

Standard Conditions of Purchase



(Goods and Services)

1. DEFINITIONS

For the purposes of these Conditions of Purchase:

Agreement means the Order together with these Conditions of Purchase;

Business Day means any day other than a Saturday, Sunday or a statutory public holiday in New Zealand;

Delivery Point means the place specified as the delivery point in as Order;

Goods means the goods specified in an Order that are to be supplied by the Seller to The Lines Company (TLC) on the terms set out in this Agreement;

GST means goods and services tax payable under the GST Act or any similar tax under any replacement legislation;

GST Act means the New Zealand Goods and Services Tax Act 1985;

Inland Revenue means the New Zealand Inland Revenue Department;

ITA means the New Zealand Income Tax Act 2007;

Notice means every notice or other communication for the purposes of this agreement;

Order means a purchase order issued by TLC to the Seller;

Personal Property Securities Register means the electronic register maintained by the New Zealand Companies Offices (on behalf of the New Zealand Ministry of Economic Development) and which allows security interests in personal property to be registered and searched in accordance with the New Zealand Personal Property Securities Act 1999;

Seller means the person to whom the Order is addressed or any subcontractor, independent contractor or other class of person appointed by that person;

Services means the services referred to in an Order that are to be supplied by the Seller to TLC on the terms set out in this Agreement;

Tax Invoice means an invoice that complies with section 24 of the GST Act; and

TLC means The Lines Company Limited or any of its wholly-owned subsidiaries.

2. GENERAL

- 2.1 Any Goods and/or Services purchased by TLC from the Seller will be purchased on the terms set out in this Agreement only. This Agreement constitutes the entire agreement of the parties in respect of the matters covered by it and supersedes all previous agreements in respect of those matters, including the Seller's terms (if any).

3. PAYMENTS

- 3.1 Unless otherwise agreed in writing between the parties, TLC is to pay for the Goods and/or Services in accordance with any terms set out in the relevant Order, or, if no such terms are set out, on the 20th day of the month following the date of the invoice or Tax Invoice for the Goods and/or

Services submitted by the Seller, unless there is a dispute regarding the invoice or Tax Invoice.

- 3.2 Payment shall not prejudice TLC's right to reject any Goods and/or Services for breach of warranty or to obtain a refund for such Goods and/or Services.

- 3.3 TLC will not be liable to pay for any Goods delivered in excess of the amounts specified in any Order.

4. PRICE AND TAX

- 4.1 Subject to clause 4.2, the purchase price of the Goods and/or Services will be the price specified in the Order or, where no price is specified, the price then current when the Goods and/or Services are ordered.

- 4.2 The purchase price of the Goods and/or Services will be inclusive of all taxes and duties of any kind that either party is required to pay in respect of the sale of the Goods or the provision of the Services other than GST.

Liability for freight and insurance as between Seller and TLC will be as specified in the Order or, where liability is not specified, the Seller will pay for freight and insurance.

- 4.3 Following acceptance of an Order, the Seller must send TLC a valid invoice that records the price of the Goods and/or Services separately from the value of any GST payable on those Goods and/or Services. Where any amendment is made to the amount payable for the Goods and/or Services after the invoice has been issued, the Seller must issue a credit or debit note (as the case may be) to TLC. If the Seller is a registered person for the purposes of the GST Act, the invoice issued by the Seller must be a Tax Invoice and any credit or debit note issued by the Seller must comply with the relevant requirements of the GST Act.

- 4.4 The Seller alone shall be responsible for paying all income tax and other taxes and levies of any nature imposed upon the Seller in respect of the supply of the Goods and/or Services to TLC and for making arrangement with Inland Revenue. TLC will not make any adjustment or reimbursement in respect of any additional amounts which the Seller may pay to or on behalf of its personnel to compensate for any increases in income tax or other taxes and levies of whatsoever nature which they may incur or suffer by reason of either operating, or supplying the Goods and/or Services to TLC.

- 4.5 Any amount withheld or deducted by TLC from any payment due to the Seller and paid to Inland Revenue pursuant to TLC's reasonable understanding of its duty under the ITA, or the Tax Administration Act 1994 (and/or related statutes or replacements) or regulations made thereunder shall for the purposes of this Agreement be

deemed to have been paid by TLC to the Seller and the payment thereof to the Commissioner of Inland Revenue shall be treated as a complete discharge of TLC's liability to the Seller in respect of the amount so paid.

