

## DEPARTMENT OF CORRECTIONS – GENERAL TERMS AND CONDITIONS OF SUPPLY

If a Supplier supplies goods or provides services to the Department of Corrections (“the Department”), these General Terms and Conditions shall apply in the absence of a current specific agreement between the Department and the Supplier in regard to that supply of goods or provision of services.

**1. Scope:** The Supplier will supply goods or provide services ordered by the Department with an official Departmental purchase order or purchased with a Departmental purchasing card.

**2. Competitive Pricing:** The Supplier will supply goods or provide services at competitive prices and to each of the Department’s sites and locations at the same pricing.

**3. Priced goods lists or catalogues:** The Supplier must where possible provide priced goods list/s or catalogue/s, in a format that is compatible with the electronic purchasing and payment system/s being operated by the Department, for use on official Departmental purchase orders. Once provided the Supplier will be bound for all goods and services that may be ordered by the Department (subject to use of the price change mechanism referred to in clause 5 below) to supply the goods shown on the list/s or catalogue/s at no more than the prices identified. For the avoidance of doubt it is confirmed that the Department shall not be obliged to order or purchase any goods or services from any Supplier.

**4. Minimum order values:** No minimum order values or premiums for small orders or purchases will be charged or paid.

**5. Price changes:** Price changes to Supplier goods list/s or catalogue/s will only be accepted in writing from the Supplier and need to be sent to the Department at least 28 days prior to the increase taking effect. The applicable price for any goods or services is that price that was in effect when such goods or services were ordered with an official Departmental purchase order or purchased with a Departmental purchasing card.

**6. Variations by the Department:** The Department may by written notice to the Supplier vary any order for any goods prior to their delivery. Fair adjustments will be made to delivery requirements due to variations by the Department so long as the Supplier gives the Department a written request for such an adjustment within five working days after notice of the variation, or prior to the otherwise scheduled delivery date of the goods in question, whichever is the earlier.

**7. Compliance of Goods:** The Supplier will ensure that in each case the goods supplied:

- (a) Comply with applicable user requirements, specifications and standards and consistent with the samples (if any) provided to the Department; and
- (b) Are new and unused unless specified otherwise by the Department.

**8. System Compliance:** The Supplier will provide sufficient information, as required, to enable the appropriate electronic or other system set-up to be completed for any Department purchasing and/or payment systems. This information includes:

- (a) Full Supplier and payment details; and
- (b) Supplier goods list/s or catalogue/s showing priced goods and services offered.

**9. Delivery:** Delivery of all goods and provision of services must be made to the location/s shown on official Department purchase orders or, in the case of purchases made with a Departmental purchasing card, to the location/s specified at the time of purchase.

**10. Free to Store:** All goods are to be provided free to store (i.e. without delivery or freight charges).

**11. Security and Access:** The Supplier acknowledges that due to the nature of its operations the Department has special security and access requirements for some of its sites. The Supplier agrees that all of the Supplier’s representatives entering a site:

- (a) Will be subject to, and must comply with the Corrections Act 2004 and the Corrections Regulations 2005;
- (b) Will comply with any lawful instruction issued by a prison officer at the site concerning the prison or any prisoner;
- (c) Will display photographic identification at all times while on a site; and

(d) Will take reasonable precautions to ensure that their vehicles are kept secured at all times while on a Departmental site.

**12. Documentation:** The Supplier will promptly supply to the Department appropriate documentation and other information so as to enable the Department to properly consume or use goods supplied and services provided under these General Terms and Conditions, and provide updates at no cost to the Department as and when they are produced.

**13. Standards/quality assurance:** Where services are provided the Supplier will, and ensure that the Supplier's representatives do:

- (a) Perform using due diligence, care and skill, using sufficient appropriately trained, qualified, experienced and supervised persons; and
- (b) Have and comply with appropriate standards and a relevant quality assurance system.

If a standard for a service is not specified, then the standard complied with will be the best standard in the applicable profession or industry.

**14. Subcontractors:** The Supplier will:

- (a) Not subcontract the Supplier's obligations in relation to the supply of goods or the provision of services under these General Terms and Conditions without the Department's prior written approval; and
- (b) If the Department approves a subcontractor:
  - (i) Keep the Department informed about the involvement of each such subcontractor so that the Department has relevant information about all such subcontracts; and
  - (ii) Remain liable to the Department under these General Terms and Conditions for the performance of the subcontractor's obligations.

**15. Invoicing:** Invoices submitted by the Supplier must include the following to ensure timely payment:

- (a) An official Departmental purchase order number;
- (b) Prices and quantities that match those ordered on official Departmental purchase orders and delivered by the Supplier;
- (c) Goods and prices that match the goods and prices shown on Supplier list/s or catalogue/s used in the Department's purchasing systems to generate purchase orders;
- (d) Identification of any agreed substitutes to any items ordered.

