



**Te Wānanga o Aotearoa**

**Standard Terms and Conditions for Purchases**

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## **Introduction**

In the absence of a specific variation, these are the only contractual provisions that apply between Te Wānanga o Aotearoa and the 'Supplier' to the exclusion of any other terms and conditions contained in Supplier documentation including packing slips, purchase Order confirmations etc.

A specific variation must be agreed to in writing with an authorised Te Wānanga o Aotearoa Head Office signatory.

The Terms and Conditions below form part of any contract or agreement of any sort entered into by Te Wānanga o Aotearoa.

Any questions suppliers may have with relation to these terms should be directed toward one of the staff in Te Wānanga o Aotearoa Procurement function. They can be reached through Te Wānanga o Aotearoa main switchboard on 07 872 0330.

## 1. 'Purchase Orders' ('Orders')

1.1 The Supplier will not provide goods or services to Te Wānanga o Aotearoa without having first received a complete and accurate Order form which contains the following details:

- (a) The supplier's name and address;
- (b) Te Wānanga o Aotearoa address and a contact name for invoicing;
- (c) Where different, the delivery address and the name of a contact who will be responsible for receiving the goods;
- (d) Where the requestor is not going to receive the goods directly then the requestors name should also be on the Purchase Order.
- (e) Specification/description of the goods and/or services together with unit cost, quantity, GST and total cost payable by Te Wānanga o Aotearoa;
- (f) Where Stock Keeping Unit codes (SKU's) or product numbers are available they may also be included on the Purchase Order (available on Workplace requisition for high usage items);
- (g) Payment terms (including specified currency where appropriate);
- (h) Expected delivery date;
- (i) Reference to Te Wānanga o Aotearoa Standard Terms and Conditions;
- (j) Any other instructions or specifications that may have been agreed verbally with the supplier.

## 2. Te Wānanga o Aotearoa Standard Terms

2.1 In instances where the Supplier has provided goods / services in response to an Order placed by Te Wānanga o Aotearoa then the Supplier is deemed to have accepted Te Wānanga o Aotearoa Standard Terms and Conditions.

## 3. Delivery/price

3.1 The Supplier will deliver each good/service Ordered by Te Wānanga o Aotearoa how, by when, where and for the prices specified in the applicable Order or Agreement.

3.2 Time is of the essence and goods / services shall be delivered or performed on the date and at the place specified in the Order and in

accordance with any additional instructions specified by Te Wānanga o Aotearoa.

- 3.3 Unless expressly specified the goods and services shall be delivered during Te Wānanga o Aotearoa normal business hours.
- 3.4 Except for GST, prices are inclusive of all costs associated with the supply unless otherwise specified.
- 3.5 The Supplier will keep Te Wānanga o Aotearoa informed about delivery progress to ensure both parties are aware of each others intended actions.
- 3.6 Te Wānanga o Aotearoa may reject any goods or services delivered and shall have no liability whatsoever to the supplier if the provisions of this clause 3 are not complied with.

#### 4. **Variations**

- 4.1 Except in the case of goods which must be specifically manufactured to meet the requirements of Te Wānanga o Aotearoa, Te Wānanga o Aotearoa may vary or cancel any of its requirements for any good or service prior to completion of delivery. The Supplier will accommodate variations by Te Wānanga o Aotearoa. Fair adjustments will be made to prices and delivery requirements due to variations by Te Wānanga o Aotearoa, except if the Supplier does not give Te Wānanga o Aotearoa a written request for an adjustment within 5 working days after notice of each variation, no increase adjustment will be made.

#### 5. **Compliance / Specification**

- 5.1 The goods and/or services must conform in all respects with the specifications and any other requirements or descriptions stated in the Order. All goods must be of sound materials, workmanship and (where you are responsible for this) design and shall be equal in all respects to relevant samples or patterns provided by or accepted by Te Wānanga o Aotearoa. All services / goods shall be free from all defects including (to the extent that the Supplier is responsible for design) defects in design.

#### 6. **Acceptance**

- 6.1 Te Wānanga o Aotearoa may carry out any reasonable or agreed acceptance test of any good/service, component and related system.

The Supplier will assist and promptly remedy any acceptance test failure at the Supplier's cost.

