

**TERMS OF SUPPLY OF GOODS TO CONSTELLATION NEW ZEALAND LTD**

**1 OFFER TO BUY GOODS**

This purchase order constitutes an offer by Constellation to the supplier named on the front of this purchase order (the **Supplier**) to buy the goods described on the front of this purchase order in the quantity and at the price described and otherwise on the terms and conditions set out in these terms of supply (**Terms**).

**2 GOODS TO BE SUPPLIED**

- 2.1 By supplying the goods described in the purchase order (the **Goods**) the Supplier is deemed to accept these Terms.
- 2.2 The Goods include all services and attendances incidental to or necessary or desirable to supply the Goods.

**3 PAYMENT**

- 3.1 Within 5 business days of the delivery of the Goods the Supplier will send Constellation a tax invoice for the price payable for the Goods. Constellation will pay the valid tax invoice by the 20<sup>th</sup> of the month following the delivery of the Goods. The due date for payment will be extended by one working day for each working day that the invoice is late.
- 3.2 The price is the total amount that Constellation is obliged to pay the Supplier in respect of the Goods (including the costs of transportation and delivery to the delivery address).
- 3.3 If at any time Constellation disputes the amount of invoice or the Goods to which the invoice relates do not meet the standards required under these Terms Constellation does not have to pay the disputed invoice until the dispute is resolved, provided that Constellation will pay that amount of the invoice that is not in dispute.
- 3.4 Failure by Constellation to dispute any invoice prior to payment will not prejudice Constellation's rights to subsequently dispute the correctness of such invoice.

**4 PERFORMANCE STANDARDS**

- 4.1 The Supplier warrants that the Goods will:
  - (a) comply with all applicable laws, regulations, bylaws, standards and codes of practice;
  - (b) meet or better any performance standards set out in this purchase order;
  - (c) be of merchantable quality and fit for their intended purpose; and
  - (d) conform as to any quality, sample or description specified by the parties.
- 4.2 In supplying the Goods the Supplier will ensure that all practicable steps are taken to ensure the health and safety of its and Constellation's employees, contractors and the general public.
- 4.3 The warranties set out in the Terms are additional to any other warranties and guarantees given by the Supplier or implied by law.

**5 RISK AND PROPERTY AND DELIVERY**

- 5.1 Risk of loss or damage to the Goods from any cause will remain with the Supplier until delivery of the Goods to Constellation. Property and title to the Goods will pass to Constellation on delivery.
- 5.2 The Supplier is not granted nor entitled to any lien, charge or other security interest (as that term is defined in the Personal Property Securities Act 1999) in respect of the supply of the Goods to Constellation in relation to this agreement or any other encumbrances.
- 5.3 Delivery of the Goods to Constellation, unless otherwise stated, will be deemed to occur when the Goods are unloaded at the delivery point specified by Constellation.
- 5.4 The Supplier will arrange for Goods to be delivered to Constellation on the dates and at the places specified by Constellation.
- 5.5 The cost of return freight is payable by the Supplier.
- 5.6 The signing of a delivery note by a Constellation representative will not be taken as acceptance of either the quality or quantity of the Goods and acceptance by Constellation of the Goods will be subject to subsequent inspection by a Constellation representative or the use of Goods.

**6 INTELLECTUAL PROPERTY**

The Supplier warrants to Constellation that the supply of the products or services or use of them by Constellation shall not infringe the intellectual property of a third party and the Supplier hereby indemnifies Constellation for any claim, expense, loss, damage or cost (including legal costs incurred in defending any such claim on a full indemnity basis) arising from a breach of this warranty.

**7 REJECTION OF GOODS**

- 7.1 Constellation may reject any goods, which do not meet the specifications in this purchase order or the warranties in clause 4.
- 7.2 All Goods are shipped subject to Constellation's inspection and acceptance upon arrival and Constellation reserves the right to cancel this order or part thereof if delivery is not completed within the time specified, and notwithstanding any prior payment made by Constellation. Any money paid by Constellation to the Supplier for the rejected goods will be refunded immediately.
- 7.3 Any money paid by Constellation to the Supplier for rejected Goods, or Goods which do not comply with the warranties in clause 4, will be refunded immediately.

**8 CONFIDENTIALITY**

Constellation and the Supplier will keep confidential the Terms of this purchase order and any information they learn about the other or the other's business in the course of carrying out this purchase order unless the other party gives prior written consent or unless disclosure is required by law or the requirements of any stock exchange.

**9 TERMINATION**

- 9.1 Constellation may cancel this order with immediate effect by giving the Supplier notice in writing if Constellation does not receive the Goods on the delivery date specified in this Purchase Order.
- 9.2 On termination or expiry of this purchase order the Supplier will immediately return to Constellation any documents or records held by the Supplier in relation to the Goods.
- 9.3 On cancellation under either clause 9.1 or 9.2, the Supplier will be liable to reimburse Constellation for all costs, expenses, losses and damages (including the cost of locating an alternative Supplier) incurred by Constellation as a result of the termination.
- 9.4 Termination of this purchase order will not operate as a waiver of any breach of this purchase order and will be without prejudice to any rights, liabilities or obligations of either party, which have accrued up to the date of termination. This clause 9.4 together with any other provisions, which expressly or by implication are intended to survive termination or expiry, will continue in force notwithstanding termination or expiry.

**10 GENERAL**

- 10.1 Subject to clause 10.8, this purchase order is the entire agreement between the parties relating to the Goods and replaces all earlier negotiations, representations, warranties, understandings and agreements between them (whether oral or written) relating to the Goods.
- 10.2 Subject to clause 10.8, any Goods supplied by the Supplier to Constellation will be supplied on the Terms set out in this purchase order, unless a variation to this purchase order, expressly stated as being a variation of this purchase order, is agreed by the Supplier and Constellation. Nothing in any sales or delivery docket or other document furnished by the Supplier will apply to the purchase of Goods by Constellation.
- 10.3 The Supplier may not assign or subcontract the benefit or burden of this purchase order without first obtaining the written consent of Constellation.
- 10.4 Each term in this purchase order is separately binding. If for any reason either party cannot rely on any term then all the other Terms remain binding.
- 10.5 None of this purchase order will be considered to be waived by either party except when such waiver is given in writing.
- 10.6 Failure or omission by a party at any time to enforce or require strict or timely compliance with any provision of this purchase order will not affect or impair that provision in any way or the rights of that party to avail itself of the remedies it may have in respect of any breach of that provision or any other provision.
- 10.7 Nothing in this purchase order should be interpreted as constituting either party an agent, partner or employee of the other and neither party may pledge the credit of the other nor represent to anyone that:
  - (a) it is the other party or is an agent, partner or employee of the other party; or
  - (b) it has any power or authority to incur any obligation of any nature on behalf of the other party.
- 10.8 If the Supplier has signed any standard terms of supply or similar document issued by Constellation, then this purchase order is without limitation to that document and in the event of any conflict with that document, that document shall prevail.