- 4.6 The parties agree that the purchase price of any Goods and/or Services purchased by TLC from the Seller pursuant to this Agreement is the lowest price that the parties would have agreed upon for those Goods and/or Services on the basis of payment in full on the date the first right in the Goods was transferred and/or the Services provided and that no income or expenditure arises in respect of the sale and purchase of the Goods and/or Services under the financial arrangements rules in the ITA.

5. DELIVERY OF GOODS

- 5.1 The Goods are to be delivered by the Seller to the Delivery Point.
- 5.2 Where a delivery date is specified in the Order, time is of the essence. The Seller indemnifies TLC against any loss or damage suffered if the Seller does not deliver the Goods to the Delivery Point by the specified delivery date and, without prejudice to TLC's other rights, TLC may cancel the Order and/or all further deliveries of Goods.
- 5.3 Delivery of the Goods will be deemed to have occurred when:
- (a) the Goods have been unloaded at the Delivery Point;
 - (b) TLC has inspected the Goods; and
 - (c) TLC or its agent has acknowledged receipt of the Goods.
- 5.4 Without prejudice to TLC's other rights, if the Seller delivers a different quantity of Goods to that specified in the Order, TLC may accept all of the Goods or accept any lesser quantity and reject the rest of the Goods.
- 5.5 The Seller will be liable for all costs and losses that TLC incurs as a result of the delivery of the wrong quantity of the Goods or the wrong Goods.
- 5.6 The Seller must provide detailed delivery documents with every delivery of Goods which must contain as a minimum TLC's Order number, and/or order item number, the date, the Seller's details, the quantity of Goods dispatched and an item description.

6. PROVISION OF SERVICES

- 6.1 Where the Order specifies a date by which the Services must be provided, time is of the essence. The Seller indemnifies TLC against any loss or damage suffered if the Seller does not provide the Services by the specified date and, without prejudice to TLC's other rights, TLC may cancel the Order and/or all further provision of Services.

7. OWNERSHIP AND RISK

- 7.1 Except as otherwise provided in this Agreement, ownership of and risk in the Goods will pass to TLC once the Goods are delivered to, inspected by and accepted by TLC. Acceptance as to ownership of the Goods does not defeat the Seller's warranties contained in clause 13, or TLC's rights of return under clause 10, or act as a waiver of any of TLC's other rights.
- 7.2 Notwithstanding clause 7.1, the Seller bears the risk of loss or damage to Goods until ownership of those Goods

passes to TLC in accordance with clause 7.1 or the terms of the Order.

8. INSPECTION

- 8.1 TLC or its representative has the right at all reasonable times to inspect the Goods (whether in the course of manufacture or not) and/or Services, whether at the Seller's place of business or otherwise. Notwithstanding such inspection or TLC's acceptance of delivery, all Goods and Services are subject to TLC's inspection and acceptance at its own premises following delivery or completion. If the Goods are to be installed or incorporated into any plant, machinery or any other part of TLC's premises, such inspection and acceptance may be carried out after installation or incorporation under operating conditions.

9. DEFECTIVE GOODS

- 9.1 TLC may reject any Goods which fail to comply with the terms of an Order. Any rejected Goods may be returned at the cost of the Seller. The rejected Goods shall, upon rejection, become the property of the Seller, and, if held by TLC, will be held at the Seller's risk.
- 9.2 The Seller acknowledges that any defect or fault in any Goods which may occur within 12 months from the date of delivery shall be deemed to be a consequence of faulty workmanship, materials or design and shall be remedied at the Seller's expense unless the defect is directly attributable to the default or neglect of TLC. If the defect cannot be effectively remedied within a reasonable time, TLC may reject the Goods, and any moneys paid by TLC in respect of the Goods shall be repaid immediately by the Seller.
- 9.3 Such defect correction shall be in addition to and not in substitution for any rights which TLC may have for breach of warranty or otherwise at law in respect of any defect or fault in the Goods.

10. RETURN OF GOODS

- 10.1 If TLC cancels the Order or rejects any Goods in accordance with this Agreement, TLC may, at the risk and expense of the Seller, return the whole or any part of the Goods to the Seller and, at TLC's discretion, require the Seller:
- (a) to replace or repair the defective Goods to no additional costs; or
 - (b) refund in full any money paid to the Seller for Goods that have been returned.

11. FAILURE TO PROVIDE SERVICES

- 11.1 If the Seller fails to provide all or part of the Services in accordance with this Agreement, TLC may cancel the Order and obtain replacement services from a third party at the Seller's cost.

