purchase Order describes a purchase that is within the scope of an existing master agreement, head contract or other framework agreement, the order of precedence stated in the master agreement, head contract or other framework agreement prevails.
- 1.5 Subject to clause 1.4, the Terms of the relevant Purchase Order together with these Terms comprise the entire agreement between the parties in relation to the supply of Goods and/or Services and supersede any previous discussions, arrangements, and representations.
- 1.6 Without limiting the foregoing, any terms and conditions asserted or provided by the Supplier in connection with the supply of the Goods and/or Services will not apply and the Entity will not be bound by any other terms or conditions that the Supplier may purport to apply, whether or not endorsed or delivered with or referred to in any order or other documents delivered by the Supplier to The Entity.

### 2 PRICE AND TERMS OF PAYMENT

- 2.1 The Entity purchases the Goods and/or Services for the Price stated in the Purchase Order. Unless expressly stated by The Entity to the contrary, the Price will be in New Zealand dollars and is inclusive of all costs associated with the supply and delivery of the Goods and/or Services howsoever arising including all delivery and packaging costs, GST and any other taxes, and is not subject to any rise and fall, foreign exchange adjustment or any other adjustment.
- 2.2 Following Delivery of the Goods and/or Services, the Supplier shall provide The Entity with a valid GST invoice. The Supplier’s invoice must:
  - (a) be computer generated;
  - (b) be sent by email to [accounts@theplantpeople.co.nz](mailto:accounts@theplantpeople.co.nz);

- (c) include the Supplier’s GST number;
  - (d) include the relevant Purchase Order number;
  - (e) include a description of the Goods and/or Services supplied and the date of Delivery; and
  - (f) show the total amount payable by The Entity, with details of how this amount has been derived.
- 2.3 The Supplier acknowledges that payment may be delayed if The Entity’s invoicing and payment processes are not followed.
  - 2.4 Subject to compliance with these Terms, The Entity shall pay the Supplier’s invoice on the last day of the month following the date of invoice.
  - 2.5 If any part of an invoice or Delivery is disputed by The Entity, The Entity may withhold payment of the relevant invoice, or part thereof, until the dispute is resolved.
  - 2.6 The Entity may withhold, deduct, or set off any amount owed to The Entity by the Supplier from any amount due to the Supplier by The Entity.

### 3 INSPECTION, TESTING AND ACCEPTANCE

- 3.1 The Entity has the right to inspect, examine and test all or part of the Goods and/or Services at any stage of engineering, manufacturing, installation, or supply. Such inspection, examination or testing does not relieve the Supplier of its liability for any of its obligations under these Terms or the Purchase Order, nor will it affect The Entity’s right to subsequently reject the Goods or Services.
- 3.2 The Entity shall be entitled to carry out any reasonable acceptance tests on the Goods and/or Services (in whole or part) following delivery of the Goods or performance of the Services. If any of the Goods or Services fail any acceptance test, the Supplier must then, at its cost, immediately remedy any defect, fault, or problem, and may be required to assist The Entity with testing (and re-testing) as and when requested. The Entity is not obliged to undertake acceptance testing.
- 3.3 Without prejudice to any other rights or remedies it may have, The Entity reserves the right to reject the whole or any part of the Goods or Services if the Goods or Services do not conform with the description in the Purchase Order or are not in accordance with any drawings, designs or specifications.
- 3.4 Any rejected Goods may be returned, at the Supplier’s cost, and The Entity shall be immediately repaid or credited the cost of the rejected Goods. Goods that are rejected but being held by The Entity will be at the Supplier’s risk.

### 4 PACKING AND DELIVERY

- 4.1 The Supplier must have a valid Purchase Order Number before supplying the Goods and/or Services.
- 4.2 The Goods or Services must be delivered or supplied to the Site at the time (or multiple times) specified in the Purchase Order.
- 4.3 Goods supplied against an invalid Purchase Order Number may be returned to the Supplier at the Supplier’s expense.



