

PGG WRIGHTSON GROUP – SERVICES AND SUPPLIES TERMS OF TRADE

1. INTRODUCTION

- 1.1 These Services and Supplies Terms of Trade apply when PGG Wrightson Limited (PGW) purchases products or services for internal use by PGW business units. They do not apply to the purchase of merchandise for resale to our customers for which there is a separate document titled Merchandise Terms of Trade.
- 1.2 These Services and Supplies Terms of Trade apply when PGW places a purchase order with you as the Supplier of Products and Services to PGW.
- 1.3 By accepting a signed Purchase Order from PGW, (see 1.5 & 3.3) you accept these Services and Supplies Terms of Trade. These are binding on you even if not signed, and take precedence over any other document except a specific signed agreement with PGW. You should read them carefully and contact PGW if you have any queries.
- 1.4 Any specific terms agreed between us will be contained in a separate supply agreement which, when signed by both of us, forms a binding part of these Services and Supplies Terms of Trade.
- 1.5 Where there is conflict between documents, the following apply in order of precedence:
- 1.5.1 Any signed supply agreement between us,
 - 1.5.2 These Services and Supplies Terms of Trade, and
 - 1.5.3 A Purchase Order.

- 1.6 In these Services and Supplies Terms of Trade

Commencement Date means the date of the Purchase Order.

Delivery Depot means the place designated by PGW for delivery of the Products or Services.

Services and Supplies means products or services for internal use within PGW that will not be sold to PGW customers.

Products mean the Products in a Purchase Order and may include any Services relating to those Products.

Purchase Order means any authorised purchase order for the Products and/or Services in PGW's current standard form issued to you.

PGW means the PGG Wrightson Group including PGG Wrightson Limited and its subsidiaries and related companies.

Services mean the services supplied by you to PGW in a Purchase Order.

Supplier means you.

Services and Supplies Terms of Trade means these Services and Supplies Terms of Trade.

2. SUPPLY

- 2.1 You agree to supply the Products and Services to PGW in accordance with these Services and Supplies Terms of Trade. Your primary point of contact in PGW is the Procurement and Sourcing Manager who has the authority for negotiating:
- 2.1.1 Supply agreements
 - 2.1.2 Supplier performance criteria
 - 2.1.3 Payment terms; and
 - 2.1.4 Dispute resolution.

- 2.2 PGW may obtain Products or Services from other suppliers at any time. You are not required to exclusively supply us, nor is PGW required to exclusively purchase from you. PGW is not required to, nor should you expect that we will, purchase or continue to purchase any particular or minimum quantities of Products or Services.

3. PURCHASE ORDERS

- 3.1 All orders will be in writing, using PGW's Purchase Order. The Purchase Order must be signed by PGW, unless impractical for electronic communications in which case the PGW originator must be able to be identified. PGW will send Purchase Orders to you by our preferred option and could be either EDI, facsimile or email.
- 3.2 The Purchase Order may specify the quantity, price, delivery date and place and other relevant details including specifications relating to the Product or Services. These Services and Supplies Terms of Trade apply to each Purchase Order, and the supply, purchase and delivery of the ordered Products or Services.
- 3.3 PGW is not bound by, and you should not accept from us, any order not using the Purchase Order form or without an allocated Purchase Order number, or where the Purchase Order is not signed or, if electronic, the PGW originator is unable to be identified. You must not accept any verbal orders. If you deliver Products or Services without a Purchase Order, PGW may return the Product or decline the Services and any invoice will not be paid.
- 3.4 If PGW wishes to vary an order, PGW will send you a new system generated Purchase Order. On receiving the new system generated Purchase Order, you must confirm receipt of this by writing on the new Purchase Order the words "agreed and

confirmed"; it must be dated, signed with the name of the person under the signature. If you deliver Products or Services that are the subject of a variation that is not recorded in a new system generated Purchase Order, PGW may return the Products or decline the Services and any invoice will not be paid.

- 3.5 It is the Supplier's responsibility to confirm that all of the details provided on the Purchase Order are able to be met and any variation must be agreed to by PGW prior to delivery being made and must be in the form of a new system generated Purchase Order; this includes such details as, but not limited to, quantity, price, type of products or services to be delivered, and substituted product. Failure to comply may result in any invoice not being paid.

