

1. AGREEMENT TO SUPPLY

- 1.1. Unless a formal agreement has been entered into between **Vehicle Testing New Zealand Limited (VTNZ)** and the **Supplier**, these **Terms of Purchase** shall apply to any **Purchase Order** issued by **VTNZ** to the **Supplier**. The **Purchase Order** is deemed to be accepted by the **Supplier** upon acceptance of or otherwise processing of an **Order**. Any terms and conditions of the **Supplier** shall have no legal effect and shall not constitute part of any agreement (including this **Agreement**) between **VTNZ** and the **Supplier** for the supply of **Goods**.
- 1.2. Subject to the exception stated in **clause 1.1**, or unless otherwise agreed in writing by **VTNZ**, if the **Supplier** supplies any **Goods** to **VTNZ**, then the **Supplier** is deemed to have accepted these **Terms**.
- 1.3. The **Supplier** will supply the **Goods** according to the **Specification(s)** detailed in the **Purchase Order**.

2. QUANTITY FORECAST

- 2.1. Where **VTNZ** provides an estimate or forecast of its future requirements for **Goods**, these estimates are indicative only and do not constitute a commitment to purchase the estimated requirements.

3. DELIVERY

- 3.1. **Delivery of Goods** shall be made by the **Supplier** by the dates and to the places specified in the relevant **Purchase Order**, and the **Supplier** is solely responsible for safely unloading all **Goods** at the **Delivery Address** unless the **Purchase Order** specifies otherwise in writing.
- 3.2. **VTNZ** may, at any time, and for any reason whatever, by notice in writing to the **Supplier** extend the time for **Delivery** of the **Goods**.
- 3.3. The **Supplier** shall ensure all deliveries of **Goods** are accompanied by a delivery docket containing the following information:
 - (a) **Purchase Order** number and order date;
 - (b) **Supplier's** details;
 - (c) quantity dispatched;
 - (d) item description and part number;
 - (e) whether or not **Delivery** is part only of total order; and
 - (f) details of any items on back order; and
 - (g) the **Supplier's** delivery docket number/tax invoice number.
- 3.4. The **Supplier** must, at its own cost, package, mark, label and ship the **Goods** in accordance with the instructions or specifications on the **Purchase Order**, or with any specification for packaging, marking or labeling in respect of the **Goods**, if applicable or otherwise in a manner reasonably expected of the **Supplier** by **VTNZ** having regard to the nature of the **Goods** and the purpose for which the **Goods** are reasonably intended by **VTNZ** whilst complying with best commercial practice to ensure safe arrival at the **Delivery Address** at the lowest transportation cost.

4. TITLE AND RISK

- 4.1. The **Supplier** warrants that it has ownership of the **Goods** free of any liens, charges and encumbrances and will transfer the **Goods** to **VTNZ** on that basis.
- 4.2. Unencumbered title to the **Goods** passes to **VTNZ** at the point of **Delivery** of the **Goods** in accordance with this **Agreement** or at time of payment if the **Goods** were paid for in advance.
- 4.3. Risk of loss and damage or deterioration to the **Goods** from any cause whatsoever shall remain with the **Supplier** and shall not pass to **VTNZ** until the **Goods** are **Delivered** to **VTNZ** at the specified **Delivery Address**.

5. INSPECTION

- 5.1. **VTNZ** may reject any **Goods** that fail to meet the description or [**Specification**] set out in a **Purchase Order**. Any monies paid by **VTNZ** to the **Supplier** prior to inspection of the **Goods** shall be deemed to have been paid conditional upon, and subject to, the **Goods** being free of any defects to the satisfaction of **VTNZ**, following inspection by it. If **VTNZ** notifies the **Supplier** of any defects in or damage to the **Goods**, **VTNZ** may return the **Goods** to the **Supplier's** premises at the **Supplier's** expense and risk and any monies paid shall be refunded to **VTNZ**.
- 5.2. No inspection, examination or testing by **VTNZ**, or its respective employees, contractors, consultants or agents will relieve the **Supplier** of its obligations under this **Agreement**.