- 4.4 The Supplier will adequately pack and protect the Goods against damage and deterioration. The Supplier must, at its own cost, ensure that this is adhered to. The Supplier is also liable for loss or damage to the Goods in transit to the Site.
- 4.5 The Supplier shall clearly mark all documents accompanying the Goods or Services with the reference, item number, unit of measurement, description, or other information specified in the Purchase Order, as applicable.
- 4.6 If the supply of such Goods or Services involves the bringing of any hazardous goods, materials or equipment onto the Site, the Supplier must first provide The Entity with all material information and comply with The Entity's instructions in relation to those hazardous goods, materials, or equipment.
- 4.7 If delivery is not made in accordance with the Purchase Order and these Terms, The Entity may, by written notice and without prejudice to any other rights it has, cancel the Purchase Order, obtain replacement Goods or Services, and claim reimbursement from the Supplier for any additional costs incurred due to the failure by the Supplier to deliver (including without limitation penalties paid by The Entity to third parties and claim damages for breach of contract.)
- 4.8 If the Supplier becomes aware of any delay or failure to complete any Purchase Order, the Supplier must immediately notify The Entity in writing including the reason and the extent of the delay, and The Entity may at its discretion suspend the completion of the Purchase Order and/or terminate the Purchase Order and recover the price, or any part thereof, paid to the Supplier. For the avoidance of doubt the suspension of completion of the Purchase Order by The Entity will not limit The Entity's rights to terminate the Purchase Order in accordance with these Terms.
- 4.9 The Supplier must not vary the scope of the Services or the extent, nature, or character of the Goods in any way unless instructed to do so by The Entity in writing, and in which case the Supplier must comply with the notice instructing the variation.

## 5 PASSING OF TITLE AND RISK

- 5.1 Risk and title to the Goods will pass to The Entity on completed Delivery of such.
- 5.2 The Supplier will not register a security interest in the Goods under the subject of a Purchase Order unless expressly agreed with The Entity in writing.

## 6 GOODS

- 6.1 The Supplier warrants that the Goods:
- (a) shall conform in quantity, quality and description with the specification supplied by The Entity or as agreed between The Entity and the Supplier;
  - (b) shall be new and of best quality and free from any defects in design, material and workmanship;
  - (c) shall comply with all applicable laws and legislation governing such, and with the accepted New Zealand standard, if any, and /or relevant trade standards/regulations, including any appropriate foreign or international trade standards/regulations/laws;
  - (d) will, at the time of Delivery, be free of any security interest, lien, or other encumbrance under the Personal Property Securities Act 1999;

- (e) will be Delivered at the time specified on the Purchase Order; and
  - (f) will not cause The Entity to infringe any Intellectual Property Rights of any third party.
- 6.2 Where The Entity makes clear to the Supplier the purpose for which the Goods are to be used, either expressly or by implication, the Goods shall be fit for that purpose.
- 6.3 Where the Goods are supplied by reference to a sample, the Goods shall correspond to that sample.

## 7 SERVICES

- 7.1 The Supplier shall provide the Services in accordance with the Purchase Order and in compliance with all reasonable directions of The Entity and shall allocate sufficient resources to enable it to comply with this obligation.
- 7.2 The Supplier warrants to The Entity that:
- (a) the Supplier will perform the Services with reasonable care and skill and in accordance with generally recognised best practices and standards in the industry for similar services;
  - (b) the Services will conform with all descriptions, requirements, and specifications provided to the Supplier by The Entity; and
  - (c) the Services will be provided in accordance with all applicable legislation.

## 8 HEALTH, SAFETY AND ENVIRONMENTAL

- 8.1 The Supplier must comply with all applicable workplace health and safety legislation, and reasonable safety-related instructions given by The Entity. The Supplier will ensure any employees, contractors and other person under their responsibility are suitably briefed in these requirements.
- 8.2 The Supplier shall ensure, as far as reasonably practicable, that all Services will be provided using due care and skill by its employees, contractors and any other person it is responsible for. It is expected these services are conducted in a diligent, professional, workmanlike manner that would reasonably be expected of a skilled and experienced operator engaged.
- 8.3 The Supplier is responsible for the protection of the Site (including the protection of air, water and land) as a result of the of its provision of the Goods or Services to the Site and must comply with all applicable environmental legislation in New Zealand.

