

Terms and Conditions

- For the purposes of these terms and conditions:

"Business Day" means any day of the week other than a Saturday or Sunday or regional holiday, on which the New Zealand trading banks are open for business.

"Charges" means the charges specified in the Purchase Order.

"Confidential Information" means any information relating to PFR's business, the existence and contents of the Purchase Order and any information that arises in relation to the supply of goods under the Purchase Terms.

"Delivery Docket" means a written document provided by the Supplier on delivery of goods which records the Purchase Order number, and the quantity (including any applicable units of measure), part number(s) and description(s) of the goods being delivered.

"Defective Goods" has the meaning given to it in clause 15 of these Terms.

"Delivery Date" means the delivery date specified in the Purchase Order.

"Delivery Location" means the location specified in the Purchase Order as the delivery address.

"Goods" means the goods specified in the Purchase Order.

"PFR" means The New Zealand Institute for Plant and Food Research Limited a Crown Research Institute established under the Crown Research Institutes Act 1992 and having its registered office at Mt Albert Research Centre, 120 Mt Albert Road, Mt Albert, Auckland (Company No 547965 NZBN 9429038983559).

"Purchase Order" means a purchase order sent from PFR to the Supplier.

"Purchase Terms" means these Terms together with the Purchase Order that applies to the supply of the Goods.

"Shelf Life" applies only to goods which have a limited storage life and means the shelf/calendar or utilisation period stated on the packaging in which the Goods are delivered which defines the period during which the Supplier warrants the Goods remain fit for purpose.

"Supplier" means the supplier specified on the Purchase Order.

"Terms" means these terms and conditions.

"Warranty Period" has the meaning given to it in clause 22 of these Terms.

Terms

- PFR reserves the right to amend the Terms from time to time and it is the Supplier's responsibility to review the Terms every time it agrees to a Purchase Order.
- The Terms are based on the purchase of standard goods by PFR and, if PFR considers it appropriate, PFR may require the Supplier to enter into a more detailed written agreement for the supply of goods.
- As a Crown Research Institute, PFR is required to have regard to the Government Rules of Sourcing and PFR reserves the right to withdraw a Purchase Order at any time before the supply contemplated in clause 8, where PFR considers (acting reasonably) that the Government Rules of Sourcing should govern the purchase. In particular, where the Supplier seeks to vary the Charges with the effect that the proposed increased charge exceeds, or is likely to exceed, NZ\$100,000 then the Supplier will immediately notify PFR.
- If PFR and the Supplier execute a written agreement for the supply of goods, the terms of that written agreement will take precedence over these Terms in relation to those goods.
- The Purchase Terms override any other terms and conditions provided by the Supplier or incorporated by reference into any other documents provided by the Supplier in relation to the supply of goods including, without limitation, any terms or conditions contained in a Delivery Docket.

- Any changes to the Purchase Terms must be expressly agreed to in writing by PFR and the Supplier.

Supply of the Goods

- The Supplier agrees to supply the Goods to PFR in accordance with the Purchase Terms. The supply of the Goods by the Supplier will be deemed to be agreement by the Supplier to the Purchase Terms.
- The Supplier will deliver the Goods to PFR at the Delivery Location on the Delivery Date. PFR may specify additional or special requirements for the delivery of the Goods on the Purchase Order.
- It is essential that the Goods are delivered to PFR on or before the Delivery Date. The Supplier will notify PFR immediately in writing if it becomes aware of any actual or possible delay in delivery of all or any part of the Goods.
- The Supplier will package and transport the Goods appropriately so as to protect the contents and keep them clean, dry and in a new condition until delivered to PFR.
- The Supplier shall be responsible for obtaining any customs or regulatory approvals, or similar, needed in relation to entry of the Good into NZ and/or delivery to PFR. Before committing to supply the Goods, the Supplier shall advise PFR of any steps that PFR needs to take in respect of entry or delivery of the Good as contemplated herein and PFR may withdraw the Purchase Order if PFR is unable or unwilling to take those steps.
- The Supplier will ensure a Delivery Docket is supplied with the Goods. Delivery will be deemed to have occurred when an authorised representative of PFR has confirmed receipt of the Goods in writing provided such confirmation does not constitute acceptance by PFR of either the quality or quantity of the delivered Goods.

