

## **GENERAL TERMS AND CONDITIONS OF PURCHASE OF GOODS AND SERVICES**

### **1. Terms and Conditions Applying**

- 1.1 These General Terms and Conditions, together with any Special Terms and Conditions (together the "Terms"), along with the relevant Purchase Order, apply to and govern the purchase of all goods and/or services delivered or supplied by you to us.
- 1.2 Each Purchase Order for goods and/or services submitted by us incorporates, and is subject to, these Terms notwithstanding anything to the contrary in any documentation from you. By supplying us goods and/or services outlined in a Purchase Order, you are deemed to have read and agreed to these Terms applying in preference to any other terms.
- 1.3 In the event of any conflict between these General Terms and Conditions and any Special Terms and Conditions, the Special Terms and Conditions will prevail.
- 1.4 No variation of these Terms or any Purchase Order will be accepted unless expressly agreed to by us in writing.

### **2. Definitions and Interpretation**

- 2.1 In these Terms, unless the context otherwise requires:
  - a. "GST" means goods and services tax chargeable or for which a person may be liable under the Goods and Services Tax Act 1985.
  - b. "Price" means the price (exclusive of GST) payable for the goods and/or services as specified in a Purchase Order. The price is inclusive of all costs associated with the supply of the goods and/or services (other than GST), including, without limitation, import duties and taxes, freight, packaging, insurance, assembly, installation and commissioning (as applicable).
  - c. "Purchase Order" means a purchase order provided in accordance with clause 3.1.
  - d. "You" and "your" means the supplier of the goods and/or services to us and your permitted successors and assigns.
  - e. "We", "our" and "us" means Rhino Group Holdings Limited and our Related Companies, together with our permitted successors and assigns.
  - f. "Related Company" means any company owned or controlled by Rhino Group Holdings Limited, including Rhino Manufacturing Limited.
  - g. "Site" means any site owned or leased by us and any other site where goods, products, equipment or material owned or leased by us may be situated from time to time.
- 2.2 In these Terms:
  - a. Words referring to the singular include the plural and vice versa;
  - b. Everything expressed or implied in these Terms which involves more than one person binds and benefits those people jointly and severally;
  - c. Clause headings are for reference purposes only;
  - d. A reference to a person includes any other entity or association recognised by law;
  - e. All reference to dollars and \$ are references to New Zealand dollars unless otherwise stated;
  - f. Time is of the essence.

### **3. Purchase Orders**

- 3.1 We will confirm orders for goods and/or services by issuing you a purchase order. That purchase order will specify (as applicable):
  - a. The quantity of goods required;
  - b. The services required;
  - c. The Price payable for the goods and/or services, delivered to our nominated delivery address;
  - d. The date on which the goods or services are to be delivered by and the address at which the goods are to be delivered or the services are to be performed;
  - e. Any other particular requirements relating to the supply of the goods or services, for example, specifications.
- 3.2 If you do not accept the Purchase Order you must notify us within 3 working days of the date of the Purchase Order. If you do not notify us within this time period you will be deemed to have accepted the Purchase Order and will be bound to supply the goods and/or services specified in that Purchase Order.

### **4. Price and Payment**

- 4.1 The Price is as set out in the Purchase Order (unless otherwise agreed in writing). Unless otherwise stated in the Purchase Order the Price is in New Zealand dollars.
- 4.2 Payment by us will be subject to receipt from you of a valid GST invoice. The tax invoice must quote the Purchase Order number. Further, all invoices or claims issued for goods and/or services covered by the Construction Contracts Act 2002 shall be subject to the following provisions and procedure:
  - a. You will issue monthly Progress Payment Claim/s within the meaning of and compliant with the Construction Contracts Act 2002.
  - b. Each Payment Claim shall be served on us not later than 5pm on the 25th day of the month, failing which we may elect without notice to you to treat it as deemed to be served on the 25th day of the following month.
  - c. Not later than 20 working days after the date of service, or deemed service as set out above, of the Payment Claim we will serve on you a Payment Schedule within the meaning of the Construction Contracts Act 2002 and pay you the scheduled amount.
- 4.3 Except where otherwise provided in a Payment Schedule, we will pay you the Price (plus GST) by the 20<sup>th</sup> of the month following the invoice date.
- 4.4 Neither the issuing of a Payment Schedule or payment of a scheduled amount constitutes final acceptance or approval of the goods and/or services scheduled and/or paid for.
- 4.5 We may set off any amount you owe us which remains unpaid 30 days after the payment due date against any Price payable by us to you.