- 6.2 If by the nature of the goods and/or the services any defects or any failure to conform with the terms of the Order do not or would not become apparent (despite the carrying out of any examination and/or acceptance tests) until after use, then as soon as it becomes apparent that the goods and/or the services do not conform with the terms of the Order, Te Wānanga o Aotearoa may reject or require the replacement / re-performance of such goods / services even after a reasonable period of use. The Supplier shall within a reasonable period at its own expense remove any such goods from the premises to which have been delivered or supplied and may at Te Wānanga o Aotearoa request be required to make a full refund of any moneys paid by Te Wānanga o Aotearoa and compensate it by way of damages for any losses suffered.
- 6.3 Te Wānanga o Aotearoa signature given on any delivery note or other documentation presented for signature in connection with delivery of the goods is evidence only of the number of packages received. In particular, it is no evidence that the correct quantity or number of goods has been delivered or that the goods delivered are in good condition or of the correct quality.

## 7. **Specification and Rejection**

- 7.1 Any goods and/or services rejected under Clause 5 or 6 must at Te Wānanga o Aotearoa request be replaced or re-performed as the case may be by the Supplier at the Supplier's expense.
- 7.2 Alternatively Te Wānanga o Aotearoa may decide to cancel the Order as provided for in Clause 19 both in respect of the goods and/or the services in question and / or the whole of the undelivered balance (if any) of the goods and/or the remainder of the services (if any) covered by the Order.
- 7.3 All rejected goods will be returned to the Supplier at the Supplier's expense.

## 8. **Standards/quality assurance**

- 8.1 In making its supply, the Supplier must:
- (a) Use appropriate due diligence, care and skill, and ensure that supply is carried out by appropriately

trained, qualified, experienced and supervised persons; and

- (b) Comply with standards and quality assurance systems made known by Te Wānanga o Aotearoa at the time an Order is supplied by it.
- (c) If no standard is specified in respect of a supply, then the supply will be to the best standard in the applicable profession or industry.

8.2 Te Wānanga o Aotearoa may observe and review anything being undertaken by any Supplier in relation to an Order and the agreement arising from that Order and shall have such access to premises, employees of the Supplier, materials, machinery and the like as is necessary for it to complete the carry out of that observation and review.

8.3 If Te Wānanga o Aotearoa should reasonably require it, the Supplier will ensure that any named representative or employee ceases to be involved in the supply of the goods and services in question from the date of the request made by Te Wānanga o Aotearoa.

## 9. Access

9.1 Subject to Te Wānanga o Aotearoa security, operational and documentation requirements and this clause 9, Te Wānanga o Aotearoa will allow the Supplier's representative access at reasonable times to relevant property as necessary for the delivery of each good/service.

9.2 The Supplier will co-operate with other persons and not restrict any other person's activities during access and generally when performing this Contract. The Supplier will minimise disruption, and promptly tidy up and make good any damage or problems caused at the Supplier cost.

9.3 If Supplier personnel, representatives or subcontractors attend a Te Wānanga o Aotearoa site to provide goods or services or provide face-to-face services, the Supplier must ensure that all of such personnel hold a valid "My Vaccine Pass" (as renamed or superseded by equivalent official record from time to time). Where this is the case, the Supplier must ensure that relevant personnel present their My Vaccine Pass where requested to by Te Wānanga o Aotearoa. If the Supplier fails to comply with this clause 9.3:

- (a) any Supplier personnel that do not hold a valid “My Vaccine Pass” will not be permitted to attend any Te Wānanga o Aotearoa site or provide face-to-face services; and
- (b) Te Wānanga o Aotearoa may suspend or cancel this Contract in accordance with clause 23.1 (a).

## 10. Operational Requirements

### 10.1 The Supplier will:

- (a) Ensure that the Supplier personnel and any of the Supplier’s representatives / subcontractors and visitors, comply with Te Wānanga o Aotearoa security, operational and documentation requirements and with applicable law. It shall be the obligation of the Supplier to ensure that it is fully familiar with those security, operational and documentation requirements.
- (b) Have and comply with the Supplier’s own appropriate health and safety plan, and promptly notify Te Wānanga o Aotearoa:
  - (i) If any hazard exists at any of Te Wānanga o Aotearoa premises due to the acts or omissions of the Supplier and/or visitors; and
  - (ii) Of any accident or serious harm that occurs to, or is caused by, the Supplier’s representatives or visitors at Te Wānanga o Aotearoa premises.

## 11. Insurance

- 11.1 The Supplier will have in force and maintain at its own cost such policy or policies of insurance with a reputable insurer authorised to act as such which provides adequate insurance cover in respect of the provision of goods / services to Te Wānanga o Aotearoa and will upon request satisfy Te Wānanga o Aotearoa that such insurance is in place.



## 12. Confidential Information

- 12.1 All information acquired or generated as a result of this Contract is to be treated as confidential by the Supplier.
- 12.2 The Supplier agrees to bind its management, staff and sub-contractors to these confidentiality clauses.