Acceptance of Goods

- Acceptance of the Goods is subject to PFR's reasonable inspection, testing and approval at the Delivery Location.
- If PFR considers in its sole discretion that all or any part of the Goods do not satisfy the warranties and otherwise comply with the Purchase Terms, including but not limited to any specification as to the quantity of the Goods (the "Defective Goods") PFR may give the Supplier written notice within twenty (20) Business Days of delivery of the Goods that it:
 - requires the Supplier to repair the Defective Goods;
 - requires the Supplier to replace the Defective Goods; or
 - rejects any or all of the Goods (whether the Goods rejected are Defective Goods or not).
- PFR shall be deemed to have accepted the Goods if it has not sent the Supplier written notice in accordance with clause 15 within twenty (20) Business Days of delivery of the Goods.
- Where pursuant to clauses 15 or 23 PFR requires the Supplier to repair or replace any Goods, the Supplier must do so forthwith but in any event no later than within ten (10) Business Days, at the Supplier's sole cost and expense.
- If the Supplier fails to repair or replace the Defective Goods within ten (10) Business Days, or if PFR determines (in its sole discretion) the repaired or replaced Goods do not satisfy the warranties nor otherwise comply with the Purchase Terms, PFR may give the Supplier written notice that it rejects the Goods.
- Upon receipt of a rejection notice pursuant to clause 15.3 or clause 18, the Supplier will:
 - within five (5) Business Days of such notice, refund to PFR all amounts paid by PFR in relation to the rejected Goods; and
 - at the request of PFR, and at the Supplier's own cost and expense, remove or procure the removal of the rejected Goods from PFR's premises.
- PFR's rights under clauses 14 to 19 are in addition to, and do not limit, any other rights or remedies which may be available to PFR in contract or at law.
- Without limiting the general effect of clause 22, the Supplier also acknowledges that some Goods, by their nature or packaging, may not be tested for defects of deficiencies within the deemed acceptance timeframe contemplated in clause 16.

Supplier Warranties

22. The Supplier warrants that the Goods will:
- 22.1. be free from defects in design, materials and workmanship;
 - 22.2. be of merchantable quality and fit for purpose;
 - 22.3. in the case of Goods that are mains operated, comply with the applicable AS/ NZS standards and, where required by PFR, provide line conditioning or uninterrupted power supply;
 - 22.4. comply with the description and specification in the Purchase Order; and
 - 22.5. meet or exceed any functionality and performance metrics set out in the Purchase Order in relation to goods where:
 - (a) a Shelf Life is not applicable, a period of 24 months; or
 - (b) a Shelf Life is applicable, then the period of the applicable Shelf Life;from the date of acceptance or deemed acceptance of the Goods by PFR (the "Warranty Period").
23. If any of the Goods do not comply with any of the warranties set out in the Purchase Terms (including for clarification, warranties provided or implied by law) PFR may give the Supplier written notice before the expiry of the Warranty Period that it:
- 23.1. requires the Supplier to repair the Goods; or
 - 23.2. requires the Supplier to replace the Goods: and clauses 16 to 20 of these Website Terms will apply in relation to those Goods.
24. The Supplier further warrants that:
- 24.1. the Goods will be new and unused when delivered to PFR and, if a Shelf Life is applicable to the Goods, that at least 95% of such Shelf Life will remain on delivery of the Goods;
 - 24.2. it will supply the Goods with adequate documentation to enable PFR to use and maintain the Goods as intended by PFR;
 - 24.3. all information provided by the Supplier to PFR in relation to the Goods is current, complete and accurate;
 - 24.4. the Goods comply with all laws, regulations, codes of practice and industry standards relevant to their manufacture, transport, storage, distribution and use;
 - 24.5. the Supplier has, at the time of delivery, full and unencumbered right, title and interest in the Goods, so that unencumbered ownership of the Goods shall pass to PFR on delivery, and no third party will have any right, title, interest or other claim in respect of such Goods;
 - 24.6. neither the supply of the Goods to PFR, nor PFR's use of the Goods for any purpose reasonably contemplated by PFR, will infringe any rights (including but not limited to intellectual property rights) of the supplier or any third party; and
 - 24.7. the licence terms applicable to any software embedded in and/or provided as part of the Goods comply with the warranties and other terms of the Purchase Terms and if there is any conflict or ambiguity between the terms of any software licence and the Purchase Terms, the Purchase Terms will prevail.
25. If the Supplier is not the original manufacturer of the Goods or any item incorporated into or supplied with the Goods, the Supplier shall ensure that (without limiting any of the Supplier's warranties or other obligations under these Terms) PFR receives the full benefit of any warranty or other service commitment available from such third party supplier in relation to the Goods.
26. The warranties in clauses 22 to 25 above shall be deemed to apply to any Goods that have been repaired or replaced by the Supplier, and any spare parts that have been provided by the Supplier, with the Warranty Period commencing on the date the Supplier delivers such Goods or spare parts to PFR.

Title and Risk

27. Title to the Goods (including any replacement Goods) passes to PFR on the date PFR pays for the Goods in full or in part.

