

## Amprocontrol NZ Conditions of Purchase

### 1. Contract

- (a) These Conditions of Purchase, the Purchase Order ("Order") and any other document stated in the Order, shall constitute a binding Contract ("Contract") between the Vendor ("Supplier") named on the Order and the Amprocontrol entity ("Buyer") named on the Order (together referred to as the "Parties").
- (b) The Supplier must give the Buyer written acceptance of the Order within 72 hours, otherwise acceptance will be deemed immediately upon verbal acknowledgement of the Order or commencement by the Supplier.
- (c) This Agreement overrides the entire agreement between the parties in relation to its subject matter, and supersedes all previous communication, understandings or agreements between the Parties.
- (d) If there is any inconsistency between these Conditions of Purchase and the Order, the conditions in the Order shall prevail to the extent of any inconsistency, excluding cl.7 which prevails over any other inconsistency.
- (e) If the Supplier discovers any ambiguity or discrepancy in the Contract, the Supplier shall immediately notify the Buyer, who will in its absolute discretion determine the correct interpretation. This determination will be final and binding on the Parties, and subject to cl.2(b), shall have no effect on the Price.

### 2. Price

- (a) Unless otherwise stated on the Order, the price specified on the Order ("Price") is in New Zealand dollars and is inclusive of:
  - (i) the cost of delivery, including insurance, duties, Goods and Services Tax ("GST"), other taxes, packing and any other costs or concessions associated with manufacturing, delivery and supply of the Goods and/or Services (the "Supply"); and
  - (ii) two hard copies and one electronic copy of all technical materials relating to the Goods and/or Services.
- (b) The Price stated on the Order is not subject to change without the express written authorisation of the Buyer. The Buyer reserves the right to make any changes necessary to the Price due to an act or omission by the Supplier, or to correct any typographical or clerical errors in the Contract which shall be binding on the Parties.
- (c) The Buyer may reject, without payment, any invoice that is not a valid GST tax invoice (as described in section 24 of the Goods and Services Tax Act 1985).
- (d) Where there is any adjustment in relation to the Supply, the Price must be varied to account for any variation in GST applicable to the Supply.
- (e) If one of the Parties is entitled to be reimbursed for an expense or outgoing incurred in connection with the Contract, the amount of reimbursement will be net of any GST input tax credit which may be claimed by the party being reimbursed in relation to that expense or outgoing.

### 3. Delivery

- (a) The Supplier must deliver Free into Store ("FIS") the Goods and/or Services to the nominated delivery address.
- (b) The Supplier shall be deemed to have delivered the Supply only where it obtains a receipt or signed delivery docket, quoting the Order number, item number and a detailed description of the Goods and/or Services, from an authorised officer of the Buyer.
- (c) All Goods shall be suitably packaged, labeled, stored and transported in compliance with relevant standards and regulations relative to the Goods being supplied.
- (d) The Buyer will not be deemed to have accepted the Supply until it has had a reasonable time to inspect the Supply, and notified the Supplier in writing of acceptance.
- (e) Any receipt, review, inspection, examination or witnessing of testing of the Supply by the Buyer does not relieve the Supplier of its responsibilities under this Agreement, and does not constitute acceptance of the Supply.
- (f) Risk does not pass to the Buyer until the delivery or completion of the Supply, and acceptance of the Supply by the Buyer. If acceptance is not communicated to the Supplier within 30 after completion or delivery, the Supply shall be deemed to have been accepted by the Buyer.
- (g) Property in the Goods, including packaging, shall pass to the Buyer on delivery of the Goods to the delivery address or payment by the Buyer, whichever is the earlier.
- (h) The quantity delivered shall not be in excess of that ordered, any excess shall be returned collected by the Supplier from the Buyer's premises at the Suppliers cost.

### 4. Time

- (a) Time is of the essence. Where a delivery or completion date is stated on the Order, that date must be met in accordance with the terms of the Contract, and delivered during normal business hours of the Buyer unless otherwise agreed in writing by the Buyer in relation to a specific delivery.
- (b) If the Supplier fails to comply with cl.4(a) or if the Supply is rejected by the Buyer, the Buyer shall be entitled to, in addition the rights in cl.13, deduct from monies due to the Supplier, as liquidated damages representing a genuine pre-estimate of the Buyer's loss, an amount equal to one (1) per cent of the total value of the Order for each day by which delivery exceeds the delivery date.