## 9 WARRANTY PERIOD

- 9.1 The warranty period on the Goods and / or Services shall be specified in the Purchase Order. However, if there is no warranty period specified in the Purchase Order, the warranty period shall be 24 months from Delivery of the Goods by the Supplier and acceptance of the Services by The Entity.
- 9.2 The Entity may require the Supplier to repair and or replace Goods (at its discretion) during the warranty period. If the Goods are required to be repaired or replaced by the Supplier, the warranty period for the repair or replacement is extended until 12 months after the date of delivery of the repaired or replaced Goods.



## 10 MATERIALS PROVIDED BY THE ENTITY

- 10.1 Any tools, dies, jigs, gauges, equipment, patterns, drawings, blueprints, designs, specifications, samples, software media and technical data supplied by The Entity to the Supplier or manufactured or acquired by the Supplier in relation to the Purchase Order (Materials) are the exclusive property of The Entity, and the Supplier shall:
- insure those Materials to their full replacement value against all usual risks and in accordance with any direction made by The Entity (noting The Entity's interest) and shall provide evidence of such insurance to The Entity upon demand;
  - maintain and keep those Materials in good order and serviceable condition at its cost and in accordance with any direction made by The Entity and to the satisfaction of The Entity;
  - use those Materials solely for the purpose of supplying the Goods or Services to The Entity in accordance with The Entity's Purchase Order;
  - replace any Materials which are lost, damaged or rendered unusable (in The Entity's opinion) while in the Supplier's possession;
  - during and after the termination of the Purchase Order, not disclose to any other person, without the prior consent of The Entity, which consent can be withheld at The Entity's discretion, the nature and details of the Materials;
  - not use, sell, reproduce, copy, destroy, modify, disclose to any person, or dispose of those Materials without The Entity's prior written consent which can be withheld at the discretion of The Entity; and
  - return the Materials to The Entity upon demand.

## 11 DISPUTE RESOLUTION

- 11.1 If any dispute arises between the parties in relation to these Terms or the Terms of any Purchase Order (Dispute) then the parties must first attempt to resolve the Dispute themselves within ten (10) Business Days of the Dispute arising.
- 11.2 If the Dispute is not resolved in accordance with clause 11.1, then either party shall be entitled to refer the Dispute to mediation. The parties must jointly agree on the appointment of a mediator and once the mediator has accepted appointment the parties must comply with the mediator's reasonable instructions. If the parties are unable to agree on a mediator, the mediator (and the mediator's fee) will be determined by the Chair for the time being of the Arbitrators' and Mediators' Institute of New Zealand, Inc. (or the Chair's nominee).
- 11.3 If the Dispute is not resolved within 20 Business Days from the date of the appointment of the mediator (or such longer time agreed by the parties acting reasonably), either party may bring legal proceedings with respect to the Dispute.
- 11.4 The costs of any mediator appointed pursuant to clause 11.2 must be paid equally by the parties.

## 12 DEFAULT AND CANCELLATION

- 12.1 If the Supplier breaches any of these Terms relating to the Goods and/or Services, then at the sole option of The Entity and without prejudice to any other remedy or right The Entity may have, The Entity may:

- reject the Goods and/or Services in whole or in part and return the Goods to the Supplier at the Supplier's risk and expense;
- require the Supplier to replace, repair, reinstate or re-supply the Goods and/or Services at the Supplier's risk and expense; or
- have the Goods and/or Services replaced, repaired, or re-supplied by another person and recover the cost of doing so from the Supplier.

12.2 The Entity may terminate the Purchase Order immediately if the Supplier breaches any of these Terms and fails to remedy the breach within ten (10) Business Days of written notice from The Entity specifying the breach and requiring it to be remedied.