28. Risk in the Goods passes to PFR on the date the Goods are delivered to PFR. The Supplier shall, at its own cost and expense, ensure the Goods are fully insured up to the time that delivery is confirmed by PFR.
29. If PFR rejects any Goods, title and risk in the rejected Goods passes back to the Supplier on the date PFR receives a full refund of all amounts PFR has paid for the rejected Goods.
30. If the Supplier has replaced any Goods, title and risk in the Goods that have been replaced passes back to the Supplier on the date PFR returns the replaced Goods to the Supplier.

Spare Parts and Consumables

31. The Supplier will maintain an adequate stock of spare parts and consumables for the Goods for not less than ten (10) years from the date of the Purchase Order.

Health and Safety & security on site

32. To the extent that any personnel, representatives or contractors of the Supplier are required to be on PFR's site or premises to provide installation, training or maintenance services in relation to the Goods, the Supplier shall ensure that any such personnel, representatives or contractors comply:
- 32.1. with PFR policies and procedures regarding site access;
 - 32.2. with all health and safety and environment requirements of PFR, including compliance with any health and safety policies and procedures as may be notified by PFR; and
 - 32.3. with the reasonable instructions or directions of PFR personnel regarding health and safety matters, in a manner that ensures PFR's health and safety, regulatory and/or other obligations are able to be satisfied.

Limitation of Liability

33. To the extent allowed by law, PFR is liable only for payment of the Charges in relation to Goods accepted by PFR.
34. In any event PFR shall only be liable for its wilful and deliberate breach of this Agreement, and in no circumstances shall PFR's total liability in relation to the Purchase Order, and the liability of its officers and employees, exceed in aggregate an amount equal to the amount that PFR has paid to the Supplier under the Purchase Order.

Indemnity

35. The Supplier indemnifies PFR and its officers and employees against all loss, damage, cost (including reasonable legal costs on a solicitor/client basis), expense or the like which PFR may suffer or incur in connection with any breach by the Supplier of any warranty or other obligation of the Supplier in relation to the Goods, or to the Purchase Terms except to the extent that any negligent act or omission of PFR contributed to the loss, damage, cost or expense.

Insurance

36. The Supplier acknowledges and agrees that it will:
- 36.1. maintain or cause to be maintained, liability insurance cover of not less than NZ\$3 million in respect of all of the Supplier's obligations under this Agreement;
 - 36.2. produce evidence of the currency of the above insurance policies if required by PFR; and
 - 36.3. undertake at all times to comply with the terms of the above insurance policies.

Charges and payment

37. The Supplier will invoice PFR and PFR will pay the Supplier's valid invoices in accordance with the Purchase Terms.
38. The Supplier will send invoices to PFR on the date the Goods are delivered to PFR in accordance with the Purchase Terms (unless otherwise agreed by the parties). Each invoice shall break down the Charges and GST and will be effective tax invoices for GST purposes.
39. PFR will raise any queries, or pay any undisputed invoice, by the 20th of the month following receipt of any invoice. Where PFR disputes all or any portion of an invoice PFR will pay the undisputed portion of the invoice and the parties will resolve the matter in accordance with the dispute resolution process set out in clauses 49 to 52.

40. PFR will be entitled to set off against the Charges any money owed by the Supplier to PFR under these terms or any other agreement.

Confidentiality

41. The Supplier will keep confidential, and will not use nor permit the use of, any Confidential Information, except to the extent that:
- 41.1. the Confidential Information lawfully enters the public domain;
 - 41.2. PFR consents in writing to the disclosure of the Confidential Information;
 - 41.3. the Confidential Information is received in good faith from a third party having the lawful right to disclose such information, where no obligation of confidentiality is owed to the third party; or
 - 41.4. disclosure is required by law, in which case the Supplier shall promptly notify PFR and take all reasonable steps so as to allow PFR the full opportunity to oppose disclosure.
42. The Supplier may only make the Confidential Information available to those of its employees, agents and subcontractors to the extent that such Confidential Information is necessary in order for the Supplier to perform its obligations under the Purchase Terms. The Supplier will ensure that its employees and permitted subcontractors who receive, or may receive, Confidential Information which the Purchase Terms require to be kept confidential, are aware of, and are bound by, the confidentiality provisions of the Purchase Terms.
43. If required by PFR, the Supplier will obtain a written undertaking from any person to whom the Supplier discloses Confidential Information that confirms that person:
- 43.1. has read and understood the confidentiality provisions of the Purchase Terms; and
 - 43.2. will comply with the confidentiality provisions of the Purchase Terms.

Use of PFR's Name

44. The Supplier will not use PFR's name or refer to any matter arising under the Purchase Terms to advertise or promote or endorse (whether directly or indirectly) the Supplier, the Goods, or the Supplier's business in any manner.