**16. Payment:** Payment will be made by the Department to the Supplier by the 20th day of the month following the month in which the Department's National Procurement Team receive a correct GST tax invoice for the goods or services for which payment is charged. Invoices are to be addressed to

National Accounts Payable  
Private Bag 3083  
Wellington 6140

or such alternative address as may be notified to the Supplier from time to time.

For accounting system reasons, the Department may issue tax invoices to itself on the Supplier's behalf and copy the invoice to the Supplier.

The Department may set off any amount that is or may become payable by the Department to the Supplier against any amount that is or may become payable by the Supplier to the Department.

The Department may request confirmation that a Supplier is registered for GST.

**17. Title:** Clear title to goods will pass to the Department either on completion of delivery and acceptance, or payment by the Department for those goods, whichever is the earlier.

**18. Risk:** Every risk to goods remains with the Supplier until completion of delivery and acceptance, except when such goods are within the Department's possession and control.

**19. Insurance:** The Supplier, at the Supplier's cost, must have and maintain insurance cover in respect of the Supplier's obligations under these General Terms and Conditions for so long as the Supplier supplies goods or provides services to the Department.

**20. General warranties:** The Supplier warrants to the Department that:

- (a) All goods supplied by the Supplier will be appropriately packaged, packed and securely stored until completion of delivery and installation (if applicable) to minimise damage, deterioration and theft;

- (b) All goods supplied will, where applicable, be properly installed and integrated into, will be compatible with and will not damage, the Department's relevant systems and other property;
- (c) All goods supplied will be -
  - (i) fit for the use and purpose contemplated; and
  - (ii) free from any defect (including any latent defect) in design, materials and workmanship;
- (d) If any goods contain any ozone depleting or hazardous substance or is dangerous, all packaging and those goods will be marked with a prominent warning and a Material Safety Data Sheet provided;
- (e) No material form of inducement or reward has been or will be directly or indirectly provided to any of the Department's representatives, agents or staff; and
- (f) The Supplier legally owns or is otherwise authorised to sell goods being supplied to the Department, and the supply of any services to the Department will not breach the intellectual property rights of any third party.

These warranties are additional to any other warranties or guarantees given by the Supplier or implied by custom or law. The Supplier will, to the extent possible, pass on to the Department the benefit of any warranty or guarantee received from any other person in respect of goods supplied or services provided, to the intent that the Department may have recourse against those persons through the Supplier for a breach of any warranty or guarantee.

**21. Warranty claims:** The Supplier will promptly remedy each warranty claim to the Department's reasonable satisfaction. If the Supplier fails to promptly remedy a warranty claim, or if the Department determines that an urgent or other situation so justifies, the Department may carry out, or procure the carrying out of, anything required to remedy the defect and recover the cost of doing so from the Supplier.

**22. Compliance with laws/authorisations:** The Supplier:

- (a) Will ensure the Supplier, and anything the Supplier supplies, complies with all New Zealand applicable laws, codes and standards; and
- (b) Is responsible for ensuring that every necessary and prudent authorisation is obtained to ensure that the Supplier can comply with these General Terms and Conditions.

**23. Failure by Supplier:** If the Supplier:

- (a) Breaches, or fails to properly or promptly perform, any of the Supplier's obligations under these General Terms and Conditions and fails to remedy the situation to the Department's reasonable satisfaction within five working days after notice from the Department of the breach or failure;

then the Department may:

- (b) Withhold any payment otherwise due to the Supplier until the matter is resolved to the Department's reasonable satisfaction; and/or
- (c) Have the obligation met by its own personnel or anyone else (that seems to the Department to be appropriate) at the Supplier's cost.

**24. Supplier indemnity:** The Supplier will indemnify the Department for any damage, loss or cost (including legal and lawyer/client costs) to the Department, to the extent caused or contributed to by the Supplier or any of the Supplier's representatives, visitors or property in relation to the Supplier's obligations under these General Terms and Conditions.

**25. Liability limitation:** To the extent allowed by law, the Department will not be liable (in contract or tort, including negligence, or otherwise) to the Supplier for any indirect damage, loss (including loss of profits or business or consequential loss) or cost caused or contributed to by the Department, any of its representatives or visitors in relation to the supply of goods or provision of services under these General Terms and Conditions.

**26. Force majeure:** Neither the Supplier nor the Department is liable for any failure or delay in performing an obligation under these General Terms and Conditions if such failure or delay is due to a cause reasonably beyond the control of the Supplier or the Department (as the case may be) which has used its best endeavours to perform on time despite the cause provided that in no case shall the Department be liable to pay for goods and services not actually received.

