

# Purchase Order Terms and Conditions



## 1. General

These terms apply to all Purchase Orders raised by the Purchaser, except any Purchase Order that includes an express statement otherwise, and will prevail over any terms proposed by the Supplier.

## 2. Interpretation

In these terms:

- (a) **Amount** means with respect to any Purchase Order, the price of the Goods or Services supplied under that Purchase Order;
- (b) **Authorised Representative** means the Purchaser's employee nominated on the Purchase Order or other individuals nominated by the Purchaser in writing from time to time;
- (c) **Delivery Date** means the date for delivery of the Goods or provision of Services which is set out in the Purchase Order;
- (d) **Delivery Time** means the time for delivery of the Goods or provision of Services which is set out in the Purchase Order;
- (e) **Day Docket** means a document produced daily by the Supplier and issued to the Purchaser outlining the Services carried out by the Supplier including staffing levels; start, finish times (where applicable) and the Place for Delivery;
- (f) **Delivery Docket** means a document accompanying Goods that lists the description and quantity of the Goods delivered;
- (g) **Goods** means the goods described in the Purchase Order and the subject of these Terms;
- (h) **GST** has the same meaning as in the Goods & Services Tax Act 1985;
- (i) **Insolvent** means, for the purpose of any Purchase Order, that the Supplier:
  - (i) is the subject of any compromise or arrangement with its creditors;
  - (ii) has a receiver or receiver manager appointed;
  - (iii) appoints an administrator; or
  - (iv) has a liquidator or provisional liquidator appointed.
- (j) **Intellectual Property** means all intellectual property rights and interests including:
  - (i) methods, plans, data, drawings, specifications, characteristics, know-how, trade secrets, inventions, confidential information;
  - (ii) patents, trade-marks, service marks, copyrights, registered and unregistered designs, trade names, domain names, logos and symbols; and
  - (iii) licences or similar rights in respect of any such rights and interests.
- (k) **Place for Delivery** means the place for delivery of the Goods or Services which is described in the Purchase Order;
- (l) **Purchase Order** means a purchase order issued by the Purchaser to the Supplier for the supply of Goods or Services;
- (m) **Purchaser** means Vac-U-Digga NZ Ltd (NZ Business no. 942 903 058 3368) of 10 Tenahaun Place, Wigram, Christchurch 8042, New Zealand, its associated companies, substitutes, successors, permitted assigns and its licensees, franchisees and/or its agents, and Earth Radar Pty Ltd and the Earth Radar operating entities;
- (n) **Services** means services described in the Purchase Order and the subject of these Terms;
- (o) **Supporting Documentation** means Day Dockets and Delivery Dockets signed by the Purchaser's Authorised Representative;
- (p) **Supplier** means the supplier of the Goods or Services who is named on the Purchase Order;
- (q) **Terms** means these terms and conditions.

## 3. GST

Unless otherwise specified, all amounts payable under this Purchase Order are exclusive of GST and must be calculated without regard to GST.

## 4. Warranties

The Supplier warrants that all Goods and Services supplied under this Purchase Order:

- (a) are fit for the purposes for which goods and services of that kind are commonly supplied and any other purpose made known to the Supplier;
- (b) are of merchantable quality and free from any defect in material and workmanship;
- (c) do not infringe the Supplier's or any third party's intellectual property rights (including patents and copyright) relating to or arising from the Goods and Services;
- (d) meet all the relevant manufacturer's recommendations and standards, Australian / New Zealand Standards (AS/NZ), Building Code requirements, authority requirements, rules and regulations of the Governing Authority and all other relevant standards and codes;
- (e) will be supplied to the fullest extent possible under the Supplier's own accreditations (where held). The Supplier gives Vac-U-Digga NZ Ltd the right to communicate this arrangement and the Supplier's accreditation details to a third party if required.

## 5. Delivery

Delivery of the Goods and provision of the Services must be made by the Supplier at the Delivery Time and on the Delivery Date at the Place For Delivery set out in the Purchase Order.

The Purchaser may specify in writing a later Delivery Time.

All Goods delivered to the Purchaser by the Supplier must be accompanied by a Delivery Docket that refers to the Purchase Order under which the Goods are supplied and must include a description of the Goods supplied. The Authorised Representative must sign the Delivery Docket stating that the goods have been received. Receipt of Goods is not acceptance of Goods.

