



## Terms of Purchase: Purchase Order Terms and Conditions

### 1. General

- 1.1. These are the terms and conditions ("**the Purchase Order**") upon which the New Zealand Institute for Public Health and Forensic Science Limited ("**PHF Science**") acquires products, equipment, goods, services and advice (the "**Goods and/or Services**") from any individual, corporation or other entity ("**the Supplier**"). Subject to any other written agreement entered into by PHF Science and the Supplier which the parties have agreed prevails over this Purchase Order, all Goods and/or Services supplied to PHF Science by the Supplier are subject to these terms and conditions and are acquired only in accordance with this Purchase Order.
- 1.2. Subject to a separate written agreement to the contrary, this Purchase Order takes precedence over any terms and conditions of the Supplier. No variation to this Purchase Order will be binding without the express prior written consent of PHF Science and the Supplier.
- 1.3. PHF Science will not accept responsibility for any order unless it is made in accordance with a valid, original and authorised order in accordance with the terms and conditions of this Purchase Order.
- 1.4. If the Supplier commences fulfilment of any order, without written notice to PHF Science that this Purchase Order is unacceptable, it shall be deemed to have accepted the relevant order on the terms and conditions of this Purchase Order.

### 2. Delivery, inspection and title

- 2.1. The Supplier must deliver the Goods and/or Services to a location nominated by PHF Science, no later than the time(s) and date(s) specified in or attached to this Purchase Order or, if no delivery time(s) or date(s) are specified, within a reasonable time. Time will be of the essence for delivery. PHF Science reserves the right to cancel any Purchase Order wholly or in part, without redress to the Supplier, if it is not fulfilled by the stated delivery date, or if no delivery date is stated, within a reasonable time.
- 2.2. The Supplier will adequately pack and protect the Goods and/or Services against damage and deterioration and PHF Science accepts no responsibility for delivery of the Goods and/or Services, nor for any packing, freight or insurance, unless authorised by this Purchase Order. Unless otherwise agreed, all international consignments must be consigned through PHF Science's notified appointed freight forwarding agents.
- 2.3. PHF Science may reject any Goods and/or Services that fail to meet the relevant description or specification specified by PHF Science. Any monies paid to the Supplier prior to inspection of the Goods and/or Services shall be deemed to have been paid conditional upon, and subject to, the Goods and/or Services being free of any defects to the satisfaction of PHF Science, following any inspection by it. If PHF Science notifies the Supplier of any defects in or damage to the Goods and/or Services or the output of the Goods and/or Services, PHF Science may return the Goods and/or Services to the Supplier's premises at the Supplier's expense and risk and/or request the Goods and/or Services are supplied or performed again and any monies paid shall be refunded to PHF Science.
- 2.4. Risk and title to the Goods and/or Services will remain with the Supplier until the Goods and/or Services have been delivered to the location nominated by PHF Science. Risk will pass to PHF Science upon delivery. Title will pass to PHF Science upon payment.
- 2.5. At all times while the Supplier or its representatives are present on the land or premises occupied or controlled by PHF Science, such person(s) shall comply with the requirements and directions of PHF Science.

### 3. Price

- 3.1. PHF Science shall pay to the Supplier the Price for the Services set out in or attached to this Purchase Order ("**Price**"), in accordance with this clause 3.
- 3.2. The Supplier shall invoice PHF Science within 6 days of the end of each calendar month for the fees relating to the Goods and/or Services provided by the Supplier during that month (based on the Price). PHF Science shall have the right to request from the Supplier a specific and itemised account of the time spent by the Supplier on the Goods and/or Services. The invoice shall be paid by PHF Science by the earlier of the 20th day of the month following the month in which the Supplier's invoice was received by PHF Science, or as required by law. If PHF Science disputes all or any part of the Supplier's invoice in good faith, PHF Science can withhold payment of the disputed amount until the dispute is resolved.
- 3.3. The Supplier must provide valid tax invoices. PHF Science has no obligation to pay the amounts stated in an invoice that is not a valid tax invoice. A valid tax invoice must:
  - (a) clearly show all GST due, if any;
  - (b) be in New Zealand currency;
  - (c) be clearly marked 'Tax invoice';