4. DELIVERY

- 4.1 Unless otherwise agreed in writing, you must deliver the Products or Services that PGW has ordered under a Purchase Order:
- 4.1.1 to the Delivery Depot specified in the Purchase Order;
 - 4.1.2 on the date specified in the relevant Purchase Order; or if no date is specified or agreed, within 10 days after the date on which PGW issued that Purchase Order (**Delivery Date**).
- 4.2 Unless otherwise agreed in writing, you will deliver in full all Products or Services ordered under each completed Purchase Order. We only accept back orders or split shipments in exceptional circumstances that require prior approval by the PGW originator.
- 4.3 If:
- 4.3.1 the ordered Products or Services have not been delivered within ten (10) days of the Purchase Order date; or
 - 4.3.2 the ordered Products have been damaged during transit; or
 - 4.3.3 the ordered Products have a shelf life of not less than fifteen (15) calendar months from the Purchase Order date; or
 - 4.3.4 the Products or Services delivered do not comply with the relevant descriptions or specifications supplied; or
 - 4.3.5 there is any shortage or divergence from the Purchase Order, then either:
 - (a) the Purchase Orders (or part of those orders) for such Products or Services may be cancelled at PGW's discretion; or
 - (b) if PGW has paid for the Products, PGW may return the Products to you at your cost and you must produce a credit note within 7 days or at PGW's request provide a full refund plus any associated costs within 7 days.
- 4.4 If an event in clause 4.2 occurs, PGW may elect to place a new Purchase Order with you if required.

5. RISK AND TITLE

- 5.1 Risk passes to PGW when the ordered Products are delivered to the Delivery Depot. Delivery of ordered Products will be deemed to have been made immediately after the ordered Products are unloaded at the Delivery Depot and signed for by an authorised representative of PGW in good condition.
- 5.2 Title to Products ordered by PGW will pass to PGW when they have been paid for in full.
- 5.3 Without prior written notice and agreement between both parties, you may not take possession of any Products which have been ordered and delivered to PGW.
- 5.4 All Products must be supplied to PGW free of any security interests, liens, charges or other encumbrances.
- 5.5 You acknowledge and accept that these Services and Supplies Terms of Trade do not create a "**security interest**" (as that term is defined in the Personal Property Securities Act 1999) and, accordingly, you must not register a financing statement in relation to the supply of Products on the Personal Property Securities Register. You will immediately upon PGW's request remove any financing statement registered against PGW on the Personal Property Securities Register.

6. PRODUCTS

- 6.1 All Products must be fit for their purpose and acceptable in appearance and finish. The Products must also be safe, durable and free from defects, and comply with all Acts, standards, regulations, policies, rules, laws and specifications relating to those Products.
- 6.2 All products purchased from you shall carry a minimum twelve (12) months warranty by you.
- 6.3 **Returns** – If any Product is faulty, defective or otherwise in breach of these Services and Supplies Terms of Trade, then PGW will notify you that the Product is faulty, defective or otherwise. At your option, PGW will return the Product to you or destroy the Product (in either case, at your cost) and if you do not make an election, PGW will return the Product to you (at your cost). PGW must receive a credit note for the product within 7 days or at the request of PGW a refund in full. In the event that this is not met then PGW reserves the right to deduct the price of the Product and all our costs from any amount that is payable to you and if these amounts exceed the amount that is payable to you, you must refund the balance remaining in full within 7 days of receipt of a written request from us.

7. SERVICES

- 7.1 All Services must be provided within an agreed timeframe and to a standard acceptable to PGW.
- 7.2 The Services must comply with all Acts, standards, regulations, policies, rules, laws and specifications relating to those Services.