6. PRICE

- 6.1. The **Supplier** agrees to supply the **Goods** in accordance with this **Agreement** in consideration for the **Price** specified in the **Purchase Order**. No variation to the **Price** will be allowed unless agreed to in writing by **VTNZ**. If the **Price** is omitted on the **Purchase Order**, the **Price** will be that specified in any quotation provided by the **Supplier** and accepted by **VTNZ**, or otherwise the lowest prevailing market price for the **Goods** as determined by **VTNZ**. All prices are inclusive of delivery, packaging, transport and any **Taxes** unless otherwise stated in a **Purchase Order** and are in New Zealand dollars.

7. PAYMENT AND DEDUCTIONS

- 7.1. Tax invoices submitted to **VTNZ** under this **Agreement** must specify the:
 - (a) description of **Goods**, including manufacturer part number;
 - (b) quantity of the **Goods** in units of measure which are consistent with the **Purchase Order**;
 - (c) details of any items on back order;
 - (d) serial item number, if applicable, of the **Goods**;
 - (e) the **Delivery Address** and **Delivery Date**;
 - (f) **Price** (including unit price) of the **Goods** consistent with the relevant **Purchase Order**, or discount applied to items whose price is not specified in a **Purchase Order**;
 - (g) **Purchase Order** number;
 - (h) **Purchase Order** item number (in sequential order); and
 - (i) the delivery docket number and list transactions in date order showing;

- (j) freight and other charges where applicable;
- (k) goods and services tax ("**GST**"); and
- (l) total purchase price.

- 7.2. If the **Supplier** complies with **clause 7.1**, and subject to **VTNZ** receiving a correct tax invoice by the end of the month in which the **Goods** are **Delivered**, **VTNZ** shall pay the tax invoice by the 20th day of the following month. **VTNZ** may withhold payment of any tax invoice which contains reference to **Goods** under dispute until that dispute is resolved.

- 7.3. In addition to any other rights that it may have under this **Agreement** or otherwise, **VTNZ** may deduct from, and set off against, any monies due or that become due to the **Supplier**:
 - (a) all costs, damages and expenses which **VTNZ** may have paid for or incurred or is likely to incur in connection with the supply of **Goods** for which the **Supplier** is liable and which remain unpaid by the **Supplier**; and
 - (b) all debts owed by the **Supplier** to **VTNZ** and which remain unpaid on any account whatsoever.

8. GST

- 8.1. **VTNZ** agree to pay the **Supplier** **GST** for **Goods** subject to such tax, and delivered to **VTNZ** pursuant to a **Purchase Order**. If the amount of **GST** recovered by the **Supplier** from **VTNZ** differs from the amount of **GST** payable at law by **VTNZ** in respect of the supply, the relevant price payable by **VTNZ** will be adjusted.

- 8.2. **VTNZ** will not be obliged to pay any amount in respect of **GST** to the **Supplier** unless and until a valid tax invoice has been issued by the **Supplier** in respect of the **Goods** to which that **GST** relates.

9. SUPPLIER'S WARRANTIES

- 9.1. The **Supplier** warrants and guarantees to **VTNZ** that:
 - (a) all **Goods** are free from defects in design, material and workmanship, of merchantable quality, of good material and workmanship; and
 - (b) all **Goods** will be fit for the purpose for which goods of the same kind are commonly supplied.
- 9.2. Without limiting **VTNZ's** rights under this **Agreement** or otherwise at law, if the **Goods** are or become **Defective** during the **Warranty Period**, **VTNZ** may, in its sole discretion, do one or more of the following:
 - (a) require the **Supplier** to rectify the **Defects** at the **Supplier's** cost;
 - (b) reject the **Defective Goods** (including any other **Goods** of the same type that have not yet been **Delivered**); and
 - (c) accept the **Defective Goods**, in which case **VTNZ** may, acting reasonably, determine an amount due and payable by the **Supplier** to **VTNZ** that reflects any decrease in value to **VTNZ** of the **Goods** by reason of them being **Defective**.
- 9.3. Where **VTNZ** requires the **Supplier** to rectify the **Defects** under clause 9.2(a):
 - (a) **VTNZ** will provide written notice to that effect;
 - (b) the **Supplier** must, at its own cost (including any transportation costs), promptly rectify the **Defects**;
 - (c) a new **Warranty Period** will apply to the replaced or rectified **Goods**, which shall commence on the date of the replacement or rectification; and
 - (d) if, within 10 working days (or as otherwise agreed between the parties) after receiving the notice under clause 9.3(a), the **Supplier** has not rectified the **Defects**, **VTNZ** may have the rectification performed by a third party and the cost of doing so will be a debt due and payable by the **Supplier** to **VTNZ**.