12.3 The Entity may terminate any Purchase Order immediately if the Supplier becomes bankrupt, ceases to carry on business, goes into liquidation, becomes insolvent, appoints a receiver, or enters into a formal proposal for a compromise with its creditors under the Companies Act 1993.

12.4 Subject to The Entity's rights of deduction or set-off, The Entity shall pay the Supplier for any Goods or Services validly provided up to the date of termination.

12.5 No failure or delay on the part of The Entity to exercise any of its rights in respect of default by the Supplier will prejudice The Entity's rights of future enforcement.

12.6 Termination of any Purchase Order does not affect any responsibilities which are intended to continue after the termination of the Purchase Order.

12.7 The Entity may, and without affecting any accrued rights or remedies of The Entity, terminate the Purchase Order for any reason (in whole or in part) and shall, where the Supplier is not in default of the relevant Purchase Order, reimburse the Supplier upon request for: (a) all reasonable unavoidable costs necessarily incurred by the Supplier pursuant to the

Purchase Order up until the date of termination; and

- all reasonable unavoidable costs incurred by the Supplier up until the date of termination as a result of the termination provided that the Supplier makes available to The Entity all or any books, records, facilities, work, material, inventories and other items relating to any claim by the Supplier pursuant to this clause 12 within 60 days of the date of termination.

12.8 If the Purchase Order is terminated in part by The Entity, then the Supplier must deliver those remaining Goods and/or Services required to be delivered by the Supplier to The Entity in accordance with the Purchase Order.

## 13 INDEMNITY

13.1 The Supplier indemnifies The Entity, its officers, employees and agents from and against:

- all actions, claims, demands, damages, losses, costs, injury, and expenses which may be brought or made against or suffered or incurred by The Entity in respect of or by reason of or arising out of any negligence, or breach relating to or arising out of the Purchase Order or these Conditions by the Supplier, its officers, employees, or agents; and



- (b) all damages, loss, costs and expenses arising out of the presence of the Supplier's officers, employees or agents upon or about the Site and against all liability for their injury or death whilst carrying out their duties for the Supplier and for all loss or damage to their personal effects, except to the extent that the damages, loss, costs, expenses or liability are caused by the negligence, or breach relating to or arising out of the Purchase Order or these Conditions, by The Entity, its officers, employees and agents and; 13.2 This obligation continues after the termination or expiry of the Purchase Order.

#### 14 RELATIONSHIP BETWEEN PARTIES

- 14.1 Nothing in these Terms or any Purchase Order makes a party the partner, agent or representative of the other party or creates any joint venture between the parties.

#### 15 CONFIDENTIALITY

- 15.1 All Confidential Information will be and will remain the property of The Entity, and the Supplier must:
  - (a) keep all Confidential Information confidential and use Confidential Information only for the purpose of the Purchase Order;
  - (b) not disclose any Confidential Information to any person except as expressly authorised by The Entity in writing or as required by law; and
  - (c) destroy or return the Confidential Information to The Entity upon The Entity's request.
- 15.2 The Supplier will ensure that its employees, subcontractors, and advisers are aware of and will be bound by these obligations of confidentiality.
- 15.3 This clause 15 shall survive termination or expiry of the Purchase Order.

#### 16 INTELLECTUAL PROPERTY

- 16.1 All Intellectual Property owned by either party and existing prior to the commencement of the supply of Goods and/or Services will remain the exclusive property of that party.
- 16.2 The Supplier agrees that all new Intellectual Property that arises or is created by the Supplier or any of the Supplier's employees, subcontractors, or advisers in the course of supplying the Goods and/or Services will be The Entity's exclusive property.
- 16.3 The Supplier grants to The Entity a perpetual, royalty free, non-exclusive licence to use all Intellectual Property owned by the Supplier under clause 16.1.
- 16.4 The Supplier must not, at any time, use any The Entity trademark, including any branding, without the prior written consent of The Entity, which consent can be withheld by The Entity at its discretion.
- 16.5 The operation of this clause 16 survives termination of the Purchase Order, including termination for breach by either party and termination by expiry.