12. PACKING

- 12.1 All Goods must be marked, packed and otherwise protected, at the Seller's expense, for transit to the Delivery Point, in such manner as will prevent any damage to or deterioration of the Goods under normal transport and storage conditions, having regard to the nature of the Goods and reasonably anticipated transport conditions.

13. WARRANTIES

- 13.1 The Seller warrants that the Goods:
- (a) are free from any charges, encumbrances or other security interests;
 - (b) will, on delivery to TLC, be free from any liens, charges, encumbrances and security interests and no financing statement is or will be registered or maintained in respect of the Goods in the Personal Property Securities Register;
 - (c) will, for a period of 12 months after the supply of such Goods, remain fit for the purposes made known by TLC (expressly or by implication) or if purposes are not made known, will be fit for all the purposes for which goods of the type in question are commonly supplied or for which the Seller represents that they are or will be fit;
 - (d) are of merchantable quality and are free from defects in design, material and workmanship provided that where the Goods have been manufactured in accordance with any drawings, specifications or instructions provided by TLC, the Seller warrants only that the Goods conform to such drawings, specifications or instructions, are of sound material and workmanship, and are free from any defects;
 - (e) where the Goods have been manufactured by a third party, TLC will receive the full benefit of all warranties given by that third party manufacturer in respect of those Goods;
 - (f) correspond with the sample, demonstration model or description where the sale is by sample, demonstration model or description, as the case may be; and
 - (g) will not be supplied to TLC on terms that would allow the Seller or any third party to have access to any of TLC's premises to recover the possession of the Goods.
- 13.2 To the extent permitted by law, the above warranties are in lieu of and to the exclusion of any express or implied conditions or warranties, statutory or otherwise, relating to the quality and description of the Goods.
- 13.3 The Seller warrants that the Services:
- (a) will be provided in a timely manner in compliance with this Agreement;
 - (b) will be performed with due care, skill and diligence by competent and qualified persons; and
 - (c) will be fit for the purposes made known by TLC to the Seller (expressly or by implication) or if no purposes are made known, for all the purposes for which Services of the type in question are commonly acquired or for which the Seller represents they are or will be fit.
- 13.4 The Seller warrants that it has obtained all licences, authorisations and other formalities necessary for the manufacture of the Goods and/or the provision of the Services.
- 13.5 Without limiting TLC's rights under this Agreement or otherwise, if the Seller breaches any of the warranties in this clause 13 and/or the warranty in clause 16, TLC may:
- (a) in the case of Goods, reject all of the Goods or any of them and obtain from the Seller, at TLC's

option, a refund of the purchase price paid in respect of the rejected Goods or replacement Goods;

- (b) in the case of Goods, accept the Goods or any of them and obtain from the Seller damages in compensation for any reduction in value of the Goods below the purchase price paid or payable for the Goods; or
- (c) in the case of Services, require the Seller to stop providing the Services and obtain replacement services from a third party at the Seller's cost.

- 13.6 Ownership of any Goods rejected under clause 13.5(a) shall remain with the Seller and those Goods will continue to be at the Seller's sole risk.

14. LIABILITY, INDEMNITY AND INSURANCE

- 14.1 The Seller indemnifies TLC for all claims, costs, demands, expenses, liabilities, damages or losses of any nature, arising out of or in connection with the Seller's failure to comply with this Agreement, provided that the Seller's liability under this clause 14.1 shall be limited to \$NZ1 million (plus GST, if any) for any one event or for any series of related events.
- 14.2 The Seller shall hold, and keep current until such time as TLC has accepted the Goods or the Seller has provided the Services to the satisfaction of TLC (as the case may be), \$NZ1 million public liability insurance and, if TLC requires, \$NZ1 million professional indemnity insurance in relation to the Goods and/or Services. AT TLC's request, the Seller must provide TLC with copies of certificates containing details of the required policies.
- 14.3 Without prejudice to any other remedies available to TLC, if the Seller provides any Services or constructs, inspects or delivers any Goods to TLC at the Delivery Point or one of TLC's other premises, the Seller will, at its own expense, indemnify, hold harmless and defend TLC and its officers, agents, contractors and employees for any loss, liability or demand, or the payment of any sum of money by reason of any damage to any property, that may occur in connection with the construction, inspection or delivery of the Goods and/or the provision of the Services.
- 14.4 Except in relation to the obligation to make payment for the Goods or Services in accordance with the terms of this Agreement, TLC excludes all liability for any loss or claim whatsoever arising directly or indirectly out of, or in connection with, this Agreement that the Seller may incur.