### 5. Payment

- (a) The Supplier shall be entitled to submit an Invoice to the Buyer for the amount due to the Supplier under the Contract, upon the supply of the Goods and/or Services as stated in the Order.
- (b) The Invoice shall include details of the Price, value of the work performed and materials supplied under the Contract.
- (c) Each Invoice must include the Order number and be supported by evidence of the amount due to the Supplier and such other information as the Buyer shall reasonably require.
- (d) Without limiting the Buyer's rights under any other provision of the Contract, the Buyer may deduct from or set-off against any monies which may be or thereafter become payable by the Buyer to the Supplier, including, but not limited to:
  - (i) any debt due from the Supplier to the Buyer under or in connection with the Contract or otherwise; and
  - (ii) any claim which the Buyer may have against the Supplier under or by virtue of any provision of the Contract or otherwise at law or in equity, or for any over-payment by the Buyer to the Supplier.
- (e) Subject to compliance with this clause 5, the Buyer must pay the Supplier within 30 days after the end of the month within which a valid GST tax invoice from the Supplier was received, or as otherwise agreed in writing.

### 6. Insurance

- (a) The Supplier must, and ensure its contractors or subcontractors must, before commencing the Supply, effect and maintain any and all necessary insurances as specified in the Order, or if no insurances are specified in the Order the following insurances as a minimum:
  - (i) insurance for any equipment provided under the Contract, for its full replacement value, against any loss or damage, including loss or damage in transit and unloading, until acceptance of the Supply has been made by the Buyer in accordance with clause 3(d);
  - (ii) a comprehensive Public and Products Liability insurance policy for at least \$10 million, for any one occurrence, for any loss or damage to property and/or the death of or injury to any person arising out of or in connection with the Contract;
  - (iii) a Professional Indemnity insurance policy for at least \$5 million, for any one occurrence, and maintained for a period of 6 years from the cessation of the Supply, in respect of the performance of the Contract; and
  - (iv) insurance against statutory and common law liability for death or injury to persons employed by the Supplier.
- (b) The Buyer shall be noted as an interested party on any of the Supplier's insurance policies required under the Contract
- (c) Excluding cl.6(a)(iii), all insurances required under the Contract shall be maintained until risk in the Supply passes to the Buyer in accordance with clause 3(f).
- (d) The Supplier must provide evidence of the currency of insurance required by the Contract to the Buyer within 7 days of the commencement of the Supply.
- (e) If the Supplier fails to maintain the insurances required by the Contract, without prejudice to any other rights or remedies, the Buyer may effect and maintain such insurances and recover from the Supplier the amount paid under this clause 6(e), which the Supplier agrees to pay on demand.

### 7. Indemnity

- (a) Without limiting the Buyer's other rights and remedies, the Supplier shall indemnify, keep indemnified, and hold harmless the Buyer from and against all actions, claims, loss, damage, expense, liability or demand, incurred as a result of or in connection with:
  - (i) the negligent act or omission of the Supplier;
  - (ii) death, personal injury to any person or loss of or damage to any property, arising out of or in connection with the Supply;
  - (iii) any claim made against the Buyer by any of the Supplier's employees, agents, or contractors;
  - (iv) any penalty imposed for breach of an applicable law caused by the Supplier during the performance of the Supply;
  - (v) any breach of any warranty or any terms and conditions of the Contract by the Supplier; and
  - (vi) a claim by a third party, including any alleged infringement of any intellectual property right in relation to the Goods and/or Services provided under the Contract.

### 8. Warranty

- (a) The Supplier warrants that the Goods and/or Services will comply with the warranties stated in cl.8(b) for a minimum of 12 months from date of acceptance by the Buyer.
- (b) The Supplier warrants that the Goods and/or Services:
  - (i) will be supplied in accordance with a quality system approved to NZS9001:2000 or other recognised industry standard;
  - (ii) will meet the description, specifications & quality standards set out in the Order, and at all times conform to all instructions, specifications, drawings & other technical documents provided by the Buyer to the Supplier;
  - (iii) will conform with any description, representation or samples provided by the Supplier to the Buyer (including those provided before issuing the Order or contained in the Suppliers brochures, product information or other marketing material);
  - (iv) are free of any omission, defect or failure in design, materials or workmanship, or any other failures which render them unsuitable for the Buyer's requirements;
  - (v) will operate satisfactorily and reliably under all conditions, unless otherwise specified;

