



## STANDARD PURCHASE ORDER TERMS AND CONDITIONS

These provisions together with the Purchase Order (together "the Contract") are the only provisions which apply between the Todd company listed in the Purchase Order for invoicing purposes ("Company") and the Supplier. If any other provision is to apply or prevail it must be agreed to in writing by both parties in each case.

- 1 **Scope:** The Contractor will perform the services (the "Services") and supply the Goods (the "Goods") for the prices (the "Prices") as specified in the service order attached ("Service Order").
- 2 **Contractor Equipment:** The Contractor shall supply at its expense all items necessary for the performance of the Services (including without limitation any Goods specified in the Service Order).
- 3 **Risk:** Every risk to the Services and any Goods specified in the Service Order remains with the Contractor until completion of delivery and acceptance. The Contractor's representatives and anything involved in any Service are provided at the Contractor's every risk and cost.
- 4 **Title:** Subject to the terms of this contract, title to any Goods supplied by the Contractor to the Company or any other item or documentation produced as part of the Services by the Contractor shall pass to the Company on the date the Company pays for such Goods or Services.
- 5 **Warranties:** The Contractor warrants that it shall perform the Services and meet all its obligations under this Contract:
  - (a) with due diligence and care;
  - (b) in a good and workmanlike manner;
  - (c) in accordance with good industry practice;
  - (d) in accordance with the specifications and technical requirements of this Contract;
  - (e) in compliance with (and it shall procure that its representatives comply with) all relevant consents, permits and regulatory approvals and the Company's security, operational and documentation requirements.
- 6 **Warranty claims:** Subject to the limitations and protections against liability afforded Contractor under this contract the Contractor will promptly remedy each warranty claim to the Company's satisfaction provided that the claim is brought by the Company within 24 months after completion of the Services. Warranty periods are suspended while each claim is being remedied and then start again for the remaining warranty period on completion of remedying each defect. If the Contractor fails to promptly remedy a warranty claim, or if the Company determines that an urgent or other situation so justifies, the Company may (provided Company has, except where it reasonably considers that the circumstances are urgent or it is otherwise not practicable to do so, given reasonable notice in the circumstances of the need to remedy work) carry out, or procure the carrying out of, anything required to remedy the defect and recover damages from the Contractor.
- 7 **Rejected Services:** The Company may reject the results of any Services which have been carried out otherwise than in accordance with this Contract. Without prejudice to the Company's remedies at law, at the Company's option:
  - (a) the Company may require the Contractor to redo or remedy the rejected results of the Services forthwith and at no cost to the Company provided that notice is given to the Contractor within ninety (90) days of completion of the Services; or
  - (b) the Company may redo or remedy the rejected results of the Services and charge the actual and reasonable costs thereof to the Contractor, but only after first allowing the Contractor the right to redo or remedy the rejected results of the Services and provided that the amount the Company shall charge the Contractor shall only be the excess over and above the original cost (which shall be reduced by any amounts already paid to the Contractor) of undertaking this Contract.Neither failure on the part of the Company to inspect the results of the Services nor to discover defects, or failure to reject work performed by the Contractor which is not in accordance with this Contract shall relieve the Contractor from any liability or obligation under this Contract.
- 8 **Compliance with laws/authorisations:** The Contractor:
  - (a) will ensure it, and each Service performed under this Contract, complies with all relevant New Zealand laws, codes and standards and the laws, codes and standards of any other relevant jurisdiction; and
  - (b) is responsible for ensuring that every necessary and prudent authorisation is obtained to ensure that it can perform this Contract and the Company can own (where intended), possess, modify, use and resell unrestricted, each product and the result of each Service supplied by the Contractor.
- 9 **Subcontractors:** The Contractor will not subcontract the whole or a substantial part of its obligations under this Contract without the Company's prior approval. The Contractor will, despite any such approval, continue to be liable at all times for the performance of its obligations under this Contract.
- 10 **Safety:** In effecting delivery of Goods to, and/or the performance of Services at the Company's site the Contractor shall comply with the Company's safety and environmental and other work place policies and practices as advised from time to time (including without limitation those policies and standards specified in the Service Order (if any)). The Contractor will be responsible for travel to and from the Company's site and the Company accepts no liability in relation to such travel.
- 11 **Force Majeure:** A party is not liable for any breach if due to a cause reasonably beyond its control (a "Force Majeure Event") and it has used its best endeavours to perform despite the cause. Force Majeure Event does not include lack of financial resources, strikes, lockouts or any other form of labour dispute in relation to the Contractor's employees, or any reasonably foreseeable physical or weather conditions. If a Force Majeure Event continues for more than fifteen (15) consecutive working days, or for an aggregate of thirty (30) working days in any six (6) month period, the party not claiming the protection of this provision may terminate the Contract.
- 12 **Prices/invoices:** The Contractor will promptly provide the Company with itemised tax invoices for Services performed. Such invoices shall be provided by the 5th of the month following the calendar month in which the Services were performed and the



## STANDARD PURCHASE ORDER TERMS AND CONDITIONS

Services shall be priced in accordance with Company orders and this Contract. Services for part periods will be priced on a prorata basis.