## 13. Intellectual Property

- 13.1 The parties agree that any intellectual property belonging to Te Wānanga o Aotearoa prior to the commencement of this agreement or generated pursuant to this agreement (**IP**) will belong to Te Wānanga o Aotearoa.
- 13.2 The Supplier will:
- (a) Ensure that its management, staff and sub-contractors agree to sign any documents at any time as may be required by Te Wānanga o Aotearoa or if necessary to ensure that Te Wānanga o Aotearoa is able to enjoy the full benefits of the IP;
  - (b) Not contest Te Wānanga o Aotearoa ownership of the IP Rights.
- 13.3 All traditional or indigenous or cultural rights used in the course of this Contract that belongs to any whanau, hapu, or iwi, remains the Intellectual and Cultural Property rights with that whanau, hapu or iwi. The use of Intellectual and Cultural Property as described in this paragraph does not constitute a transfer of ownership to Te Wānanga o Aotearoa.
- 13.4 The Supplier hereby indemnifies Te Wānanga o Aotearoa from all actions, costs, claims, demands, expenses and liabilities whatsoever resulting from any actual or alleged infringement of Intellectual Property brought against Te Wānanga o Aotearoa as a result of the Supplier's actions. The Supplier shall defend or (at Te Wānanga o Aotearoa option) assist in the defence of any proceedings which may be brought in connection to infringement of Intellectual Property.
- 13.5 At the end of the Contract, all materials supplied by Te Wānanga o Aotearoa or generated pursuant to this agreement (including rough drafts), will be returned to Te Wānanga o Aotearoa at Te Wānanga o Aotearoa request.

#### 14. Documentation / training

- 14.1 The Supplier will supply, with goods/services, appropriate documentation in English, and a reasonable amount of training to enable Te Wānanga o Aotearoa to independently install, operate and maintain goods/services provided.
- 14.2 The Supplier will promptly and freely provide Te Wānanga o Aotearoa with updates of that information as it becomes available. Te Wānanga o Aotearoa may freely copy any relevant information for use by Te Wānanga o Aotearoa.

#### 15. Payment

- 15.1 Payment will be made by Te Wānanga o Aotearoa to the Supplier by the 20<sup>th</sup> day of the month following the month in which:
- (a) An acceptance certificate for the relevant good/service was given by Te Wānanga o Aotearoa to the Supplier, if applicable; or
  - (b) Te Wānanga o Aotearoa received the products or services; and
  - (c) Te Wānanga o Aotearoa received a correct itemised tax invoice for the relevant good/service quoting the Te Wānanga o Aotearoa Purchase Order number applicable to the Order.
- 15.2 Te Wānanga o Aotearoa reserves the right not to pay invoices that cannot be matched against a Te Wānanga o Aotearoa Purchase Order.
- 15.3 Te Wānanga o Aotearoa may set off any amount that is or may become payable by it to the Supplier against any amount that is or may become payable by the Supplier to Te Wānanga o Aotearoa whether or not arising from the same supply transaction. Te Wānanga o Aotearoa shall clearly identify any set off which is made.

#### 16. Title

- 16.1 Where Te Wānanga o Aotearoa is buying a good or output for a service, clear title passes to Te Wānanga o Aotearoa at the earlier of delivery or any earlier payment for it. This does not affect the rights of

Te Wānanga o Aotearoa to reject goods or services in accordance with these Standard Terms and Conditions.

## 17. Risk

- 17.1 Risk in each good/service remains with the Supplier until completion of delivery and (where appropriate) acceptance by Te Wānanga o Aotearoa. Delivery and installation shall be at the cost and risk of the Supplier.

## 18. Support

- 18.1 The Supplier will ensure that Te Wānanga o Aotearoa has access to the prompt supply of appropriate support (e.g. spares, maintenance service) on a reasonable basis throughout the expected life of each good/service.