**27. Property removal and intellectual property:** (i) Any of the Supplier's property that is not removed from any Departmental site as and when reasonably required by the Department may be relocated, stored or disposed of by the Department at the Supplier's risk and cost and in the event that such property is disposed of the Department will pay to the Supplier such amount as remains after deduction of the costs of such disposal.

(ii) Ownership of any intellectual property that may be created by the Supplier in supplying goods or providing services under these General Terms and Conditions will automatically vest in the Department.

**28. Confidentiality:** The Supplier will keep confidential and secure, and not misuse, any Departmental information which would reasonably be expected to be proprietary, commercially sensitive or confidential. Disclosure and use of information to the extent required by law, or to the extent necessary to undertake the Supplier's obligations under these General Terms and Conditions are allowed. The Supplier agrees not to make any public statement relating to the Supplier's role as a supplier of goods or provider of services to the Department without the prior written consent of the Department.

**29. Maintain records:** The Supplier and the Department will produce and retain records which enable prompt and accurate verification of a matter in respect of the supply of goods or the provision of services under these General Terms and Conditions.

**30. Official Information Act and associated matters:** The Supplier acknowledges that the Department is subject to the Official Information Act 1982. The Supplier agrees to cooperate fully in providing to the Department any documents or other information which the Department is required to provide pursuant to a request made under this Act, or pursuant to questions raised in Parliament or in Select Committee concerning a supply of goods or provision of services under these General Terms and Conditions.

**31. No assignment:** The Supplier may not assign any of the Supplier's benefits or burdens in respect of these General Terms and Conditions without the Department's prior written consent.

**32. Relationships:** Nothing in these General Terms and Conditions creates or evidences any legal partnership, joint venture, agency or employer/employee relationship between the Supplier and the Department.

**33. Waiver:** No delay or failure to act is a waiver. No waiver is effective unless it is in writing. A waiver of a breach is not a waiver of any other breach.

**34. UN Convention excluded:** The United Nations Convention on Contracts for the International Sale of Goods does not apply to any supply of goods made under these General Terms and Conditions.

**35. Governing law:** New Zealand law governs. New Zealand courts have exclusive jurisdiction.

**36. Interpretation:** Unless the context otherwise requires or it is specifically otherwise stated:

- (a) Every right, power and remedy of the Department or the Supplier (as the case may be) remains unrestricted and may be exercised without prejudice to each other at any time;
- (b) If the Supplier comprises more than one person, each of those person's liability to the Department is joint and several;
- (c) References to a party or a person include any form of entity and their respective successors, assigns and representatives;
- (d) Amounts are in New Zealand dollars;
- (e) Time is of the essence;
- (f) References to legislation include references to that legislation as amended or substituted;
- (g) "The Department" means her Majesty the Queen acting by and through the Chief Executive of the Department of Corrections;
- (h) The expression "in writing" includes any electronic communication made consistently with the provisions of section 10 to 13 of the Electronic Transactions Act 2002; and
- (i) The expression "Supplier's representatives" includes any servants, agents and contractors of the Supplier.

**37. Entire terms and conditions:** In the absence of a current specific agreement between the Department and the Supplier these General Terms and Conditions constitute the entire terms and conditions for the supply of goods or the provision of services to the Department where such goods and services are ordered with an official Departmental purchase order, or purchased with a Departmental purchasing card.

**38. Validity:** These General Terms and Conditions are valid as at 1 April 2008, but are subject to amendment by the Department at any time. Current Terms and Conditions are posted on the Department's website at [www.corrections.govt.nz](http://www.corrections.govt.nz).

**39. Sustainability:** Given the Department's obligation to the Govt3 programme the Supplier must demonstrate commitment towards sustainable practice, including environmental, economic, and social matters and to this end:

- (a) The Supplier confirms they will supply goods and provide services, in a manner which gives appropriate regard for the protection of the natural environment;
- (b) The Supplier confirms they comply with all environmentally related legislation and codes of practices relating to the goods being supplied or services being provided.

**40. Communication with the Department:** Communication with the Department in respect of these General Terms and Conditions, or in respect of supply of goods or the provision of services under these General Terms and Conditions must be directed to:

National Procurement Team  
Department of Corrections  
Private Box 1206  
Wellington

Telephone (04) 499 5620

or such alternative address (and telephone number) as may be notified to the Supplier from time to time.

**41. Health and Safety:** Suppliers will comply with any health and safety requirements of the Department and will supply goods or provide services consistently with the provisions of the Health and Safety in Employment Act 1992.