- 13 Payment:** All undisputed amounts due to Contractor shall be paid by Company to Contractor's designated bank account in the currency specified in the Prices by the 20th of the month following invoice date or, if the 20th is not a business day, the next business day after the 20th.
- 14 Set-off:** The Company may set off any amount that may become payable by it to the Contractor against any amount that is or may become payable by the Contractor to the Company.
- 15 Taxes:**
- (a) Notwithstanding anything in clause (c) below, the Prices are inclusive of any taxes, duties and levies (including goods and services tax) whether imposed by New Zealand or by any other jurisdiction and whether or not the Company is required to deduct or withhold such taxes, duties or levies. Accordingly, the Company shall not be liable to pay any additional amount as a result of the imposition of such taxes, duties and levies and if the Company is required by law to make any deduction or withholding from the Prices, the Company shall be entitled to make any such deduction or withholding without being required to pay any additional amount to the Contractor.
  - (b) The Contractor shall furnish the Company with a "tax invoice" (as defined in the Goods and Services Tax Act 1985) within 5 days from the end of the month in which any taxable supplies are made.
  - (c) The Contractor agrees that to the extent that costs incurred by it are able to be on-charged, directly or indirectly, to the Company under this Contract, it is only the GST exclusive amount of those costs that are able to be on-charged unless:
    - (i) the Contractor is a registered person for then purposes of the Goods and Services Tax Act 1985; and
    - (ii) the on-charged amount forms part of the consideration for a taxable supply made by the Contractor to the Company,in which case the Supplier may add to the GST exclusive amount the amount of GST chargeable thereon by the Contractor pursuant to section 8 of the Goods and Services Tax Act 1985.
  - (d) If the Contractor is not a tax resident in New Zealand and elects to mobilise personnel for work carried out in New Zealand, unless it:
    - (i) holds a valid certificate of exemption; or
    - (ii) has a valid special tax rate certificate specifying that a different rate of tax is to apply,then, under New Zealand law, the Company may be required to deduct NRCT from payments to the Contractor and pay such deductions to the relevant government authority. The Company shall not be liable to pay to the Contractor any additional amount as a result of the need to make any deductions for NRCT.
- 16 Cancellation of Orders:** Unless otherwise provided for in this Contract or in the relevant Service Order, once accepted by the Contractor, orders for Services can be cancelled by Company and the Contractor will cease performance of the Services and allow the Company or its nominee full rights of access to take over performance of the Services. The Company will indemnify Contractor against actual and reasonable costs attributable to such cancellation provided that the Contractor:
- (a) is not in default of this Contract; and
  - (b) has taken all reasonable steps to mitigate such costs.
- 17 Suspension for Contractor Failure:** In the event that the Contractor fails to comply with any of its obligations and/or duties under the Contract the Company shall have the right, at any time and at its sole discretion, to order the Contractor to suspend immediately all or part of the Services for a period and in the manner which the Company considers necessary, by giving the Contractor notice of suspension. The Contractor shall continue to execute any parts of the Services that have not been suspended. During any period of suspension under this clause, the Company may step in and perform any part of the suspended Services. No payment shall be due by the Company to the Contractor for that part of the Services performed by the Company during any period of suspension whether the Services are completed during that period of suspension or are reinstated.
- 18 Insurance Requirements:** The Contractor must take out and maintain with solvent and reputable insurance carriers the insurance cover specified in the Appendix and if none is specified then such insurance sufficient to meet its liabilities under this Contract. The Contractor may not reduce the coverage afforded by those insurances without the prior written approval of the Company.
- 19 Company to be Named as Co-Insured:** To the extent of the indemnities given by the Contractor under this Contract, all insurances effected by the Contractor shall name as additional insureds, the Company and any other interested parties nominated by the Company, and shall be endorsed to provide that the insurers waive all rights of subrogation and recourse against the Company and the parties so nominated and to provide for cross liabilities to the same extent.
- 20 Certificates of Insurance:** At any time after execution of Contract the Contractor shall upon request furnish the Company with copies of certificates of insurance evidencing that the above insurance is in full force and effect. Receipt of those certificates shall not constitute acceptance of the insurances nor waiver of the Contractor's responsibility under this Contract. The certificates shall contain a provision stating that the insurer agrees to give the Company thirty (30) days prior written notice in event of cancellation or material change in the insurance.
- 21 Subcontractors' Insurance:** The Contractor shall cause every subcontractor employed by the Contractor to carry insurance of types and amounts necessary to cover risks inherent in the work of the particular subcontractors.