## 19. Cancellation / Termination

- 19.1 Te Wānanga o Aotearoa has the right to terminate this Contract if the Supplier commits or allows to be committed any breach of any of the terms of this Contract and fails to remedy the breach, to the satisfaction of Te Wānanga o Aotearoa acting reasonably, within fourteen (14) days of receipt of notice in writing from Te Wānanga o Aotearoa requiring the breach to be remedied.
- 19.2 If the Supplier or Te Wānanga o Aotearoa are delayed or prevented from performing their obligations under the Order by circumstances beyond the reasonable control of either of them such performance shall be suspended and if it cannot be completed within a reasonable time after the due date as specified in the Order, the Order may be cancelled by either party.
- 19.3 Te Wānanga o Aotearoa reserves the right to cancel the whole or any part of an Order or any consignment if the Order is not completed in all respects in accordance with the Order.
- 19.4 If Te Wānanga o Aotearoa cancels the whole or any part of an Order or consignment it shall only be obliged to pay the Supplier in relation to such items of the Order or consignment that have been expressly accepted by Te Wānanga o Aotearoa.
- 19.5 In the event of Te Wānanga o Aotearoa cancelling the Order due to the Supplier not meeting the requirements of the Order in total or part,

Te Wānanga o Aotearoa will be entitled to purchase from a third party a like quantity of goods of similar description and quality and in that event the Supplier shall reimburse Te Wānanga o Aotearoa on demand for all expenditure incurred by Te Wānanga o Aotearoa in connection with the said cancellation including any increase in price over that agreed in the original Order.

- 19.6 The Supplier can terminate this Contract by giving one calendar months notice in writing to Te Wānanga o Aotearoa if Te Wānanga o Aotearoa has not paid the Supplier's invoice for more than 15 working days after any payment is due; unless Te Wānanga o Aotearoa has given notice within 10 working days of receipt of the invoice that there is a dispute over the payment.
- 19.7 If this Contract is terminated, the termination of the Contract does not prevent either party from pursuing any rights or remedies available to them before the termination of the Contract.
- 19.8 Upon the expiry or earlier termination of this Agreement the Supplier shall at its cost promptly deliver up all property of Te Wānanga o Aotearoa, including all Intellectual Property and Confidential Information, held in the Supplier's possession or control. This includes all hardcopy and electronic files, documents or information either provided to the Supplier by Te Wānanga o Aotearoa or furnished, produced or received by the Supplier in connection with the Services under this Agreement."

## 20. General Warranties

20.1 By accepting an Order the Supplier warrants:

- (a) Where applicable, each good will be properly installed and integrated into, will be compatible with and will not damage, Te Wānanga o Aotearoa relevant systems and other property;
- (b) Each good/service supplied by the Supplier will for the specified warranty periods, or if there is no specified period, then for 12 months from the later of the date of delivery and the date of first use by Te Wānanga o Aotearoa:
- (c) Be fit for the expected use and purpose; and
- (d) Be free from any defect in design, materials, workmanship and title

- 20.2 Ownership, possession, modification, use or resale of any good/service supplied by the Supplier will not infringe any third party rights and the Supplier will protect Te Wānanga o Aotearoa from any infringement claim or proceeding;
- 20.3 No form of inducement or reward has been or will be directly or indirectly provided to any of Te Wānanga o Aotearoa representatives.
- 20.4 The warranties set out in this clause are additional to any other assurances given by the Supplier or that are implied by custom or law.
- 20.5 The Supplier will, to the extent possible, pass on to Te Wānanga o Aotearoa the benefit of any warranty or other assurance from any other person in respect of each good/service supplied to the intent that Te Wānanga o Aotearoa may have recourse against those persons through the Supplier.

## 21. **Warranty claims**

- 21.1 The Supplier will promptly remedy each warranty claim to Te Wānanga o Aotearoa satisfaction. Te Wānanga o Aotearoa may require repair or replacement solutions and a temporary solution while the claim is being remedied. Components replaced or upgraded within a warranty claim will not be charged to Te Wānanga o Aotearoa. Warranty periods are suspended while each claim is being remedied, and then start again for the remaining warranty period of completion of remedying each defect.

## 22. **Compliance with laws/authorisations**

- 22.1 The Supplier will ensure that the Supplier, and each good/service supplied, complies with all New Zealand laws, codes and standards.

## 23. **Failure by Suppliers**

- 23.1 If the Supplier:
- (a) Breaches, or fails to properly or promptly perform, any of the Supplier's obligations and fails to remedy the situation to Te Wānanga o Aotearoa satisfaction within two working days after notice from Te Wānanga o Aotearoa of the breach or failure;

- (b) Is or becomes insolvent or bankrupt, or is in or goes into receivership or liquidation; or
- (c) Has a change of control or ownership, a conflict of interest with Te Wānanga o Aotearoa interests, which Te Wānanga o Aotearoa considers sufficiently inappropriate;

**Te Wānanga o Aotearoa may:**

- (i) Suspend or terminate this Contract (in whole or in part) by written notice to the Supplier; and/or
- (ii) Have the requirement performed by its own personnel or anyone else and recover the full costs of so doing from the Supplier.

