



Standard Purchase Order Terms & Conditions, Goods and Services (New Zealand)

1. DEFINITIONS AND INTERPRETATION

In these terms and conditions:

Conditions means these standard purchase order terms and conditions.

Confidential Information means all confidential, non-public or proprietary information that is or will become the property of the Principal regardless of how the information is stored, delivered or exchanged between the parties before, on or after the date of the Contract (including any copy, excerpt or record of such information) relating to the business, technology, finances or other affairs of a party, and includes any information that relates to the performance of the parties' obligations under the Contract, and includes any of the contents of the Contract

Contract means the contract (Standard Purchase Order Terms and Conditions) between Sims and the Supplier for the supply of the Goods and Services comprising the relevant Purchase Order, these Conditions and any other document referred to in the Purchase Order;

Goods and Services means any goods and or services supplied by the Supplier to Sims;

GST has the meaning given in the Goods and Services Tax Act 1985;

Laws means all relevant laws, legislation, regulations, rules, orders, bylaws, awards, proclamations and subordinate legislation, ordinances, codes, New Zealand Standards and practices, including without limitation chain of responsibility and driver fatigue obligations, licence and permit requirements;

Modern Slavery has the meaning given in the Australian Modern Slavery Act 2018 (Cth);

Personal Information has the same meaning as in the Privacy Act 1993;

Purchase Order means a purchase order issued by Sims to the Supplier;

Sims means Simsmetal Industries New Zealand Limited, Company Number NZBN 9429040968988 ("Sims")

Specification means the specification for the Goods and Services contained in the relevant Purchase Order together with any other information referred to in the Purchase Order or contained in the relevant quotation or documentation provided by the Supplier relevant to the type, quality or nature of the Goods and Services;

Supplier means the supplier specified in the Purchaser Order; and

Warranty Period means the period stated in the Purchaser Order (or if no period is stated in the Purchase Order, then the period of 12 months) commencing:

- (a) where the Supplier's obligations under this Contract are the supply of Goods only, the date of acceptance of the Goods by Sims; or
- (b) where the Supplier's obligations under this Contract include Services, the date on which the Services are last provided, and

2. CONTRACT

2.1 These Conditions apply to all Purchase Orders issued by Sims.

2.2 To the extent that there is any inconsistency between the terms of these Conditions and any terms set out in the Purchase Order, the terms of the Purchase Order will prevail. These Conditions prevail over any terms submitted by the Supplier whether in the Supplier's terms of sale or in any other document issued by the Supplier. The acceptance of a Purchase Order by the Supplier will be deemed as the Supplier's acceptance of these Conditions.

2.3 The Supplier must supply the Goods and Services to Sims in accordance with the Conditions (which includes these Purchase Order Terms and Conditions).

2.4 Each quotation for the Goods and Services from the Supplier will be deemed to be an offer by the Supplier to sell the Goods or supply the Services upon these Terms & Conditions. All quotations provided by the Supplier, including the price provision, will remain open for 30 days from its date. The Contract is only formed when a Purchase Order is placed by Sims on a Sims Purchase Order. No Contract will exist prior to service of such notice of acceptance.

2.5 The Supplier must advise Sims of receipt and acceptance of Purchase Orders promptly. The Supplier will be taken to have accepted a Purchase Order if it does not reject it within 7 days after it is issued.

3. GOODS AND SERVICES

3.1 The Supplier warrants that the Goods and Services comply to the relevant specifications, all Laws and are of merchantable quality, free from defects, fit for purpose, contain no hazardous or prohibited material and are in accordance with any specifications agreed to between Sims

and the Supplier. The Supplier further warrants that the Goods are free from any security interests (as that term defined in the Personal Property Securities Act 2009 (Cth)).

3.2 Sims has the right to inspect and test the Goods and Services at any time prior to acceptance of the delivery. The Supplier will not unreasonably refuse any request by Sims to carry out such inspection and testing and will provide Sims with access to the Supplier's (or any relevant) premises and all facilities reasonably required. If as the result of such inspection or testing Sims is not satisfied that the Goods will comply in all respects with this Contract and Sims so informs the Supplier within 7 days of inspection or testing, the Supplier will take all steps necessary to ensure compliance.