- (d) contain the Supplier's name, address, NZBN and GST number, if the Supplier is registered for GST;
  - (e) contain PHF Science's name and address;
  - (f) state the date the invoice was issued;
  - (g) provide a description of the Goods and/or Services supplied;
  - (h) contain PHF Science's contract reference or purchase order number if applicable;
  - (i) state the amount due, calculated correctly; and
  - (j) include all applicable taxable supply information as specified in the Goods and Services Tax Act 1985 (or any legislative or regulatory instrument superseding it).
- 3.4. The Price is exclusive of GST (if any) but inclusive of all other taxes, levies and duties imposed on the Supplier in respect of the Price received for the provision of the Goods and/or Services under this Purchase Order.

#### 4. Warranties

- 4.1. In addition to all warranties, terms or conditions expressed or implied by law or otherwise, the Supplier warrants that the Goods and/or Services supplied:
- (a) are of a good quality as determined by good industry practice in which the Supplier operates;
  - (b) in respect of goods comprising the relevant Goods and/or Services, at the time of delivery such goods are free from defects, are of merchantable quality, are of good material and workmanship, new and unused, and are fit for their normal purpose, or any other purpose PHF Science has made known to the Supplier or its agents or that the Supplier has represented they are or will be fit;
  - (c) in respect of services comprising the relevant Goods and/or Services, the Supplier shall exercise the degree of skill, care and diligence expected from competent, qualified and experienced professionals in performing the relevant services;
  - (d) comply with any specifications, supplied descriptions or samples, and all statutory or regulatory requirements;
  - (e) are free of any security interest, lien or other encumbrance (not otherwise disclosed to PHF Science), and that PHF Science will have undisturbed possession of the Goods and/or Services; and
  - (f) do not, and will not, infringe any rights, including intellectual property rights, of any person.
- 4.2. The Supplier shall ensure that the benefit of any manufacturer's warranties relating to the Goods and/or Services, or component parts of the Goods and/or Services, are passed on to PHF Science. The Supplier further warrants that it has the right to sell the Goods and/or Services to PHF Science upon the terms of this Purchase Order and that in providing the Goods and/or Services it has complied with all applicable laws, regulations and any codes of practice, if applicable, including but not limited to the approved codes of practice under the Health and Safety in Employment Act 2015 and associated regulations (or any legislative or regulatory instrument superseding it).
- 4.3. If the Goods and/or Services provided by the Supplier fail to comply with any of the warranties above, then PHF Science may, at any time, without limiting or waiving any of its other rights against the Supplier, and at its absolute discretion:
- (a) require the Supplier to remedy, repair or replace the relevant Goods and/or Services at the Supplier's cost and within a reasonable period; or
  - (b) cancel the order and return the Goods and/or Services to the Supplier, whereupon the Supplier shall promptly refund any amounts paid by PHF Science for the relevant Goods and/or Services and all reasonable costs PHF Science has incurred in the cancellation, including any costs associated with returning any Goods and/or Services.
- 4.4. The Supplier indemnifies PHF Science against any damage, loss, liability cost, claim or expense (including reasonable legal expenses) that PHF Science incurs as a result of any defective Goods and/or Services or any failure to comply with the warranties above.

#### 5. Intellectual property

- 5.1. Each party shall retain ownership of all intellectual property owned prior to entry into, or developed by that party independently of, this Purchase Order.
- 5.2. Any new intellectual property developed in connection with the provision of the Goods and/or Services under this Purchase Order (including intellectual property in any Goods and/or Services and any original work, process, design, ideas, concepts, or other material produced or developed by the Supplier, or any employee or subcontractor of the Supplier, and arising from the Supplier's engagement with PHF Science) will become the property of PHF Science as such rights arise, and PHF Science shall have full rights to such work, process, design or other material. The Supplier automatically assigns any such intellectual property rights to PHF Science and waives any moral rights, unless expressly agreed in writing to the contrary.
- 5.3. The Supplier shall execute any and all such documents required to give full effect to clause 5.2.
- 5.4. The Supplier:
- (a) may only use PHF Science's intellectual property for the purpose of providing the Goods and/or Services, and only to the extent agreed by PHF Science in writing. The Supplier does not otherwise obtain any interest in or right to PHF Science's intellectual property; and
  - (b) grants PHF Science a non-exclusive, perpetual, royalty free licence to any existing intellectual

property, to the extent necessary for PHF Science to use and commercially deal with the Goods and/or Services.