- 9.4. Where **VTNZ** elects to reject the **Goods** under clause 9.2(b), **VTNZ**:
 - (a) will provide written notice to that effect;
 - (b) may (at the **Supplier's** cost) return the **Goods** to the **Supplier** or engage a third party to do so;
 - (c) may (at the **Supplier's** cost) engage a third party to supply and deliver replacement **Goods**;
 - (d) require the **Supplier** to (at its own cost):
 - (i) remove the **Goods** from a location identified by **VTNZ**; and
 - (ii) deliver replacement **Goods** to the **Delivery Address** on a date or dates as directed by **VTNZ**; or
 - (e) has no obligation to pay for the rejected **Goods** and, to the extent **VTNZ** has already made any payments in respect of such **Goods**, the amount of any such payments will be recoverable as a debt due to **VTNZ** by the **Supplier**.

10. INDEMNITY AND INSURANCE

- 10.1. Notwithstanding any other provision of this **Agreement**, the liability of **VTNZ** to the **Supplier**, whether arising under or in connection with this **Agreement** (or anything incidental thereto) by way of indemnity, by statute, in tort (for negligence or otherwise), or on any other basis in law or equity is hereby limited or excluded as follows:
 - (a) **VTNZ** shall have no liability whatsoever to the **Supplier** for **Loss**; and
 - (b) the total aggregate liability of **VTNZ** to the **Supplier** is limited to the **Price**.
- 10.2. Subject to clause 10.3, the **Supplier** will indemnify and keep indemnified **VTNZ** (and its employees, agents, consultants and sub-suppliers) from and against **Loss** in connection with:
 - (a) loss of or damage to property;
 - (b) personal injury or death;
 - (c) any actual or alleged infringement of any **Intellectual Property Rights**; or
 - (d) any breach of these **Terms** or Law, arising out of or as a consequence of the **Supplier** supplying the **Goods**.
- 10.3. The indemnity provided by the **Supplier** in clause 10.2 shall be reduced