## STANDARD PURCHASE ORDER TERMS AND CONDITIONS

- 22 Payment of Premiums by Company:** If the Contractor shall fail to effect and keep in force any of the insurances specified in the Appendix or any other insurance which it may be required to effect under the terms of the Contract, then the Company may, after giving notice to the Contractor, effect and keep in force any such insurance and pay such premiums as may be necessary for that purpose. The Company may recover the same as a debt due from the Contractor.
- 23 Company's Insurance:** The Company agrees to carry, with solvent and reputable insurance carriers, insurance of the types and in amounts adequate to support its indemnity obligations under this Contract. At any time after execution of the Contract the Company shall upon request furnish the Contractor with copies of certificates of insurance evidencing that such insurance is in full force and effect.
- 24 Termination:** This Contract will terminate:
- (a) upon completion of the Services and the Companies' full payment for the Services; or
  - (b) upon a party giving notice in writing if the other party:
    - (i) breaches or fails to properly or promptly perform, any of its obligations and fails to remedy the situation within five (5) working days after notice from the other party of the breach or failure; or
    - (ii) is or becomes insolvent or bankrupt, is placed into receivership or liquidation.
- In such an event, the only remaining commitment will be for the Company to pay for Services already performed.
- Any clauses expressly or impliedly intended to survive termination of this Contract will do so.
- 25 Liability and Indemnity:** In this clause:
- "Loss"** means all claims, demands, causes of action, liabilities, costs and expenses suffered during or in connection with the performance of this Contract, including (without limitation) that arising out of:
- (a) damage to or loss of any property of the Contractor or any Party Related to the Contractor;
  - (b) damage to or loss of any property of the Company or any Party Related to the Company;
  - (c) personal injury to, sickness, disease or death of any Party Related to the Contractor; or
  - (d) personal injury to, sickness, disease or death of any Party Related to the Company;
- "Party Related to the Company"** means any person or company (except the Contractor) which is, during the term of this Contract, in a direct or indirect relationship (including through one or more intermediate related parties) with the Company by way of contract, employment licence or invitation, including but not limited to the Company's parent, subsidiary and affiliated or related companies.
- "Party Related to the Contractor"** means any person or Company (except the Company) which is, with respect to the performance of Services, in a direct or indirect relationship (including through one or more intermediate related parties) with the Contractor by way of contract, employment, licence or invitation, including but not limited to the Contractor's parent, subsidiary and affiliated or related companies.
- Liability of Company and Indemnity by Contractor:** The Contractor shall hold the Company and every Party Related to the Company harmless from and indemnified (on an after tax basis) against, all claims in respect of any Loss suffered by the Contractor, or any Party Related to the Contractor during or in connection with the performance of this Contract, except to the extent such Loss arises from the negligence or breach of contract of the Company or any Party Related to the Company.
- Liability of Contractor and Indemnity by Company:** The Company shall hold the Contractor and every Party Related to the Contractor harmless from and indemnified (on an after tax basis) against, all claims in respect of any Loss suffered by the Company or any Party Related to the Company during or in connection with the performance of this Contract, except to the extent such Loss arises from the negligence or breach of this Contract by the Contractor or any Party Related to the Contractor.
- 26 Exhaustion of Remedies Under Insurance:** No indemnity in this Contract shall:
- (a) apply in any case where the Contractor is covered by insurance unless the Contractor shall first have exhausted all its rights and remedies under such insurance;
  - (b) be available to any insurer of the Contractor; and
  - (c) constitute a liability on the Contractor to insure against the damage referred to in this Contract except to the extent provided for in the Appendix.
- 27 Indemnities to Continue:** The indemnities provided in this Contract shall be continuing indemnities and shall survive and not be affected by termination of this Contract.
- 28 Liability for Indirect and Consequential Damage:** Neither party shall be liable for any indirect economic or consequential loss or damage which may be suffered by the other party in the course of or in connection with this Contract or the performance or intended performance of it including, but not limited to, loss of use, loss of profits, loss of income, loss of product or business interruption, howsoever caused, including by the sole, joint and/or concurrent negligence of any party.
- 29 Confidentiality:** The Contractor will keep confidential and secure, and not misuse, any information of the Company which would reasonably be expected to be proprietary or commercially sensitive or confidential. Disclosure and use of information to the extent required by law or necessary to perform this Contract is allowed.