3.3 Notwithstanding any such inspection or testing, the Supplier will remain fully responsible for the Goods and any such inspection or testing will not diminish or otherwise affect the Supplier's obligations under this Contract.

3.4 The Goods and Services must match the description (including performance criteria) in the Purchase Order.

3.5 The Supplier must ensure that all of the Supplier's personnel carrying out the Services have appropriate qualifications, requisite skills and experience, and hold any required licences.

3.6 The Supplier must provide Sims with any applicable manufacturer warranties for the Goods and if the Supplier is not the manufacturer, it must assign to Sims the benefit of any manufacturer warranties for the Goods.

3.7 The Supplier must provide 12 months warranty on the workmanship for all Services, commencing on the completion date of the Services.

3.8 Sims may set a further Warranty Period with respect to the Goods and Services rectified under clause 3.6 and 3.7 which will be effective from the date of rectification for a period equal to the length of the initial Warranty Period.

3.9 The Supplier will maintain detailed quality control and manufacturing records for the period of at least 12 years from the date of supply of Goods.

3.10 The Supplier is liable for any loss or damage caused by the Supplier while rectifying defects to the Goods and Services.

4. INSTALLMENTS

4.1 The Supplier must not deliver the Goods by separate instalments unless agreed in writing by Sims. If Sims does agree, the Conditions will be construed as a separate Conditions in respect of each instalment or stage, and without prejudice to any other right or remedy, Sims will have the right, but not the obligation, to:

- (a) treat all the Conditions for the total Purchase Order as repudiated if the Supplier fails to deliver or perform any instalments or stage;
- (b) reject any or all of the instalments for the total Purchase Order if Sims is entitled to reject any one instalment.

5. DELIVERY

5.1 Goods and Services must be supplied to Sims within the times specified in each Purchase Order.

5.2 Unless otherwise specified, the Supplier is responsible for ensuring that the Goods are packed in a manner to protect the Goods and delivered to the place specified in the Purchase Order.

5.3 Unless otherwise agreed by Sims in its Purchase Order:

- (a) Sims may cancel the whole or any portion of any Purchase Order if the relevant Goods are not supplied within the time stipulated in the Purchase Order.
- (b) Sims may seek damages from the Supplier for any direct losses resulting from the delay.

5.4 At the time of delivery of the Goods, the Supplier must provide to Sims a delivery docket in duplicate setting out the:

- (a) Sims part number(s) (if applicable) and details of the Goods;
- (b) Purchase Order number;
- (c) Dispatch and delivery dates;
- (d) Quantity and description of the Goods;
- (e) Number of packages delivered; and
- (f) Name of the person who delivered the Goods, in a form acceptable to Sims, for signature by Sims, and the Supplier must retain one copy so signed.

5.5 Without prejudice to Sims's other rights under the Contract, if the Goods are delivered to Sims in excess of the quantities ordered, Sims will not be bound to pay for the excess and such excess will be and remain at the Supplier's risk and be returnable at the Supplier's expense. Sims reserves the right to agree a price with the Supplier for the excess quantity of Goods supplied.

5.6 Unless otherwise agreed in writing, the Goods will be delivered during Sims normal business hours at the place of delivery on the date or within the period specified in the Purchase Order, or if no such period is agreed or specified then within 28 days of the date of the Contract. Time for delivery is of the essence.

5.7 The Goods, on delivery, must be free of all liens and encumbrances.

6. RISK AND TITLE

6.1 Upon Sims taking possession and acceptance of the Goods, title to and risk in the Goods will pass to Sims.

6.2 All materials, equipment, tools, dies and moulds supplied by Sims to the Supplier will at all times be and remain the exclusive property of Sims and be held by the Supplier in safe custody at its own risk and kept in good condition until returned to Sims.

7. PURCHASE PRICE

7.1 The purchase price for the Goods and Services will be as agreed between the parties and stated in the Purchase Order.