## 6. Acceptance of Goods

- (a) Goods delivered to the Purchaser by the Supplier are accepted by the Purchaser subject to inspection by the Purchaser.
- (b) The Goods must be free from defects in workmanship or materials and be of merchantable quality.
- (c) The Purchaser may inspect the Goods within a reasonable time after receiving them and reject any Goods which are:
  - (i) not in accordance with the Purchase Order;
  - (ii) defective in workmanship or materials;
  - (iii) not of merchantable quality; or
  - (iv) not fit for any purpose made known to the Supplier.
- (d) Any Goods so rejected by the Purchaser:
  - (i) must be repaired or replaced by the Supplier; or
  - (ii) removed by the Supplier and the cost of those Goods refunded by the Supplier.
- (e) The Purchaser is not liable to pay the Supplier for rejected Goods unless repaired or replaced by the Supplier to the Purchaser's satisfaction.

## 7. Acceptance of Services

- (a) Services delivered to the Purchaser by the Supplier are accepted by the Purchaser subject to the Supplier:
  - (i) using a high degree of skill, care and diligence as would be expected of a professional experienced in providing services for projects similar to this project;
  - (ii) ensuring that the Services comply with the law, authority standards and each applicable Australian / New Zealand Standard;
  - (iii) complying with all directions given by the Purchaser to the Supplier in the course of providing the Services;
  - (iv) providing Day Dockets signed by the Authorised Representative each day Services are provided.

## 8. Risk and title

Risk and title in Goods supplied under this Purchase Order passes when the Goods are accepted in accordance with clause 6 above.

## 9. Insurance

The Supplier must, prior to undertaking its obligations under this Purchase Order, take out and maintain the following insurances and, if requested by the Purchaser, provide the Purchaser with certificates of currency for those insurances:

- (a) a policy covering Goods supplied for their full replacement value against loss or damage including loss or damage in transit to the Place for Delivery, and unloading the Goods, to be maintained until the Goods are accepted by the Purchaser;
- (b) public liability insurance on an occurrence basis, covering all third party claims arising from the loss, destruction or damage to real or personal property and ensuing loss of use of that property, and personal injury, death or disease of any person, arising out of or in connection with the supply of any Goods or Services, for a limit of indemnity of at least \$10,000,000 for any one occurrence; and
- (c) workers compensation insurance for its employees and contractors in accordance with all relevant legislative requirements.

## 10. Price and payment

The Supplier may invoice the Purchaser the Amount once the Goods or Services have been received.

Invoices are to be emailed to [ap@vacgroup.co.nz](mailto:ap@vacgroup.co.nz)

The Supplier's invoice must nominate the Purchaser's Purchase Order number and include Supporting Documentation.

The Purchaser agrees to pay the Supplier the Amount in relation to the Goods or Services specified in the Purchase Order with respect to any Goods or Services received by the Purchaser 45 days from the end of the month in which the invoice is received. Unless specified otherwise the Amount is inclusive of:

- (a) all charges for packaging, insurance, delivery and off-loading of the Goods by the Supplier at the Place For Delivery, in accordance with the Purchase Order; and
- (b) all taxes except GST.

No increase in the Amount may be made to any Purchase Order without the prior written approval of the Purchaser.

Payment of invoices does not constitute acceptance of the Goods or Services provided.

Invoices received after the 20th of the month will be taken as being received the following month.

## 11. Royalties

Goods and Services are for the use of or re-sale by the Purchaser and may be incorporated in goods or works made or completed by the Purchaser. The Supplier must not make any claim for royalties or other additional compensation from the Purchaser by reason of or connected with any such use, re-sale or manufacture.

## 12. Designs and specifications to be retained in confidence

- (a) The Purchaser retains the rights to all Intellectual Property in any Goods or Services made or supplied according to:
  - (i) the Purchaser's design or specifications; or
  - (ii) any original or copy designs or specifications supplied by the Purchaser.
- (b) Any such designs or specifications or other forms of Intellectual Property provided to the Supplier by the Purchaser, are held by the Supplier on the Purchaser's behalf and at the Purchaser's discretion and must not be disclosed or furnished to any other person, company or firm without the Purchaser's prior written consent.
- (c) The Supplier does not obtain any Intellectual Property rights in any Intellectual Property provided to it by the Purchaser.
- (d) The Supplier must take all reasonable steps to keep confidential all Intellectual Property provided to it by the Purchaser.
- (e) The Supplier indemnifies the Purchaser with respect to any:
  - (i) breach of confidentiality; or
  - (ii) infringement of any Intellectual Property right.