### **5. Your obligations**

- 5.1 You must supply the goods and/or services in accordance with the terms of the Purchase Order, these Terms and any specifications provided by us to you from time to time.
- 5.2 You must hold all consents, permits and licences necessary to provide the goods and/or perform the services.
- 5.3 You must comply with all Rhino Group Policies applicable to the provision of the goods and/or services, as provided to you from time to time.
- 5.4 While on any Site, you, your employees, representatives and agents must at all times comply with:
  - a. Our site rules, site access and security requirements and our health and safety requirements;

- b. The provisions of any relevant legislation, regulations or standards, including but not limited to the Health and Safety at Work Act 2015;
  - c. Any other reasonable directions given by us.
- 5.5 You must advise us promptly in writing:
- a. Of anything which may or is likely to materially reduce or affect your ability to supply the goods and/or services;
  - b. If you fail or are likely to fail to comply with any of your obligations under these Terms;
  - c. Of any serious complaints or disputes which directly or indirectly relate to the goods and/or services you supply, whether to us or any other third party.
6. **Delivery and Acceptance**
- 6.1 Unless otherwise directed:
- a. You must deliver the goods to or provide the services at the address specified on the Purchase Order, during our usual business hours, and in accordance with any other particular requirements noted on the Purchase Order; and
  - b. Quantities of goods delivered must conform to the quantities ordered by us. Where quantities supplied do not conform with quantities ordered, such goods or services may be accepted or rejected by us in our sole and absolute discretion.
- 6.2 A delivery note quoting the Purchase Order number must accompany each supply of goods. The signing of a delivery note by a representative of ours shall not be taken as acceptance of the quantity or quality of the goods and/or services.
- 6.3 If any goods and/or services fail to comply with our Purchase Order or are defective, whether as to material or workmanship, then irrespective of whether payment has been made, we will advise you in writing of our rejection of the goods and/or services and upon our rejection notice to you, you will at our preferred option and your cost immediately replace the goods and/or services or remedy the problem with the goods and/or services.
- 6.4 We may return any rejected goods to you at your expense.
- 6.5 If you make part delivery and/or fail to deliver the total quantities as stipulated in the Purchase Order we may cancel the entire order at no cost to ourselves and we may return any part deliveries to you at your cost.
- 6.6 Other than as specifically set out in a Purchase Order, we do not guarantee you any specific volume of business. All estimates provided by us are estimates only, and you confirm that these estimates will not be relied on in any circumstances.
- 6.7 You must give us written notice immediately if you:
- a. Are required for any reason to recall or modify all or any of the goods and/or services; or
  - b. Become aware of any non-compliance that affects or has the potential to affect the safety of all or any of the goods and/or services.
- 6.8 If any of the events referred to clause 6.7 occur, you shall:
- a. Consult with us; and
  - b. If required by us, use your best endeavours to provide replacement goods and/or services to us as soon as possible.
7. **Title and Risk**
- 7.1 Title to any goods (including any parts or items supplied as part of a service) passes to us on delivery, but where we pay any part of the Price before delivery then title passes on payment.
- 7.2 Risk remains with you until completion of delivery and acceptance of the goods by us.
8. **Warranties**
- 8.1 You warrant to us that:
- a. Each service and any installation or commissioning of goods supplied will be performed promptly, with due diligence, care and reasonable skill, by appropriately trained, experienced and supervised persons in accordance with best industry standards;
  - b. Clear title to all goods (including any parts or items supplied as part of a service) supplied by you will pass to us at the time title passes;
  - c. Ownership, possession, use or resale of any goods by us will not infringe any proprietary or other intellectual property right or interest of any person;
  - d. All facts, information, representations and statements made or given to us or our employees, agents, representatives or advisers by you, your employees, agents and sub-contractors (if any) are true and accurate in all respects and there is no material information or circumstance pertaining to the goods and/or services that has not been disclosed to us;
  - e. All goods and/or services supplied by you:
    - i. Are of merchantable quality and are fit for their intended purpose; and
    - ii. Comply in all respects with all applicable laws, regulations and standards in New Zealand;
    - iii. Conform to the design, quality, quantity, configuration and description specified to us and to the samples (if any) provided to us;
    - iv. Are free from any defect (including any latent defect) in design, materials, workmanship, faults and do not emit any contaminant or hazardous substance;
    - v. Are appropriately packed and shall be securely stored until completion of delivery and installation (if applicable) to minimise damage, deterioration and theft; and
    - vi. Are new and unused on delivery unless otherwise agreed by us.
- 8.2 These warranties are additional to any other warranties or guarantees given by you or implied by custom or law, whether statutory or otherwise.
9. **Warranty Claims**
- 9.1 If we notify you in writing of a breach of warranty, you shall, at your expense, promptly remedy each claim to our satisfaction.
- 9.2 If you fail to promptly remedy a warranty claim or if we determine that an urgent or other situation so justifies, we may ourselves or via a third party, remedy the breach and recover the cost of doing so from you.
- 9.3 Upon request, you shall promptly, at your own cost, supply us with a report describing the work carried out in the remediation or rectification of any warranty claim.
10. **Third Party Warranties**
- 10.1 You shall pass to us, or if you are unable to do so will hold for our benefit, all warranties provided by third parties in respect of any goods supplied by a third party.
- 10.2 If you are unable to pass a third party warranty to us, you shall be responsible for making all or any warranty claims on any goods supplied by third parties to us at no cost to us.