7.2 Prices in each Purchase Order cannot be increased by the Supplier unless such increase has been agreed to in writing by Sims.

7.3 No charge will be allowed for packing or crating, cartage or freight unless specified in the Purchase Order.

7.4 The consideration for each supply under each Purchase Order is exclusive of GST. If GST is payable, the consideration for the supply will be increased by an amount of the GST and the Supplier must provide a tax invoice to Sims to enable Sims to claim input tax credits in respect of the supply.

7.5 If the Goods are not delivered on the date set out in condition 5.6 or if the Goods are not in accordance with Sims specification, then, without prejudice to Sims other rights under the Contract, Sims will be entitled to a reduction in the price of the Goods for each day which elapses between the due date and the date of actual delivery or the date of delivery of the conforming Goods, as applicable.

8. PAYMENT

8.1 Purchase Orders are placed on the basis that all prices include the Supplier's delivery to Sims at the address shown in the Purchase Order unless otherwise specified in the Purchase Order.

8.2 Invoices for Goods and Services provided in accordance with each Purchase Order will be paid by Sims, following delivery of the Goods and Services to Sims and receipt by Sims of a correctly rendered invoice, within 30 days of the end of the month in which the invoice is received. The invoice must quote the correct Purchase Order number.

8.3 The Supplier acknowledges and agrees that it is the Supplier's obligation to issue a valid tax invoice to Sims and that invoices must be submitted promptly by the Supplier after delivery of the Goods and Services.

8.4 Where a valid Recipient Created Tax Invoice ("RCTI") Contract exists between the parties, and the Supplier elects for Sims to issue an RCTI for the Goods supplied to Sims, Sims will issue the RCTI and make payment within 30 days of the end of the month in which the Goods and Services are received from the Supplier.

8.5 Sims may set off any amount owed by the Supplier to Sims against any amount of money that is owed, or may become owing, by Sims to the Supplier. The Supplier waives any right to set off any amount that is, or may become, owing by the Supplier to Sims against any amount owing by Sims to the Supplier.

9. OBLIGATION TO PROVIDE INVOICE AND SUPPORTING DOCUMENTS:

9.1 Where the Supplier is required to issue a tax invoice or provide proof of delivery to Sims for payment and the Supplier fails to do so within 12 months of the date of delivery, the Supplier acknowledges and agrees the following:

- (a) Sims is under no obligation to accept the tax invoice for the Goods and Services or part thereof;
- (b) Sims is under no obligation to make payment for the supply of the Goods and Services or part thereof; and
- (c) any payment made by Sims will be at its sole discretion, acting reasonably.

9.2 The Supplier acknowledges and agrees that the terms and conditions of payment as set out in clauses 8 and 9 are reasonable and necessary for the protection of the legitimate interests of Sims and do not constitute a penalty.

10. FORCE MAJEURE

Sims will not be in breach of the Contract or otherwise liable to the Supplier in any manner whatsoever for any failure or delay (or for the consequences of any failure or delay) in performing its obligations under the Contract, due to any event beyond its reasonable control including without limitation, acts of God, war, civil commotion, strikes or other industrial disputes (whether involving the work force of the Sims or not),

fire, explosion, flood, storm, epidemic or pandemic, an act of terrorism, national emergencies, malicious damage, compliance with any law or regulation, accident, breakdown of plant or machinery, delays in shipments or default of suppliers, agents or subcontractors.

11. TERMINATION

11.1 Sims may terminate the Purchase Order by notice in writing to the Supplier if the Supplier:

- (a) does not carry out its obligations under the Contract and such breach is not remedied within 7 days of notice being given to the party to remedy the breach;
- (b) breaches any Law relating to the supply of the Goods and Services;
- (c) becomes insolvent;
- (d) enters voluntary administration;
- (e) has a receiver or receiver & manager appointed to any of its assets; or
- (f) is convicted of a criminal offence.

12. SAFETY, HEALTH, ENVIRONMENT AND COMMUNITY (EHS):

12.1 Any Goods supplied or installed will be so formulated, designed, constructed, finished, packaged and delivered as to be safe and without risk to EHS and will be supplied with full instructions for their proper use, maintenance and repair and with any necessary warning notices clearly displayed.