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- proportionally to the extent that a negligent act or omission of, or breach of these **Terms** by, **VTNZ** (or others for whom it is responsible) contributes to the **Loss** referred to in clause 10.2.
- 10.4. The indemnities provided by the **Supplier** in this clause 10 continue to apply regardless after the supply of the **Goods**.
- 10.5. The **Supplier** must effect and maintain policies of insurance for amounts generally held by a professional and competent supplier of the goods for which the **Supplier** has been engaged.
- 10.6. Upon request, the **Supplier** must provide **VTNZ** with a true and correct copy of any certificates of insurance.
- 11. VARIATION AND CANCELLATION OF A PURCHASE ORDER**
- 11.1. **VTNZ** may at their option vary or cancel any **Order** to the extent unperformed without cause. In the event of an **Order** being varied or cancelled, **VTNZ's** only obligation shall be to pay for **Goods** delivered prior to the variation or cancellation.
- 12. SECURITY INTEREST**
- 12.1. Under no circumstance do **VTNZ** agree to grant a security interest over any of its property including any **Goods** delivered to it, and **VTNZ** does not consider itself bound by any provision purporting to create a security interest over any of their property.
- 13. NOTICES**
- 13.1. A notice is taken as given by the sender and received by the intended recipient:
- (a) if delivered personally, on the date of delivery;
 - (b) if posted, 3 business days after posting; or
 - (c) if emailed:
 - (i) on receipt of an automatic receipt transmission reply by the sender; or
 - (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the delivery failed,
- whichever happens first.
- 14. ASSIGNMENT & SUBCONTRACTING**
- 14.1. The **Supplier** may not assign or otherwise transfer any of the rights, benefits or obligations under this **Agreement** without **VTNZ's** prior written consent, which may not be unreasonably withheld. **VTNZ** shall be entitled to assign any **Agreement** reached with a **Supplier** incorporating these **Terms of Purchase** to a third party undertaking the business to which the **Agreement** relates upon giving written notice to the **Supplier**.
- 14.2. The **Supplier** must not subcontract or otherwise arrange for another person to discharge any of its obligations (excluding **Delivery**) under the **Agreement** without the prior written consent of **VTNZ**. Notwithstanding **VTNZ's** consent, the **Supplier** will remain fully responsible for all obligations to **VTNZ** under the **Agreement**.
- 15. GENERAL**
- 15.1. This **Agreement** constitutes the entire agreement of the parties about its subject matter and:
- (a) supersedes all previous agreements, understandings and negotiations on that subject matter irrespective of whether or not in writing;
 - (b) applies retrospectively to all **Goods** of any kind provided by the **Supplier** to **VTNZ** prior to the date of this **Agreement**; and
 - (c) will prevail over any other document (including any delivery docket executed by **VTNZ**, tax invoice, creditor request or other document containing terms and conditions in relation to the supply of the **Goods**) issued by the **Supplier** from time to time whether signed by **VTNZ** or not and whether post-dating this **Agreement** or not.
- 15.2. Conduct of **VTNZ** including their employees shall not constitute acceptance of any terms set out in any document provided by the **Supplier** to **VTNZ** for the supply of **Goods**.
- 15.3. Where **VTNZ** fail to enforce or delay enforcing any of these **Terms** **VTNZ** shall not be considered to have waived those rights with respect to any subsequent breach of any term or condition of these **Terms**. To be effective, any waiver must be in writing and must be signed by an authorised officer of **VTNZ**.
- 15.4. **VTNZ** may from time to time amend these **Terms** by providing notification in accordance with clause 13.
- 15.5. This **Agreement** for the supply and purchase of the **Goods** is to be governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.
- 15.6. If any provision of these **Terms** is, or becomes, unenforceable, illegal or invalid for any reason, the relevant provision shall be deemed to be modified to the extent necessary to remedy such unenforceability, illegality or invalidity or if this is not possible then such provision shall be severed from these **Terms**, without affecting the enforceability, legality or validity of any other such provision of these **Terms**.
- 15.7. Time is of the essence in the fulfilment of the **Supplier's** obligations described in these **Terms**.
- 15.8. Unless this **Agreement** expressly states otherwise, the **Supplier** must bear all risks, costs and delays in connection with the supply and **Delivery** of the **Goods** and its obligations (including compliance with any direction given by **VTNZ**) under this **Agreement**;
- 15.9. Unless expressly and lawfully modified or excluded by this **Agreement**, **VTNZ** and the **Supplier's** rights and obligations under this **Agreement** are subject to the implied terms of the Sale of Goods Act 1908.
- 16. CONFIDENTIALITY**
- 16.1. The **Supplier** and its staff must not without **VTNZ's** prior written consent, disclose to any person (other than a person authorised by **VTNZ**) any information whatsoever acquired by the **Supplier** in connection with the **Purchase Order** issued hereunder, nor advertise or publicly announce (including by any social media) that it is supplying **Goods** to **VTNZ**. The provisions of this clause shall continue to bind the **Supplier** notwithstanding that it may have withdrawn from, terminated or concluded a **Purchase Order**.