15. HEALTH, SAFETY AND ENVIRONMENT

- 15.1 If the Seller provides Goods and/or Services at TLC's premises, the Seller must ensure that:
- (a) its employees, contractors and agents are competent in health, safety and environmental matters and that they at all times identify and exercise all necessary precautions for the health and safety of all persons and the protection of the environment;
 - (b) it complies with all applicable New Zealand legislation including (without limitation) the Health and Safety at Work Act 2015 and the Resource Management Act 1991;
 - (c) it complies with all of TLC's safety requirements and procedures;

- (d) it performs appropriate health, safety and environment risk assessments and implements any necessary preventative controls prior to providing the Goods and/or Services;
- (e) it immediately reports to TLC all incidents involving injury, potential injury or near injury to any person or the environment or damage to property;
- (f) TLC's premises are left secure, clean, orderly and fit for use; and
- (g) all TLC's property, including and without limitation, all security swipe cards, key, books, records and papers, is returned to TLC once the Seller has provided those Goods and/or Services.

16. INTELLECTUAL PROPERTY RIGHTS

- 16.1 The Seller warrants that the sale or use of the Goods and/or the supply of the Services will not infringe any patent, design, trade mark, copyright or other intellectual property right of a third party or result in TLC becoming liable for the payment of any royalties or other fees.
- 16.2 Any intellectual property created by the Seller in the course of providing the Goods or the Services will be owned by TLC.
- 16.3 The Seller will, at its own expense, indemnify, hold harmless and defend TLC and its officers, agents, contractors and employees for any loss, damage, expense, liability, claim or demand for actual or alleged infringement of any patent, design, trade mark, copyright or other intellectual property right of a third party, arising from the purchase, use or sale of the Goods, supply of the Services, or any other dealings arising under this Agreement.
- 16.4 All plans, drawings, specifications and other technical or engineering data relating to the Goods and/or Services supplied by or on behalf of TLC to the Seller, and any copies or patterns made from those documents, remain TLC's exclusive property and the Seller will only use them for the purposes of the Order and will return them to TLC on demand.
- 16.5 Clauses 16.1 and 16.2 do not apply where the Goods are manufactured to TLC's detailed design.

17. AMENDMENTS TO DRAWINGS, SPECIFICATIONS OR INSTRUCTIONS

- 17.1 TLC may amend any of the drawings, specifications or instructions for Goods and/or Services (Amendment) and the Seller must comply with any notification of an Amendment. If an Amendment results in a decrease or increase in the Seller's costs, or in the time for providing the Goods and/or Services, the parties may agree in writing to adjust the price and/or the time for providing the Goods and/or Services, provided that the Seller notifies TLC of the request for such an adjustment within seven days after receipt of the Amendment notification.

18. CANCELLATION

- 18.1 Unless previously withdrawn by TLC, an Order is open for acceptance by the Seller for the period stated in the Order or, when no such period is stated, for a period of 3 Business Days from the date of the Order.
- 18.2 TLC may cancel an Order, with immediate effect, by notice to the Seller, if the Seller:

- (a) fails to perform any of its obligations under this Agreement and the failure has not been remedied within five Business Days of receipt of a notice by the Seller requiring the failure to be remedied;
- (b) has appointed a receiver, liquidator, statutory manager, or otherwise passes a resolution for winding up, or assigns its estate or any substantial part of it for the benefit of its creditors; or
- (c) is unable to pay its debts in the ordinary course of business or is insolvent.

- 18.3 TLC may at any time, by notice in writing to the Seller, cancel the Order in respect of any undelivered Goods or uncompleted Services. If the Order covers:

- (a) standard stock goods or standard services, TLC's only obligation to the Seller is to pay for Goods delivered or Services provided, prior to the date of cancellation; and
- (b) Goods or Services manufactured or provided, or to be manufactured or provided, to TLC's specifications or specifications prepared by the Seller for TLC, then, on receipt of the cancellation notice, the Seller must immediately stop all performance under the Order except as TLC otherwise directs.

- 18.4 Where the Seller is not in default of its obligations under this Agreement, TLC must on cancellation under clause 18.3 pay to the Seller:

- (a) all reasonable costs directly incurred by the Seller in connection with the Order up to an including the date of cancellation; and
- (b) such other reasonable costs, including cancellation charges under any subcontract, as the Seller may establish to the satisfaction of TLC,

provided however that the total cancellation payment plus any previous payment made by TLC to the Seller for the Goods and/or the Services, as the case may be, must not exceed the total price stipulated in the Order. On such payment, the ownership of all Goods and uncompleted work shall pass to TLC.