12.2 Without limiting any other clause of this Contract, the Supplier must:

- (a) comply, and must ensure that its personnel, including its employees, subcontractors and agents comply, with all Laws, standards and codes of practice in respect of work health, safety and environmental matters which apply or may apply to the Goods and Services or the relevant site and any work health, safety and environmental policies, procedures and requirements issued by or on behalf of Sims or any relevant authority to the Supplier from time to time;
- (b) adopt safe systems of work and take all possible and reasonably practicable steps and measures to eliminate risk to the health and safety of workers and other persons and to avoid and minimise the consequences of work health, safety and environment issues;
- (c) ensure that its workers are appropriately trained, inducted and supervised;
- (d) if and when on a Sims site and when using Sims's facilities and without limiting any other clause of this Contract, comply with all directions, procedures and policies relating to EHS and security requirements relating to the Sims site and facilities and any other reasonable requirements of Sims;
- (e) consult, co-operate and co-ordinate activities with Sims where Sims and the Supplier have a duty in relation to the same matter;
- (f) if requested by Sims, promptly provide copies of:
 - I. its EHS policies and other evidence to demonstrate that it has met, and is meeting, at all times, its obligations under this clause 12 and all Laws in relation to EHS; and
 - II. any documents, reports, registers or records which the Supplier is required to prepare, maintain or provide in connection with its obligations under any laws in relation to EHS;
- (g) immediately notify Sims of every work-related accident, incident, injury or illness or environmental damage that occurs in relation to the performance of the supply and delivery of the Goods and Services or on Sims's site; and
- (h) investigate incidents that are notifiable by law and provide a copy of the investigation report to Sims.

13. INSPECTION

13.1 Upon delivery, Sims will have the right to inspect the Goods and Services. If Sims determines, acting reasonably, that the Goods or the Services have not been supplied in accordance with these terms, or as agreed in writing between the parties, then Sims may give notice to the Supplier that it has rejected the Goods and Services and the Supplier must immediately arrange at no cost to Sims and at the sole discretion of Sims to immediately:

- (a) replace the Goods;
- (b) make good the Services to Sims satisfaction; or
- (c) reimburse Sims all expenses incurred in replacing the Goods or making good the Service.

14. DELAYS

14.1 The Supplier must notify Sims immediately of becoming aware of any event that has the potential to delay the delivery of the Goods and Services and it must use best endeavours to reduce the delay.

15. INDEMNITY:

15.1 The Supplier indemnifies Sims and keeps Sims indemnified from and against any liability, loss, claim, cost or damage suffered or incurred by Sims as a result of the Supplier's failure to adhere to any of the provisions of this Contract and any other Contract in relation to the supply of the Goods and Services or any claim or proceedings arising from any alleged infringement by Sims of the intellectual property rights of any person arising from, or in connection with, the purchase or use of the Goods or the supply of the Services.

15.2 The indemnity in this Contract is a continuing, separate and independent obligation and survives termination of this Contract.

16. INSURANCES

16.1 For Goods supplied, the Supplier must have adequate insurance that covers the replacement value of the Goods and is to remain in force up to delivery and acceptance of the Goods at the Sims address shown on each Purchase Order.

16.2 The Supplier must maintain a public liability insurance policy, a products liability insurance policy (where the Supplier is supplying Goods) and a professional indemnity insurance policy (where it supplies professional services) at levels that are consistent with normal industry practice for providers of the relevant Goods.

16.3 The Supplier must maintain worker's compensation insurance policies as required by law.

16.4 The Supplier must provide evidence of all insurances on request by Sims.

17. INTELLECTUAL PROPERTY RIGHTS

17.1 The Supplier grants to Sims a non-exclusive, perpetual, irrevocable and royalty free licence to use, adapt and modify (and sub-licence others to use, adapt and modify) all intellectual property rights in the Goods and Services to the extent necessary for the use, operation, repair, maintenance, servicing or upgrade of the whole or any part of the Goods and or to enjoy the benefit of the Services.