- 16.2. All **Confidential Information** provided by **VTNZ** will be and will remain the property of **VTNZ**, and the **Supplier** must:
- (a) use the **Confidential Information** only for the purpose of the **Agreement** and/or **Order**; and
 - (b) return the **Confidential Information** to **VTNZ** upon **VTNZ's** request at any time or if no request is made, upon completion or termination of the **Agreement**.
- 17. COMPLIANCE WITH ALL LAWS**
- 17.1. **VTNZ** and the **Supplier** shall at all times comply with all statutes regulations and other laws relating to the supply of the **Goods** under the **Agreement** applying from time to time, including, but not limited to, the Consumer Guarantees Act 1993, the Fair Trading Act 1986 and the Sale of Goods Act 1908.
- 18. DEFINITIONS AND INTERPRETATIONS**
- 18.1. Definitions**
- In these **Terms** unless the context otherwise requires:
- Agreement** means the **Purchase Order** together with these **Terms of Purchase**;
- Defect** means any:
- (a) error, deficiency, omission, non-conformity, fault, failure, malfunction, irregularity or defect (including shrinkage, expansion, fading or settlement) in the **Goods**; or
 - (b) aspect of the **Goods** that is not in accordance with the requirements of this **Agreement**,
- and 'Defective' has a corresponding meaning.
- Delivery** means the physical receipt of possession and control of the **Goods** from the **Supplier** to **VTNZ**, and **Deliver** and **Delivered** have corresponding meanings;
- Delivery Date** means the date(s) upon which the **Supplier** has undertaken to deliver the **Goods** to **VTNZ** at the **Delivery Address** as set out in the **Purchase Order**;
- Delivery Address** means the delivery address specified in the **Purchase Order** or such other address that may be advised from time to time by **VTNZ**;
- Goods** means the **Goods** specified in the **Purchase Order**;
- GST** means goods and services tax chargeable in accordance with the Goods and Services Tax Act 1985.
- Intellectual Property Rights** means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trademarks, designs, patents, inventions and other results of intellectual activity in any field whether or not registrable, registered or patentable;
- Loss** includes but is not limited to any damage, loss (including loss of profit and loss of expected or anticipated profit), liability, cost, claim, charge, expense, outgoing or payment (whether direct or indirect, unforeseeable, remote, abnormal, consequential or incidental);
- Price** means the price for the **Goods** in accordance with this **Agreement**, as set out in the **Purchase Order**, exclusive of **GST**;
- Purchase Order** or **Order** means any document issued by **VTNZ** to the **Supplier** requesting the supply of **Goods** whether in the agreed form or otherwise and includes any specifications, drawings or other documents that may be contained therein or annexed thereto;
- Specification** means the specification for the **Goods** (if any) as set out in a **Purchase Order** and any other specifications communicated in writing by **VTNZ** to the **Supplier** for the **Goods**.
- Supplier** means the company, firm or person identified in the **Purchase Order** as the supplier of the **Goods**.
- Taxes** means all taxes (except **GST**), fees, levies, duties and charges imposed or assessed in respect of the **Goods** by all local, provincial or national government authorities including sales tax, custom duty, excise tax, and stamp duty (or equivalent) but excludes taxes imposed on the income of the **Supplier**; and
- Terms of Purchase** and **Terms** means the terms in this document.
- Warranty Period** means the period identified in the **Purchase Order**, if applicable.
- 18.2. Interpretation**
- In this **Agreement**, headings are only for convenience and do not affect interpretation and, unless the context requires otherwise:
- (a) words in the singular include the plural and the plural include the singular;
 - (b) an expression indicating a person includes an individual, a company, partnership, joint venture, association, corporation or other body corporate;
 - (c) a reference to a party to this **Agreement** includes that party's successors and permitted assigns;
 - (d) a reference to a clause, party or schedule, is a reference to a clause of, and a party and schedule to, this **Agreement** and a reference to this **Agreement** includes any schedule or annexure;
 - (e) a reference to a right includes a remedy, power, authority, discretion or benefit;
 - (f) a reference to anything (including, but not limited to, a right) includes any part of that thing;
 - (g) a reference to legislation includes any amendment to that legislation, any consolidation or replacement of it, and any subordinate legislation made under it;
 - (h) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document; and
 - (i) no rule of construction applies to the disadvantage of a party merely because that party was responsible for the preparation of this **Agreement** or any part of it.
 - (j) any other conditions appended to a **Purchase Order** or otherwise specified by **VTNZ** in relation to a **Purchase Order** shall have the same effect as if set out in these **Terms** provided that for the purposes of interpretation of these **Terms** in the event of any conflict any conditions of or relating to a **Purchase Order** shall be interpreted subject to the other provisions of these **Terms**.