## STANDARD PURCHASE ORDER TERMS AND CONDITIONS

**30 Intellectual Property:**

- (a) All intellectual property (together with all modifications, adaptations or developments to such intellectual property by a party, or that party's agents) which is owned by, or is proprietary to, a party prior to the commencement of Services ("Existing Intellectual Property") shall remain owned exclusively by that party unless otherwise agreed in writing by the parties.
- (b) Notwithstanding clause (a) above, the Contractor grants to the Company, or agrees to procure the grant to the Company of, an unrestricted royalty-free licence to use and copy the Contractor's Existing Intellectual Property to the extent reasonably required to enable the Company to make use of the Services or use, adapt, update or amend any work product arising from performance of the Services. The Company grants to the Contractor, an unrestricted royalty-free licence to use and copy the Company's Existing Intellectual Property provided to the Contractor to the extent reasonably required to enable the Contractor to provide the Services.
- (c) Any new intellectual property created during, and arising from, performance of any Services under this Contract shall be jointly owned (as tenants in common) by the parties.

**31 No Assignment:** The Contractor may not assign any of its benefits or burdens in relation to this Contract without the Company's written consent.

**32 Further Assurances:** The Contractor will do every reasonable thing to perform this Contract.

**33 Disputes:** If a party believes that there is a dispute in respect of this Contract, it will firstly notify the other party in writing giving details of the dispute. If the dispute is not resolved within five (5) working days by the parties' contact persons, it will be referred to the parties' contract authorities for resolution at the request of either contact person, and if they do not resolve the dispute within ten (10) working days, it will be submitted to arbitration under the Arbitration Act 1996 in Wellington if requested by either party. The parties agree that in respect of any interim or final determination of any arbitral body they each shall have the same rights of appeal as exist for appeal of a decision of the High Court of New Zealand to the Court of Appeal.

**34 Notices:** Without limiting methods of service in law, notices are to be in writing addressed to the other party's contact person's address and delivered by

- (a) hand;
- (b) mailing by registered post and shall be deemed to be given on the date and at the time signed for by the recipient;
- (c) facsimile transmission and shall be deemed to be given at the time specified in the transmission report of the facsimile from which the transmission was made, free of errors, to the facsimile number of the party given notice, unless that party proves that, contrary to the transmission report, it was not transmitted, or was not transmitted in a complete and legible state, to that party's facsimile;
- (d) email transmission and shall be deemed to be given at the time of acknowledgment of receipt;

to the addresses specified in the Service Order or if a written notice of change of address is given, to the new address.

**35 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.

**36 Governing Law:** New Zealand law governs. New Zealand courts have non-exclusive jurisdiction.

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

- (a) every right, power and remedy of a party 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 Purchaser is joint and several;
- (c) references to a party or a person includes any form of entity and their respective successors, assigns and representatives;
- (d) amounts are in New Zealand dollars; and
- (e) time is of the essence.

**38 Entire Agreement:** This document records the entire agreement, and prevails over any earlier agreement, concerning its subject. Each variation to this Contract must be in writing signed by the contract authorities of the parties and then attached to this document.

**39 Counterpart Execution:** This Contract may be executed in two or more counterparts, each of which is deemed an original and all of which constitute one and the same agreement. This Contract will be effective upon the exchange by facsimile of executed signature pages.



## STANDARD SERVICE ORDER TERMS AND CONDITIONS

### Appendix:

**Insurance:** To the extent of the liabilities assumed and indemnities given by Contractor under this Contract Contractor shall, at no cost to the Company, effect and maintain or cause to be maintained in force throughout the term of this Contract:

- (a) insurance covering persons employed by the Contractor against injury and death during the period for which such persons are engaged on operation under this Contract;
- (b) insurance covering all liabilities of the Contractor arising out of operations under this Contract including public & product liability for an amount not less than NZ\$5,000,000 for any one claim or series of claims arising out of any one occurrence. Such insurance shall apply in priority to any other insurance covering the same liability;
- (c) its own asset insurance on the equipment, property and materials provided by the Contractor for the purposes of operations under this Contract covering the equipment, property and materials against loss, damage or destruction during all operations under this Contract in an amount not less than the current replacement value of such equipment, property and materials;
- (d) insurance in respect of any automobiles, aircraft or watercraft employed by Contractor in operations under this Contract including third party liability for an amount of not less than NZ\$2,000,000 combined single limit bodily injury and property damage in any one occurrence.