- 5.5. The Supplier hereby indemnifies and will keep PHF Science indemnified against all costs, damages, proceedings, losses, liabilities or other expenses (including reasonable legal fees) incurred by PHF Science resulting from any failure of the Goods and/or Services, including, but not limited to, any failure to comply with the warranties above, or actual or alleged infringement of intellectual property rights.

#### 6. Te Tiriti

- 6.1. PHF Science and the Supplier will ensure that cultural, Te Tiriti, and Māori matters are properly taken into consideration when undertaking any activities relating to this Purchase Order. PHF Science and the Supplier acknowledge:
- (a) the importance and validity of Mātauranga Māori and Kaupapa Māori;
  - (b) that Mātauranga Māori and Kaupapa Māori are kept and treated as proprietary by whanau, hapū and iwi; and
  - (c) neither party has any rights to Mātauranga Māori or Kaupapa Māori.
- 6.2. If a party to this Purchase Order intends to use Mātauranga Māori or Kaupapa Māori in connection with this Purchase Order, that party will:
- (a) consult with the relevant whanau, hapū or iwi to reach kotahitanga (consensus) in writing on how that Mātauranga Māori or Kaupapa Māori will be used, including in any potential new intellectual property or publication; and
  - (b) subject to the kotahitanga reached above, where that Mātauranga Māori or Kaupapa Māori is to be used to be communicated with any third party (either verbally or in writing), it will be accompanied by an explicit acknowledgement of the contributing whanau, hapū or iwi.

#### 7. Liability and insurance

- 7.1. Neither party shall be liable for any indirect or consequential loss or damage, arising out of or in connection with this Purchase Order.
- 7.2. Subject to clauses 7.1 and 7.3, each party's total aggregate liability under or in connection with this Purchase Order, whether in contract, or tort (including negligence) or otherwise, will:
- (a) In the case of PHF Science, not exceed an amount equal to the Price paid and payable under this Purchase Order; and
  - (b) In the case of the Supplier, not exceed an amount equal to three times the Price payable under this Purchase Order.
- 7.3. Notwithstanding clauses 7.1 and 7.2, liability shall remain unlimited in relation to clauses 4.4, 5.5, breach of clause 8 (Confidentiality), or for fraud or wilful default. For the purposes of this clause, wilful default means deliberate conduct by a person who knows that they are committing, and intend to commit, a breach of duty or contractual obligation with intent to cause harm, or are reckless in the sense of not caring whether or not they commit a breach of duty or contractual obligation which may result in harm, but does not include negligence or breach of contract in the absence of the other elements set out in this definition.
- 7.4. The Supplier shall at all times have in place reasonable insurance cover (including but not limited to professional indemnity insurance and public liability insurance) to PHF Science's satisfaction in relation to the Supplier's delivery of the Goods and/or Services. On PHF Science's request, the Supplier shall provide PHF Science with copies of policy certificates for that insurance.

#### 8. Confidentiality

- 8.1. For the purposes of this clause, "**Confidential Information**" means all information that by its nature could reasonably be considered to be confidential, including but not limited to: (a) any secret process or formula, trade secret, list of customers or suppliers, business statistics, or any other information which is within or may come to the Supplier's knowledge concerning PHF Science, its employees, methods, business or finances, its customers or clients and their identity, its subsidiaries, and its administration or operation; or (b) any form of intellectual property right or proprietary interest of PHF Science, whether registered or not.
- 8.2. The Supplier shall: (a) only use the Confidential Information for the purpose of providing the Goods and/or Services; (b) not disclose any Confidential Information to any person or third party, other than to a person, entity, or third party authorised by the PHF Science in writing to receive it; and (c) take reasonable steps to safeguard the Confidential Information, including observing all of PHF Science's notified security requirements.
- 8.3. The restrictions in clause 8.2 shall not apply to the extent that:
- (a) the Confidential Information enters the public domain through no fault of the Supplier;
  - (b) the information is obtained from a third party who is lawfully in possession of the information and is not under any obligation of confidentiality;
  - (c) PHF Science consents in writing to the disclosure; or
  - (d) the disclosure is required by law or any Government Agency, any minister of the Crown or parliamentary officer or body, provided that the Supplier, as the party required to disclose the Confidential Information must, where lawful to do so, notify PHF Science of such requirement and liaise with PHF Science regarding that requirement prior to disclosure.
- 8.4. On completion of delivery of the Goods and/or Services, the Supplier (and any persons engaged by

the Supplier to provide the Services) shall:

- (a) immediately, at PHF Science's request, securely destroy or deliver up to PHF Science all of the Confidential Information;
- (b) except as required by law, not retain possession or control of any copies or extracts of Confidential Information without the express written approval of PHF Science; and
- (c) not approach, undertake, canvass, solicit, or entice the business of clients of PHF Science, using any Confidential Information, for or with whom the Supplier has worked while engaged by PHF Science.

## **9. Privacy**

- 9.1. The Supplier shall treat any personal information it receives under or pursuant to this Purchase Order as strictly confidential, will keep it safely and will not use it or disclose except as strictly necessary for the purpose of performing the Services, or as otherwise agreed with PHF Science in writing or otherwise as permitted under the Privacy Act 2020 (as may be amended).
- 9.2. The Supplier must at all times comply with the Privacy Act 2020 and not do anything that would cause PHF Science to breach the Act. The Supplier must provide PHF Science with all information and assistance PHF Science reasonably requires to comply with PHF Science's obligations under the Act in relation to this Purchase Order.
- 9.3. The Supplier shall not transfer or allow any personal information to be transferred outside of New Zealand without PHF Science's prior written consent.
- 9.4. The Supplier warrants that it has and will continue to have appropriate operational and technological processes and procedures in place to safeguard against any unauthorised access, loss, destruction, theft, misuse or unauthorised disclosure of any personal information received by it under or pursuant to this Purchase Order.
- 9.5. The Supplier shall notify PHF Science as soon as practicable of the Supplier becoming aware of any breach or alleged breach of the Privacy Act 2020 by the Supplier whether directly or indirectly in relation to personal information provided to it or otherwise accessed or held by it under or pursuant to this Purchase Order, including any "privacy breach" (as defined under the Privacy Act 2020). The notification must include the actions the Supplier proposes to take to deal with any such breach or alleged breach. The Supplier shall provide PHF Science with full co-operation and assistance in relation to any privacy breach (whether actual or alleged) in relation to this Purchase Order.

## **10. Dispute Resolution**

- 10.1. Any dispute arising under this Purchase Order whether as to interpretation of any provision of this Purchase Order or to its application shall be dealt with:
  - (a) by direct negotiation between the parties; or failing such agreement;
  - (b) by mediation in terms of the Resolution Institute standard mediation agreement; or failing such agreement;
  - (c) where both parties agree in writing, arbitration by such person as the parties may agree upon, or failing such agreement, by such person as shall be appointed by the President of the New Zealand Law Society. Such arbitration shall be conducted in accordance with the Arbitration Act 1996.
- 10.2. Each party will pay its own costs of mediation or arbitration under this clause 10.

## **11. General**

- 11.1. PHF Science may assign or transfer all or any of its rights and obligations under this Purchase Order to anyone else, without obtaining the Supplier's consent provided that such assignor agrees to be bound by the terms of this Purchase Order. Notice of assignment will be provided to the Supplier. The Supplier may not assign or transfer any of its rights or obligations under this Purchase Order to anyone else unless PHF Science provides its prior consent in writing.
- 11.2. This Purchase Order does not create an employment, fiduciary, partnership, agency or joint venture relationship between the parties.
- 11.3. This Purchase Order records the full agreement between the parties concerning the Goods and/or Services to be provided to PHF Science and supersedes any agreement, written or oral, or product of past practice, existing between the parties.
- 11.4. Each term of this Purchase Order is separately valid and binding. If for any reason either party cannot rely on any term, all other terms will remain valid and binding.
- 11.5. No failure, delay or indulgence by either party in exercising any power or right conferred on that party by this Purchase Order will operate as a waiver of such power or right.
- 11.6. This Purchase Order will be governed exclusively by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.