#### 17 SEVERANCE

- 17.1 Any invalid, illegal or unenforceable provision of these Terms shall be severed. That severance does not in any way prejudice or affect the validity, legality or enforceability of the remaining

provisions which remain in full force and effect to the extent that they are substantially capable of performance in accordance with their Terms.

#### 18 WAIVER

- 18.1 A waiver in whole or in part of any provision of these Terms or any other terms of a Purchase Order is valid only if in writing and signed by the party giving the waiver. A waiver of any provision is not a continuing waiver unless so expressed and is not a waiver of any other provision.

#### 19 GOVERNING LAW

- 19.1 These Terms and the Purchase Order shall be governed by and construed in accordance with the laws of New Zealand. The parties submit to the exclusive jurisdiction of the Courts of New Zealand.

#### 20 SITE AND SAFETY

- 20.1 The Entity may order the Supplier and any of its employees, contractors or any person for whom it is responsible from the Site where, in the opinion of The Entity, a breach of any statutory or contractual safety or environmental requirement has occurred, until the breach is remedied. Any such breach must be remedied by the Supplier within a reasonably practicable time. If the Supplier does not comply with this provision, then The Entity may terminate the Purchase Order.

#### 21 INSURANCE

- 21.1 Before delivering the Goods or Services, the Supplier must arrange the following types of insurance and provide The Entity satisfactory evidence that the following insurance has been effected:
  - (a) Public liability insurance in respect of personal injury, property damage and/or death arising out of the Goods or Services;
  - (b) Product liability insurance;
  - (c) Loss or damage to Goods supplied by the Supplier until the Goods or Services are delivered and completed.
- 21.2 Where appropriate, the insurance policy must have a waiver of subrogation clause, a cross liabilities clause and a settlement of claims on the basis of reinstatement or new replacement value clause.
- 21.3 The provisions of this clause 21 shall survive the termination of the Purchase Order.

#### 22 ASSIGNMENT AND SUBCONTRACTORS

- 22.1 The Supplier may not assign, subcontract, or otherwise transfer any of its rights, benefits, or obligations under the Purchase Order without the prior written consent of The Entity. A change in the management or control of the Supplier, or the sale of a major part of the Supplier's business or assets will be deemed to be an assignment for the purposes of this clause. The Entity may at any time assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights or obligations under the Purchase Order.



22.2 Where The Entity consents to the Supplier assigning, subcontracting, or transferring any of its obligations under the Purchase Order to a third party, the Supplier will remain fully responsible for all obligations to The Entity under the Purchase Order.

### 23 NOTICES

23.1 Any notice to be given under these Terms must be in writing and must be delivered or sent by post or e-mail.

### 24 MODERN SLAVERY AND WORKER EXPLOITATION

24.1 The Supplier promises that, so far as it is aware (having made all reasonable enquiries) its supply chain has not been:

- (a) and is not, engaged in Modern Slavery or Worker Exploitation;
- (b) convicted of any offence relating to Modern Slavery or Worker Exploitation; and
- (c) the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative, or regulatory body regarding any offence or alleged offence of or in connection with Modern Slavery or Worker Exploitation.

24.2 The Supplier must:

- (a) take and continue to take reasonable steps to prevent Modern Slavery and Worker Exploitation in its business and supply chain;
- (b) have, maintain and enforce, adequate policies and procedures (including due diligence procedures) to prevent Modern Slavery and Worker Exploitation in its business and its supply chains,
- (c) notify The Entity as soon as it becomes aware of any actual or suspected Modern Slavery or Worker Exploitation in its business or supply chain, including any investigation, inquiry, or enforcement proceedings by any governmental administrative body into an instance of Modern Slavery or Worker Exploitation; and
- (d) maintain and, on request, at its own cost provide to The Entity, a complete and accurate set of records to track the supply chain of all Goods or Services provided to The Entity.