11. **Intellectual Property**

- 11.1 Where any license or other authorisation from any person is required to own, possess, use or resell any good or any component you will, at no extra cost to us, procure an irrevocable, royalty free, and unrestricted licence on a non-exclusive and transferable basis for us to own, possess, use and resell the good.
- 11.2 All intellectual property owned by us, or which we are otherwise entitled to, is and remains our property and no rights in any such intellectual property is granted to you. All proprietary rights in any intellectual property (including any design, data, specifications, know-how or any other form of intellectual property) that is specifically developed for us as a part of the provision of any goods or service will become our property and if we require you to do so you will assign all rights in any such intellectual property to us and sign such documents as we reasonably require to record that assignment.
- 11.3 Where we provide you with any of our intellectual property for the purpose of supplying goods and/or services to us, such intellectual property is provided pursuant to a revocable, limited licence and may only be used for the purpose of supplying us goods and/or services and for no other purpose. Such licence automatically terminates upon completion of a Purchase Order.
- 11.4 All confidential information and any intellectual property provided by us in connection with any Purchase Order remains at all times our confidential and proprietary information. It must not be disclosed to any unauthorised persons and must be used solely to complete the Purchase Order and for no other purpose, other than where disclosure of such information is required by law or where we have provided our prior written consent to such use or disclosure. Any such information and intellectual property must be returned to us or destroyed at the end of the completion of the Purchase Order or at any time on request from us.

12. **Insurance**

- 12.1 You must maintain necessary insurance cover to meet your obligations under each respective Purchase Order and these Terms. Such cover must be suitable and sufficient to cover you against the risk of legal liability to any person arising in connection with the supply of goods or services under these Terms. You shall (on request by us) provide evidence of the insurances required pursuant to this clause in a form satisfactory to us.

13. **Indemnity**

- 13.1 You agree to irrevocably fully indemnify us, our directors, officers, agents, subcontractors and employees from and against any and all claims, proceedings, costs, expenses, damages and losses arising out of or in any way connected with or related to these Terms or the goods and/or services supplied by or on behalf of you, including without limitation:
- a. Loss or damage to property;
  - b. Injury to any person including injury resulting in death;
  - c. Any negligent or wrongful act or omission by you or any of your employees, agents or contractors in the course of or related to the performance of, or failure to perform, any of your obligations under these Terms;
  - d. Any fraud, dishonesty, misrepresentation or wilful default by you.