National and Regional Procurement

45. The Supplier acknowledges that PFR is and/or may from time to time become entitled to purchase certain goods and services as part of a national and/or regional procurement arrangement with some or all of the other Crown Research Institutes and/or Government departments or agencies (an "Arrangement").
46. The Supplier agrees that notwithstanding anything else the Purchase Terms, where, subsequent to the Parties entering into a Purchase Order, PFR has the opportunity to purchase goods or services as part of an Arrangement, and those goods or services are the same as, or substantially similar to, or substitutable for, all or any part of the Goods, then PFR may, on written notice to the Supplier:
- 46.1. require that the Supplier agree to vary the Purchase Terms so that such Goods will, with effect from the date of such notice, be supplied on terms no less favourable than those terms which are available to PFR pursuant to the Arrangement (the terms of such variation to be agreed within twenty (20) Business Days of PFR's notice); and/or
 - 46.2. terminate all or any part of the Purchase Order, as applicable, provided however that such termination shall not become effective until twenty (20) Business Days following the date of such notice.

Termination

47. PFR may amend or cancel any Purchase Order at any time prior to delivery of the Goods to PFR.
48. If PFR terminates a Purchase Order, PFR will only be liable to pay Charges in relation to Goods delivered to PFR which have not been rejected by PFR before the effective date of termination.

Dispute Resolution

49. If a dispute arises out of or in connection with the Purchase Terms, or the supply of Goods made under the Purchase

Terms, the parties shall each appoint a representative with authority to settle the dispute and, through that representative, shall then enter into negotiations in good faith to try to resolve the dispute.

50. If a resolution cannot be effected within ten (10) Business Days, the parties shall then refer the matter to mediation on the terms of the standard mediation agreement of the New Zealand Chapter of Leading Edge Alternative Dispute Resolvers ("LEADR"). The mediator shall be one mediator to be agreed by the parties or, in the event that a single mediator cannot be agreed within five (5) Business Days after the reference, then by a mediator appointed by the president for the time being of LEADR.
51. If a resolution cannot be effected by mediation within a further twenty (20) Business Days, then either Party may commence proceedings in any court of competent jurisdiction.
52. Nothing in the above clauses 49 to 51 shall limit or restrict the ability of either Party to seek urgent interim and preliminary relief from any court.

Notices

53. All notices under the Purchase Terms shall be in writing and personally delivered or sent by prepaid post, or facsimile, to the address of the Party to whom the notice is to be given.
54. Notices shall be deemed to have been delivered on:
- 54.1. the third Business Day after posting in the case of notices sent by post to an address within the same country;
 - 54.2. the tenth Business Day after posting by airmail in the case of notices sent by post to an address in a different country;
 - 54.3. the receipt of an error free transmission report in the case of a facsimile, unless a verifiable query as to illegibility is promptly raised; or
 - 54.4. the date of delivery in the case of personal service.

General

55. The Purchase Terms are personal to the Supplier. The Supplier may not assign, transfer, or deal with any of the Supplier's rights or obligations under the Purchase Terms, nor subcontract any duties under the Purchase Terms, without the prior written consent of PFR. Any material change in the Supplier's shareholding is an assignment for the purposes of this clause.
56. The relationship between the parties is one of customer and supplier and nothing in the Purchase Terms shall make the Parties joint venturers, partners or agents of the other and neither Party has authority to bind the other in any way.
57. The Purchase Terms represent the entire agreement between the Parties relating to the Goods. There are no oral or written agreements, representations, understandings or commitments of any kind, express or implied, not expressly set out in the Purchase Terms.
58. Variations, waivers and modifications shall be valid only if in writing and signed by the Parties.
59. Should any part or provision of the Purchase Terms be held to be unenforceable or in conflict with the applicable laws or regulations of any jurisdiction, the invalid or unenforceable part or provision shall be replaced with a provision which accomplishes, to the extent possible, the original business purpose of such part or provision in a valid and enforceable manner, and the remainder of the Purchase Terms will remain binding upon the parties.
60. The Supplier acknowledges and agrees that if the Supplier provides other goods to PFR, then in the absence of a written agreement covering those goods, those goods will be subject to the Website Terms.
61. Any failure by either Party to enforce any of the provisions of the Purchase Terms shall not constitute a waiver of any rights to future enforcement.
62. The Purchase Terms shall be governed by the laws of New Zealand. Both Parties submit to the non-exclusive jurisdiction of the courts of New Zealand. Neither Party will object to the exercise of jurisdiction by those courts, either for forum non conveniens, or on any other basis.
63. The provisions of the Purchase Terms that are capable of surviving termination or expiry shall survive termination or expiry of these Terms for any reason.