- (vi) are fit and sufficient for the purpose for which Goods and/or Services of the same kind are commonly supplied and for their contemplated use by the Buyer;
  - (vii) are made with new materials and are themselves new, unless otherwise specified in writing in the Order;
  - (viii) are of the quality specified or are the best merchantable quality;
  - (ix) are free of any liens, charges, encumbrances, mortgages or other defects in title, that free and clear title to the Goods and/or Services will pass to the Buyer at the time provided in the Contract, and that the Supplier will be entitled quiet possession and enjoyment from delivery of the Goods or completion of the Services;
  - (x) do not and will not infringe any rights of third parties (including, without limitation, any intellectual property rights, copyright or patents); and
  - (xi) will comply with all relevant Acts, Regulations, By-laws, Codes, Standards statutory requirements, applicable laws, notices, directions and requirements.
- (c) If the manufacturer of a component, part or good provides a more extensive warranty than contained in this Agreement, the Supplier must extend an equivalent warranty and guarantee to the Buyer, as is provided from the manufacturer to the Supplier.
  - (d) Prior to acceptance of the Supply, the Supplier must, without delay and at no cost to the Buyer, repair, modify, replace or re-supply any defect, fault, failure or omission which has been specified in the notice of rejection of the Supply.
  - (e) Pursuant to cl.8(b) and cl.8(c) the Supplier shall be liable for any resulting costs and expenses incurred directly or indirectly by the Buyer or the Supplier, and must at the request of the Buyer:
    - (i) refund the Price (as defined in cl.2(a)) without deduction or counterclaim; or
    - (ii) repair, modify or replace the Goods; or
    - (iii) re-supply any Services which were in the opinion of the Buyer, not supplied in accordance with the Contract.
  - (f) The Buyer may, at its option and without prejudice to any other rights and remedies, arrange for the repair, modification, replacement or re-supply of the Goods and/or Services referred to in 8(d) or cl.8(e) by a third party or itself, whereby all resulting costs and expenses shall be borne by the Supplier.
  - (g) Any repairs or replacement Goods and/or Services provided under or in connection with the Contract shall, from the date of repair or replacement, be subject to the same warranty as the original Goods and/or Services.
  - (h) The warranties and representations contained in the Contract are in addition to any warranties or guarantees implied by statute or at law which are applicable to the Supply.

### 9. Confidentiality

- (a) The Supplier shall keep confidential the Contract and all information created under or in connection with the Contract and shall only disclose them as required by law or to those employees, servants or agents as necessary to enable the Supplier to meet the Contract requirements.
- (b) All information, contained in the Order or relating to the Contract including but not limited to specifications, plans, designs, drawings and documentation vests in the Buyer on creation, and remains the property of the Buyer at all times.

### 10. Intellectual Property

- (a) The Buyer acknowledges the ownership of all intellectual property rights which are in existence prior to the date of the Contract, and otherwise than in connection with the Contract remain with the Supplier. The Supplier grants to the Buyer a perpetual, transferable, worldwide, royalty-free licence to use such intellectual property rights for the installation, use, support, repair, maintenance or alteration of the Supply.
- (b) Ownership of any intellectual property created by the Supplier under or in connection with the Contract will automatically vest in the Buyer. The Buyer grants the Supplier a revocable, non-transferable licence to use such intellectual property solely for the purpose of the Contract.

### 11. Subcontractor Assignment

- (a) The Supplier must not assign, sub-licence, sub-contract or transfer in whole or in part any of its interests, rights or obligations under the Contract without the Buyer's prior written consent, which consent may be granted, withheld or granted subject to conditions in the Buyer's absolute discretion.
- (b) Where the Buyer grants consent under cl.11(a), such consent shall not relieve the Supplier from its obligations under the Contract.

### 12. Buyer's Rights

- (a) The Buyer reserves the right to enter the Suppliers premises and inspect all or any part of the contracted work, including sub-contracted work.
- (b) The Buyer reserves the right to suspend the Contract, at no cost or liability to the Buyer, where the reason for doing so is beyond the reasonable control of the Buyer.
- (c) The Buyer's rights, remedies and powers under the Contract are in addition to any rights, remedies and powers provided by law.