7.3 PGW will own the rights to any intellectual property created in the course of the provision of the Services.

8. COMPLIANCE WITH LEGISLATION AND POLICIES

- 8.1 You must comply with the Health and Safety in Employment Act 1992 (“the Act”). When operating in any of PGW’s premises or outlets, you must comply with all policies and regulations affecting PGW, including but not limited to its hazard identification policy and other Health and Safety in Employment policies notified to you, or of which you are aware, from time to time. You will immediately:
- 8.1.1 notify PGW if any person employed or engaged to perform any activity permitted by these Terms of Trade is harmed in any way;
 - 8.1.2 notify PGW if PGW will or is likely to be in breach of the Act as a result of your failure to comply with the Act; and
 - 8.1.3 do all acts and things as PGW directs to ensure that both you and PGW continue to comply with the Act and/or to remedy any breach of the Act, including, if so directed, carrying out in good faith and with all due diligence, any safety procedures.
- 8.2 You must comply with all relevant laws applying to your manufacture, supply and/or delivery of the Products and Services from time to time. You will indemnify PGW for all expenses and losses PGW incurs as a result of your failure to comply with such laws.
- 8.3 You (including any of your employees, agents or nominees) may enter any of PGW’s premises or outlets in the ordinary course of business only. You must comply with PGW’s reasonable directions, policies and requests while accessing its premises or outlets.
- 8.4 The supply of Products and Services is between two businesses and the Consumer Guarantees Act 1993 does not apply.
- 8.5 For any substance or chemical recognised as hazardous, you shall provide Material Safety Data Sheets (MSDS) to accompany the Products and additionally publish them on your website. If this requirement cannot be met you shall advise the PGW Procurement and Sourcing Manager in writing immediately advising how your responsibilities are being met.
- 8.6 Sustainability; the “PGG Wrightson Corporate Social Responsibility Policy Statement” is available on our website www.pggwrightson.co.nz. PGW expects its suppliers to be providers of services and products which contribute to a sustainable quality of life for all our stakeholders. PGW expects its suppliers to likewise have, meet and report on their own sustainability policies.

9. INDEMNITY AND INSURANCE

- 9.1 You will keep PGW indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature, including, claims for personal injury, damage to property and consequential loss (including loss of profits), which may arise from your act, error, omission or breach of these Services and Supplies Terms of Trade, or which may be made against PGW or which PGW may sustain, pay or incur unless such cost, claim, demand, expense or liability shall be directly and solely attributable to the negligence of PGW or the negligence of a duly authorised employee or agent of PGW.
- 9.2 PGW has no liability for any losses or claims that you may incur. PGW has no liability for and does not endorse any Products or Services you provide.
- 9.3 You will maintain at your own cost adequate insurance cover in respect of your potential liability under these Services and Supplies Terms of Trade, including product and public liability insurance, in a form specified by PGW in its sole discretion. Upon request, you will provide PGW with a certificate of insurance confirming that the insurance cover is current.

10. PRICING

- 10.1 You must notify PGW of an impending price change at least three calendar months prior to the requested effective date. Communications can be directed to the Procurement and Sourcing Manager. Sending the communication does not deem acceptance or receipt by PGW.
- 10.2 The prices of any Products or Services may only be increased once the Procurement and Sourcing Manager agrees to the price change in writing. If agreed, any price change will only take effect on a date 60 days after the date PGW has agreed in writing, rounded out to the next 1st day of the month. Until the price change becomes effective, all ordered Products or Services will continue to be supplied to PGW at the lower existing price. Further:
- 10.2.1 No price increases are accepted within the three calendar month notification period, nor may they take effect during December or January in any year.
 - 10.2.2 The prices agreed with PGW will be the lowest within your industry and be firm for at least twelve months.
 - 10.2.3 Where price changes are to the market as a whole, PGW shall have an effective date of thirty days later than the market effective date.
 - 10.2.4 Price decreases are effective immediately.
- 10.3 If you offer to any particular PGW entity, division, business unit or outlet terms of trade which are more favourable than the existing Services and Supplies Terms of Trade agreed with, and applicable to, PGW generally without PGW’s consent in writing, then:
- 10.3.1 the more favourable terms of trade you have offered will be deemed to apply, not only to that particular entity, division, business unit or outlet to which the offer has been made but to all of PGW generally; and
 - 10.3.2 these Services and Supplies Terms of Trade will be deemed to be amended accordingly with effect on and from the date of your offer to that particular PGW entity, division, business unit or outlet.

- 10.4 The price payable for each Product or Service ordered and delivered to PGW is exclusive of GST.
- 10.5 You agree not to set or publish market retail pricing for any goods or services supplied to PGW.