19. CONFIDENTIALITY

- 19.1 Unless otherwise expressly agreed by TLC in writing, all data and other information provided by TLC to the Seller in connection with an Order is confidential to TLC and shall be used solely for the purposes of the Order or for any other agreement between the Seller and TLC relating to the Goods and/or Services supplied, and shall remain the property of TLC and be returned, together with any copies made of them, to TLC on demand.

20. NOTICES

- 20.1 Any Notice to be given by a party to the other shall be in writing and shall be deemed to be duly given or made:
- (a) if delivered by hand, when so delivered;
 - (b) subject to clause 20.2, if sent by email to the email address of the relevant party;
 - (i) if sent between the hours of 9am and 5pm on a local working day, at the time of transmission; or

- (ii) if sub-clause (i) does not apply, at 9am on the local working day immediately after the time of sending; and

- (c) if sent by post, on the 2nd Business Day following posting.

For this purpose a "local working day" is a normal working day in that place.

- 20.2 A Notice given by email, is not deemed received unless (if receipt is disputed) the party giving Notice produces a printed copy of the email which evidences that the email was sent to the email address of the party given Notice.

- 20.3 For the purposes of this clause 20 the address details of:

- (a) the Seller is the Seller's last address known to TLC; and
- (b) TLC is 8 King Street East, Te Kuiti 3910, or to such other address as may be stated in the Order, or designated by TLC from time to time.

21. LEGAL COMPLIANCE

- 21.1 The Seller must comply with all applicable laws, rules, regulations, bylaws, standards, codes of practice, and TLC's current policies and procedures in providing the Goods and Services.

22. WAIVER

- 22.1 No waiver by a party of its rights under this Agreement is effective unless it is in writing signed by that party.
- 22.2 A waiver by TLC pursuant to this clause 22 will not prejudice its rights in respect of any subsequent breach of the Agreement by the Seller.
- 22.3 No failure by TLC to exercise, and no delay in exercising, a right under this Agreement will operate as a waiver of that right, nor will a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right.

23. SEVERABILITY

- 23.1 If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, this Agreement remains otherwise in full force apart from such provision that will be deemed deleted.

24. AMENDMENT

- 24.1 No amendment to this Agreement is effective unless it is in writing signed, or otherwise recognised, by both parties.

25. ASSIGNMENT AND SUBCONTRACTING

- 25.1 The Seller must not assign this Agreement or subcontract any of its obligations under this Agreement without TLC's prior written consent.

26. RELATIONSHIP OF THE PARTIES

- 26.1 The relationship of the parties is one of independent contractors. Nothing in this Agreement is or will be taken as constituting the relationship of employer/employee, partners or joint-ventures between the parties.

27. INCONSISTENCY

- 27.1 To the extent of any inconsistency between these

Conditions of Purchase and the Order, the terms of the Order will prevail.

28. DISPUTES

- 28.1 The parties agree that any dispute of whatever nature arising between TLC and the Seller is to be notified in writing by the disputing party to the other (Dispute Notice). On receipt of a Dispute Notice, each party is to use its best endeavours to resolve the dispute by discussion, meeting and/or other informal means.

- 28.2 If the dispute is not resolved by discussion, meeting and/or other informal means within 10 Business Days of the date of the Dispute Notice, then the parties may agree to submit the dispute to arbitration pursuant to the Arbitration Act 1996 (excluding Clauses 4 and 5 of the Second Schedule) or, failing agreement, either party may pursue resolution of the dispute through legal proceeding before the New Zealand courts.

- 28.3 This clause 28 does not affect either party's right to seek urgent interlocutory relief.

29. RIGHTS AND RESPONSIBILITIES THAT CONTINUE

- 29.1 The provisions of clause 13 will continue to bind the parties notwithstanding the expiry or termination of this Agreement or that either party may have ceased to be a party to this Agreement.

30. APPLICABLE LAW

- 30.1 This Agreement is governed by, and is to be construed in accordance with, New Zealand law.

31. REFERENCES

- 31.1 In this Agreement, a reference to any legislation or to any statutory provision includes: (i) any statutory amendment, modification or re-enactment of; (ii) any statutory provision substituted for; and (iii) all ordinances, by-laws, regulations, rules, codes and statutory instruments (however described) issued under that legislation or statutory provision, as the case may be.