### 13. Breach, Termination and Variation

- (a) The Buyer may, without prejudice to any other rights and remedies, terminate the Contract by written notice to the Supplier, where:
  - (i) the Goods and/or Services are not supplied by the time stipulated in the Order; or
  - (ii) the Supplier is in breach of a term of the Contract and fails to remedy the breach within 14 days of receipt of a written notice from the Buyer specifying the breach and its rectification; or
  - (iii) the Buyer is of the reasonable opinion that the Supplier is unable or unwilling to comply with its obligations under the Contract with due diligence or in a competent manner; or
  - (iv) if the Supplier becomes bankrupt, insolvent, goes into liquidation, or is placed into receivership, or an administrator is appointed in respect of the Supplier, or an order is made for the winding-up of the Supplier.
- (b) The Order may be varied or terminated by the Buyer in whole or in part, at any time, by the Buyer serving on the Supplier a written notice specifying the extent to which the Order is varied or terminated, and the date upon which such variation or termination becomes effective.
- (c) The Supplier shall be liable to the Buyer for any loss whether direct, consequential, economic or otherwise suffered by the Buyer and arising out of or in connection with termination or breach of the Contract pursuant to this cl.13.
- (d) The Buyer shall not be liable to the Supplier for any loss, whether direct, indirect, consequential, and economic or otherwise, suffered by the Supplier and arising out of or in connection with termination of the Contract pursuant to this cl.13.
- (e) If the Supplier breaches a term of the Contract and the Buyer does not terminate the Contract pursuant to this cl.13, the Buyer shall not be bound to perform its obligations under the Contract until the breach is remedied by the Supplier.
- (f) Any expiration or termination of the Contract does not affect any rights of the Parties which may have accrued before the date of expiration or termination, and the rights and obligations of the Parties under clauses 7, 9, 10 & 16 which survive the expiration or termination of the Contract.

### 14. Dispute Resolution

- (a) If any dispute arises between the Parties concerning this Agreement (including any dispute as to breach or termination of this Agreement), the Parties shall without prejudice to any other right or entitlement they may have under this Agreement or otherwise, explore whether the dispute can be resolved by the use of the alternative dispute resolution technique of mediation. The rules governing such techniques shall be agreed between the Parties or as selected by the New Zealand Chapter of LEADR (Lawyers engaged in Alternative Dispute Resolution).
- (b) If the dispute is not resolved within 28 days of written notice by one party to the other of the dispute (or such further period agreed in writing between the Parties), the Parties shall submit to the arbitration of a sole arbitrator appointed jointly by the Parties, and if one cannot be agreed upon within 14 days, to an arbitrator appointed by the President for the time being of the New Zealand Law Society or his or her nominee. In either case, the arbitrator shall not be a person who has participated in any informal dispute resolution procedure in respect of the dispute.
- (c) Such arbitration shall be determined in accordance with the Arbitration Act 1996 and the law of New Zealand.

### 15. Force Majeure

- (a) Neither party shall be liable to the other for any act, omission or failure to perform any of the obligation in the Contract if such act, omission or failure arises or continues from any cause beyond the control of that party ("Force Majeure event"), provided that each party shall take all proper and reasonable steps to minimise any loss, damage or delay caused by any such cause and further, provided that the affected party gives written notice to the other party within 7 days of the date of occurrence, included in the notice will be details of the delay and likely duration of the delay, and that party has not contributed to the delay.
- (b) The Parties must take all reasonable steps to prevent, circumvent or minimise the delay under cl.15(a).
- (c) The Force Majeure event only suspends the obligations affected by the delay, and will not affect any other rights or obligations of the Parties. The affected Party must re-commence the suspended obligation immediately on conclusion of the Force Majeure event.

### 16. General

- (a) Headings appear as a matter of convenience only and will not affect the interpretation or meaning of the Contract.
- (b) The Contract shall be governed by the laws of New Zealand and the parties agree to submit to the non-exclusive jurisdiction of the courts of New Zealand. Any reference to legislation includes references to delegated legislation made under that legislation and to legislation in substitution for or in amendment of the same.
- (c) In the event of any of the terms and conditions of the Contract being declared legally invalid or unenforceable, the provision should be read down to the minimum extent necessary to render it enforceable and valid, and if incapable of being read down, it will be severed from the remainder of these conditions which shall not be affected by such severance.
- (d) Any failure or delay on the part of the Buyer to exercise any of its rights or obligations under the Contract shall not be construed as constituting a waiver, nor impair the Buyer from later pursuing the right or obligation.
- (e) Nothing in the Contract constitutes a joint venture, agency, partnership or other fiduciary relationship between the Parties. The Supplier acknowledges that it has no authority to bind the Buyer. At all times during the Contract, the Supplier is an independent party and not an employee or agent of the Buyer.