11. PAYMENT

- 11.1 PGW will pay your invoices by direct credit on the 2nd to last working day of the month following date of invoice.
- 11.2 To ensure prompt payment your invoices and credit notes must contain all the information that is necessary to enable PGW to match and pay them. They must state that they are a "Tax Invoice", specify PGW's relevant Purchase Order number; your GST number and bank account details. Invoices and credit notes must relate to one purchase order only; any invoices/credit notes that relate to multiple orders will be returned to the supplier unpaid. To ensure payment is made in accordance with clause 11.1, invoices and any credit notes must be received promptly by PGW and no later than the 2nd working day of the month.
- 11.3 Invoices/Credit Notes and statements are to be sent to PGG Wrightson, Private Bag 1961, Dunedin 9054. Attention Accounts Payable:
 - 11.3.1 by PDF e-mailed to apinvoice@pggwrightson.co.nz
 - 11.3.2 by EDI at PGW's request.
- 11.4 If PGW is unable to match your invoice/credit note to a valid Purchase Order or where there is a discrepancy in an invoice/credit note between the product or service, prices and quantities PGW has received and the Purchase Order, PGW will, within ten working days of receipt of the invoice, notify you of the discrepancy or our reason for disputing the invoice. PGW may withhold payment for any disputed invoices until the discrepancy or dispute (as the case may be) is resolved.
- 11.5 You will process all credit notes within seven days of receiving a request for an approved credit note from PGW.
- 11.6 PGW must receive a written statement from the supplier detailing all invoices due for payment; this must be received no later than the 5th working day of the month following supply of the goods or services. PGW must also receive a statement for any account that is in credit balance. Failure to supply as statement may result in the account being unpaid.
- 10.7 PGW may at any time (including when amounts are owing in respect of more than one transaction) apply any moneys owing to you in any manner and in any order and to any amounts owing by PGW that PGW thinks fit (despite any direction to the contrary and whether before or after any default by you).

12. TERM & REVIEW

- 12.1 These Services and Supplies Terms of Trade will commence on the Commencement Date and continue until such time as they are replaced by PGW.
- 12.2 PGW may at any time discontinue purchasing any or all of your Products or Services, whether quantities or particular Products or Services, for any period of time, at our sole discretion. PGW has no obligation to provide you with reasons for its decision or to provide you with reasonable notice of the discontinuation. If PGW exercises its discretion to discontinue, you will not make any claim against PGW for any damages or otherwise.

13. MISCELLANEOUS

- 13.1 **Severance** - If any condition of these Services and Supplies Terms of Trade is unenforceable, such unenforceability will not affect any other condition. However, we will negotiate in good faith to agree any other means by which the effect of that condition can be retained.
- 13.2 **Confidentiality** - Both parties agree to keep confidential any information about the business affairs of the other party and to take all appropriate steps which are necessary or desirable to ensure that such confidential information is not disclosed without the prior written consent of the other party. This clause shall not apply to information that is already in the public domain, or information that is required to be disclosed by law or by the listing rules of any applicable recognised stock exchange.
- 13.3 **Waiver** - If either you or PGW fail to require performance of any obligations by the other under these Services and Supplies Terms of Trade, that will not affect the right to require that obligation to be performed at a later time, nor will a waiver by either you or PGW of a breach of any part of these Services and Supplies Terms of Trade amount to a waiver of any subsequent breach.
- 13.4 **Intellectual Property** - PGW has the exclusive right, title and interest in or to its Intellectual Property and you acknowledge that you do not have any rights in PGW's Intellectual Property. You will not use PGW's Intellectual Property without its prior approval. You warrant that the Products or Services do not breach the Intellectual Property rights of any third parties. You agree that you will not knowingly breach the Intellectual Property rights of any third parties in your dealings with PGW.
- 13.5 **Disputes** - If a dispute arises, we will meet in the spirit of goodwill to attempt to resolve it.
- 13.6 **Relationship** - The relationship between PGW and the Supplier is as buyer and seller. There is no partnership, joint venture, employment or agency relationship.
- 13.7 **Assignment** - You must not assign or subcontract any of your rights or obligations under these Services and Supplies Terms of Trade without our prior written consent (which may be withheld at our sole discretion). PGW may transfer its rights and obligations under these Terms of Trade by notifying you in writing.
- 13.8 **Governing Law** - New Zealand law governs these Services and Supplies Terms of Trade.