14. **Rights and Liabilities**

- 14.1 If you fail to comply with any obligations in these Terms and fail to properly remedy the situation to our satisfaction within five (5) working days after we notify you of the breach or failure, or if you are or become insolvent or bankrupt or go into receivership or liquidation or appoint any receiver or administrator, or enter into any compromise with your creditors, then we may, without limitation to any other right or remedy under these Terms or at law:
- a. Terminate or suspend the Purchase Order(s) or any uncompleted portion thereof;
  - b. Set off against any amount we owe you;
  - c. Recover from you any direct, indirect and consequential losses or damages (including full legal costs) suffered by us.
- 14.2 Notwithstanding the termination or suspension of the Purchase Order or any uncompleted portion thereof, clauses 7-15 of these Terms remain in full force and effect.
- 14.3 Except to the extent required by law, we have no liability whatsoever (including, but without limitation, in equity, contract or tort, including negligence) to you or any other person for direct or indirect or consequential losses, damages, costs, expenses or any monetary value suffered by you or any other person.
- 14.4 In the event we are found to have any liability to you at law, our liability to you (including, but without limitation, in equity, contract or tort, including negligence) is always limited to the price payable in respect of the relevant Purchase Order.

15. **Dispute Resolution**

- 15.1 Where any dispute arises between you and us concerning the goods or services supplied, or these Terms, we may attempt to settle any such dispute by negotiation or mediation. There is, however, no requirement to attend mediation or settlement discussions prior to issuing formal proceedings.
- 15.2 The provisions of clause 15.1 will not limit or affect the right of the parties to apply to a Court at any time for any interim or preliminary relief in respect of the dispute.

16. **Personal Guarantee**

- 16.1 Upon request by us you shall procure a personal guarantee of your performance of these Terms (in the form attached) from such person or persons as we may request.

17. **General**

- 17.1 You may not assign or sub-contract any of your rights and obligations in respect of a Purchase Order or these Terms, except with our prior written consent.
- 17.2 You acknowledge that you are an independent contractor and nothing in a Purchase Order or these Terms may be construed to make you a partner, servant, agent or employee of us.
- 17.3 We may set off any sums due or owed to you against any monies owing by you to us.
- 17.4 These Terms and the Purchase Order constitute the entire agreement between the parties and no modifications are binding unless mutually agreed to in writing.
- 17.5 No delay or failure to act is a waiver. No waiver is effective unless it is in writing and signed by an authorised officer of the party granting the waiver.
- 17.6 If a provision is invalid or unenforceable the remaining provisions will continue in full force and effect.
- 17.7 These Terms are also for the benefit of, and enforceable by, any Related Company of Rhino Group Holdings Limited in accordance with the Contract and Commercial Law Act 2017.
- 17.8 The Purchase Order and these Terms are governed by and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

## **SPECIAL TERMS AND CONDITIONS OF PURCHASE OF GOODS AND SERVICES**

### **1. Exclusivity - Goods**

1.1 In consideration for payment of the Price:

- a. You agree not to manufacture and/or supply any goods to any person where the manufacture or supply of such goods makes any use of our intellectual property or confidential information; and
- b. Where goods are manufactured or developed specifically for us you agree not to supply to any person other than us any goods that are the same or similar to goods we engage you to develop and supply to us,

in each case without first obtaining our prior written consent.

1.2 This clause survives termination or expiry of any Purchase Orders or these Terms.

### **2. Exclusivity - Services**

2.1 In consideration for payment of the Price:

- a. You agree not to supply any services to any person where the supply of such services makes any use of our intellectual property or confidential information; and
- b. Where services are designed or developed specifically for us you agree not to supply to any person other than us any services that are the same or similar to services we engage you to develop and supply to us, in each case without first obtaining our prior written consent.

2.2 This clause survives termination or expiry of any Purchase Orders or these Terms.

### **3. Cancellation**

3.1 We may cancel a Purchase Order without cause by giving you three (3) working days written notice and no liability or monies owing will be incurred by us.

### **4. Insurance**

4.1 Without limiting clause 12.1 of the General Terms, we require you to have and maintain the following insurance cover in relation to the provision of goods and/or services:

- a. Material Damage Insurance cover.
- b. Public and Product Liability Insurance in an amount not less than \$10 million;
- c. Statutory (Fines and Penalties) Liability \$1 million;
- d. Employers Liability \$1 million;
- e. Motor Vehicle Third Party Liability \$10 million
- f. Professional Indemnity Insurance in an amount not less than \$1 million.

Evidence of such insurance cover must be provided to us upon request.