## 13. Termination

- (a) The Purchaser may cancel any Purchase Order by notice in writing to the Supplier if:
  - (i) the full amount of all Goods ordered is not delivered or the Services are not provided to the Place for Delivery by the Delivery Time on or before the Delivery Date; or
  - (ii) the Supplier is or becomes Insolvent.
- (b) If the Purchaser cancels the Purchase Order under subclause (a):
  - (i) The Supplier does not have and may not prosecute any claim whatsoever at law or in equity against the Purchaser;
  - (ii) The Purchaser may cease payment under the Purchase Order;
  - (iii) The Purchaser may recover from the Supplier any money paid for undelivered Goods or Services;
  - (iv) The Purchaser may purchase similar goods or services from alternative suppliers and recover any loss it incurs in doing so under the indemnity in clause 18.
- (c) The Supplier must, in addition to any other liability, pay the costs of removing the Goods from the Purchaser's premises if directed in writing by the Purchaser to do so.

## 14. Limitation of liability

The Purchaser's liability to the Supplier under or arising out of any Purchase Order, whether directly or indirectly, will be limited in aggregate to the Amount.

## 15. Variation

- (a) Prior to the Delivery Date, the Purchaser may by written notice to the Supplier increase, decrease or omit any of the Goods or Services, or change the character or quality of the Goods or Services, and the Supplier will comply with that direction.
- (b) If a direction is given by the Purchaser to the Supplier in the provision of a Service, the Supplier must inform the Purchaser in writing that such direction will be a variation prior to following such direction.
- (c) If a Supplier in the provision of a Service comes across conditions that may lead to a variation, the Supplier must inform the Purchaser immediately then follow up in writing within 1 day that a variation may be charged.
- (d) Failure to follow clauses 15(b) and 15(c) will make any claim by the Supplier for a variation invalid.
- (e) Where a variation is valid, the value of the variation will be determined at the sole discretion of the Purchaser.

## 16. Warranty period

If the Purchaser notifies the Supplier of any defect or omission in the Goods during the Warranty Period the Supplier must rectify the defect or omission promptly and at no cost to the Purchaser.

The Supplier will bear all costs of meeting its obligations under this clause including, without limitation, the costs of collection, loading, packaging, freight, assembly, reassembly, rework, any permits and reinstatement.

Unless stated otherwise the Warranty Period for any Goods or Services provided is 36 months from the Delivery Date.

## 17. Ambiguity

In the event that the Supplier discovers an ambiguity in this Purchase Order, including any design or specifications provided to the Supplier by the Purchaser in relation to this Purchase Order:

- (a) the Supplier will promptly, and before commencing manufacture or production of the Goods, inform the Purchaser of the ambiguity;
- (b) if the Supplier informs the Purchaser of the ambiguity, the Purchaser will promptly provide clarification to the Supplier; and
- (c) to the extent that the clarification causes the Supplier to incur more or less cost in the supply of the Goods, the Purchaser agrees to adjust the value of this Purchase Order accordingly.

## 18. Indemnity

The Supplier indemnifies the Purchaser against:

- (a) loss of or damage to the Purchaser's property (other than the Goods) and claims in respect of personal injury or death or loss of, or damage to, any property arising out of or as a consequence of the performance or breach of this Purchase Order by the Supplier; and
- (b) any other cost, expense, loss, damage or other liability suffered or incurred by the Purchaser arising out of or as a consequence of the performance or breach of this Purchase Order by the Supplier.

## 19. Use of name

The Supplier must not use the name "Vac-U-Digga" or "Earth Radar" or any other intellectual property of the Purchaser in its company, business or trading name, signage, stationary or any other display or identification of its business, without the prior written approval of the Purchaser, which approval may be given or withheld by the Purchaser in its absolute discretion, and which approval may be subject to any conditions the Purchaser requires.

## 20. Dispute resolution

If either party has a dispute arising out of this Purchase Order it may give written notice to the other party stating the matter in dispute (Dispute Notice). Within 7 days of receipt of a Dispute Notice, the parties' senior representatives (who have authority to settle the dispute) will meet and seek to resolve the dispute. If the dispute remains unresolved within 14 days after this meeting, either party may commence court proceedings.

## 21. Jurisdiction

The Purchase Order shall be governed by the laws of New Zealand.

## 22. Vienna convention

The United Nations Convention of Contracts for the International Sale of Goods (Vienna 1980) does not apply to this Purchase Order.