### 25 HEAVY VEHICLE LAW – CHAIN OF RESPONSIBILITY (COR)

25.1 The Supplier:

- (a) must implement COR Systems and ensure that its employees, agents, suppliers, and subcontractors comply with its COR Systems and COR Laws;
- (b) must ensure that its agents, suppliers, and subcontractors, implement and comply with their own COR Systems so as to ensure compliance with COR Laws;
- (c) must, when accessing, leaving or on the Site, comply with and ensure its employees, agents, suppliers and subcontractors comply with The Entity's COR Systems;
- (d) acknowledges that it is a primary duty holder under the COR Laws with responsibility for developing COR Systems;
- (e) must proactively provide reasonable assistance to The Entity to enable The Entity to satisfy its duties and responsibilities under COR Laws;

- (f) must obtain and maintain, and ensure that each of its employees, agents, suppliers, and subcontractors obtains and maintains, any licence, permit, consent, approval, certification, authorisation, or other thing required to enable the applicable activity, function, or task to be undertaken lawfully;
- (g) must undertake any audits or monitoring directed by The Entity to demonstrate compliance with COR Laws; and
- (h) must proactively co-operate with any audits or monitoring directed by The Entity regarding COR Systems and COR Laws.

### INTERPRETATION

**“Business Day”** means a day on which registered banks are open for business in New Zealand, excluding Saturdays and Sundays.

**“Confidential Information”** means any information (verbal or written) including documents, drawings, software, financial information, commercially sensitive information, technical information, know-how and intellectual property of The Entity and any copies thereof but will not include public information (provided such information did not become public as a result of unauthorised disclosure by the Supplier) or information independently developed or acquired by the Supplier.

**“COR Laws”** means the chain of responsibility laws under the Land Transport Act 1998, Heavy Motor Vehicle Regulations 1974, Land Transport Amendment Act 2005, and all subordinate legislation made under the respective acts, as well as any other applicable law relating to fatigue management, speed and mass, dimension, and load restraint compliance requirements.

**“COR Systems”** means policies, procedures, standards, training, and systems designed to ensure, so far as is reasonably practicable, compliance with COR Laws.

**“Delivery”** means, in the case of Goods, the delivery of the Goods to and/or the provision of the Services at a location nominated by The Entity and “Deliver” has a corresponding meaning.

**“Entity”** means The Plant People (2006) Limited, The Plant People (1999) Limited, TPP Holdco Limited, Signature Plants Limited and Eiso Limited.

**“Goods”** means the goods, materials or substances specified in the Purchase Order and all parts or components of the same.

**“GST”** means goods and services tax prescribed by the provisions of the Goods and Services Tax Act 1985, at the rate prevailing at the relevant time.

**“Intellectual Property”** means any rights arising by virtue of any law or custom relating to the protection of industrial or intellectual property rights or the protection of confidential information and, without limitation, includes inventions, discoveries and novel designs, whether or not registered or registerable as patents or designs, including developments or improvements of equipment or products, technology, processes, methods or techniques; copyright (including future copyright) throughout the world in all literary works, artistic works, computer software, and any other works or subject matter in which copyright may subsist now or in the future; confidential information, trade secrets and trademarks, including service marks and trading names (whether registered or unregistered).



“**Modern Slavery**” for domestic New Zealand purposes, has the meaning given to it by the New Zealand Ministry of Business, Innovation and Employment of Modern Slavery (and shall include any updated definition that is published).

“**Purchase Order Number**” means the number set out on the Purchase Order as relating to that particular purchase.

“**Site**” means the site stated location indicated in the Purchase Order for Delivery of the Goods or provision of the Services.

“**Supplier**” means the person, firm, company, or corporate entity to whom The Entity issues a Purchase Order and who will supply the Goods or provide the Services.

“**Worker Exploitation**” has the meaning given to it by the New Zealand Ministry of Business, Innovation and Employment. It includes non-minor breaches of employment standards in New Zealand.