17.2 The Supplier will keep confidential any and all Confidential Information that it may acquire and will not use the Confidential Information for any purpose other than to perform its obligations under the Contract. The Supplier will ensure that its officers and employees comply with the provisions of this condition clause 19.

17.3 Property in all inventions, improvements, copyrights, know-how, designs and intellectual property which arise pursuant to and as a direct result of the Supplier being engaged by Sims in the course of performing any work of whatsoever nature is vested and will vest in Sims.

17.4 Pre-existing intellectual property of the Supplier which is necessary for Sims to enjoy the benefits of the Goods remains the property of the Supplier.

17.5 The Supplier agrees to provide Sims all drawings and know-how, for all works completed by the Supplier that isn't classified as pre-existing intellectual property and the Supplier will provide such drawings and know how as requested by Sims.

18. CONFIDENTIALITY

18.1 Each Party (Receiving Party) acknowledges that information disclosed to it by the other Party (Disclosing Party) under this Contract or any Purchase Order is proprietary, confidential or a trade secret of the Disclosing Party.

18.2 The Receiving Party must not and must not permit any of its officers, employees or agents to use or disclose to any person any information disclosed to it by the Disclosing Party under this Contract without the prior written consent of the Disclosing Party.

18.3 This clause 18 does not apply to any information which is generally available to the public (other than as a result of the wrongful disclosure by the Receiving Party), or is required to be disclosed by any Laws.

19. LABOUR HIRE LICENSING

19.1 Without limiting anything in this Contract, where the Services performed, require the Supplier to hold a Labour Hire Licence in order to lawfully perform the Services, the Supplier must:

- (a) warrant that it currently holds the required Labour Hire Licence and listed on the Register of Licences as holding a Labour Hire Licence;
- (b) at its expense, must maintain a Labour Hire Licence that allows the Supplier to lawfully perform the services;
- (c) ensure the services comply with any conditions imposed on the Labour Hire Licence;
- (d) immediately inform Sims if the Supplier is subject to any disciplinary action, including a show cause process, regarding the Suppliers Labour Hire Licence; and
- (e) immediately inform Sims if the Labour Hire Licence is cancelled, suspended or has any conditions imposed on it.

20. MODERN SLAVERY

20.1 The Supplier warrants that in connection with this Contract it will comply with all applicable statutory requirements relating to Modern Slavery.

21. CORPORATE STANDARDS AND POLICIES

21.1 The Supplier warrants it will comply with Sims Supplier Code of Conduct at all times and it is available to be downloaded at:
<https://smm-corporate.s3.amazonaws.com/2020/Supplier+CoC+A4.pdf>

22. GENERAL

22.1 The Supplier must not assign the benefit of, or otherwise create an interest in its rights under this Contract unless it obtains the prior written consent of Sims. Sims may assign any or all its rights under this Contract to any person.

23. GOVERNING LAW AND JURISDICTION

23.1 This Contract is governed by the laws of New Zealand and Sims and the Supplier agree to irrevocably submit all disputes arising between them to the jurisdiction of the New Zealand courts.

24. SUBCONTRACTING

24.1 The Supplier will be liable for all acts and omissions of a subcontractor as if they were the acts and omissions of the Supplier. To the extent permitted by law, the operation of any proportionate liability legislation is excluded.

25. PANDEMICS AND EPIDEMICS

25.1 The Supplier warrants:

- (a) it and its personnel will at all times comply with all Laws and recommendations provided by the Federal or State Government for managing any pandemics or epidemics;
- (b) it will follow Sims Standards and Policies for managing a pandemic or epidemic when attending a Sims site;
- (c) It will immediately notify Sims of any information that Sims should be made aware of;
- (d) it shall ensure none of its employees or its sub-contractors will attend a Sims site when displaying any symptoms listed by the New Zealand Ministry of Health as a symptom of the pandemic or epidemic.
- (e) it will have a system in place, at its place of work, that complies with all Laws and recommendations to manage any pandemics or epidemics.