The rights contained in this clause 23 are in addition to those set out in clause 19.

**24. Indemnity**

- 24.1 The Supplier will promptly make good, and protect Te Wānanga o Aotearoa and its representatives from, any damage, problem, claim or proceedings the Supplier causes in relation to the goods / services.

**25. Te Wānanga o Aotearoa liability limited**

- 25.1 To the extent allowed by law, Te Wānanga o Aotearoa 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 cost caused or contributed to by Te Wānanga o Aotearoa, in relation to this Contract. Each of Te Wānanga o Aotearoa representatives is also to enjoy the benefit of this provision.

## 26. Confidentiality

26.1 The Supplier will keep confidential and secure, and not misuse, any information of Te Wānanga o Aotearoa, which would reasonably be expected to be proprietary, or commercially sensitive or confidential. Disclosure and use of information to the extent required by law is allowed. The Supplier shall indemnify Te Wānanga o Aotearoa against the unauthorised publication or disclosure of any such information, materials or documents.

## 27. No assignment / subcontracting

27.1 Neither the Contractor nor Te Wānanga o Aotearoa are able to assign their rights or otherwise dispose of their interest in this Contract without getting the prior written consent of the other party. Such consent shall not be unreasonably withheld.

27.2 The Contractor may not subcontract its obligations under this Contract without the prior written consent of Te Wānanga o Aotearoa.

27.3 The Contractor will at all times remain primarily liable to Te Wānanga o Aotearoa for the acts and omissions of the Contractor's subcontractors.

27.4 The Supplier will keep Te Wānanga o Aotearoa informed about the involvement of subcontractors on a fully transparent basis and ensure each subcontract has 'pass through' provisions allowing Te Wānanga o Aotearoa to directly benefit from and enforce it.

## 28. Relationships

28.1 Nothing in this document creates or evidences any legal partnership, joint venture, agency or employer/employee relationship between the parties.

## 29. Non Solicitation

29.1 For a minimum period for 12 months from the last date on which goods or services were provided the Supplier shall not on its own account or in connection with any other firm or person, firm or entity:

- (a) Canvass or solicit for employment or engagement any Te Wānanga o Aotearoa personnel; or

- (b) Recommend any Te Wānanga o Aotearoa personnel to anyone that might result in an approach to Te Wānanga o Aotearoa personnel to leave the employment or engagement of Te Wānanga o Aotearoa.

### 30. Disputes

- 30.1 If either party believes there is a dispute relating to these Terms of Business or any associated Agreement, it will promptly notify the other party and give written details of the dispute. If the dispute is not resolved within ten working days by senior representatives of the parties, it will be referred to an individual or organisation acceptable to both parties. Both parties agree to co-operate and exercise reasonableness in deciding on the individual or organisation engaged to resolve the dispute, and consent to reaching settlement within ten working days of the third party being involved. If the dispute is not resolved within 30 working days of first being raised in writing then either party may take other action including legal proceedings.

### 31. Conflicts of Interest

- 31.1 The Supplier warrants that they have no Conflict of Interest or contractual obligation to another person or organisation that limits their right or ability to perform the work under this Contract, and they have completed and returned Te Wānanga o Aotearoa standard Declaration of Interest form prior to the commencement of this Contract.
- 31.2 The Supplier is not permitted to enrol in any Te Wānanga o Aotearoa programme that the Supplier is engaged to deliver including any Supplier programme being tutored by another person.

### 32. Joint and Several Liability

- 32.1 If two or more individuals execute this Contract as the Supplier, except where the individuals are executing this Contract on behalf of a corporate entity, the individual signatories shall be jointly and severally liable for any Supplier obligation or liability arising from this Contract.

### 33. Governing law

- 33.1 New Zealand law governs this Contract.



## 34. Interpretation

34.1 Unless the context otherwise requires or it is specifically otherwise stated:

- (a) “Contract” means the contract formed between the Supplier and Te Wānanga o Aotearoa, which consists of these Terms and Conditions, any Orders and may include an Agreement;
- (b) “Good” and “service” include any form of deliverable;
- (c) Amounts are in New Zealand dollars;
- (d) “Order” is a Purchase Order raised in Te Wānanga o Aotearoa Workplace system;
- (e) “Supplier” refers to any person or organisation delivering goods and / or providing a service to Te Wānanga o Aotearoa;
- (f) Headings are for ease of reference only and do not affect interpretation;
- (g) “Agreement” is a written contract between Te Wānanga o Aotearoa and a supplier that describes in detail the scope of goods / services to be provided and each parties rights and obligations with regard to this supply.