

## **NEW ZEALAND FIRE SERVICE GENERAL CONTRACTUAL PROVISIONS - BUYING GOODS/SERVICES**

**These are the only contractual provisions that apply between the FIRE SERVICE and the Contractor. If any other provision is to apply or prevail it must be agreed to in writing by the FIRE SERVICE in each case.**

1. **Delivery/price:** The Contractor will deliver each good/service ordered by the FIRE SERVICE how, by when, where and for the prices specified to satisfy the FIRE SERVICE's requirements. Prices are all inclusive unless specified otherwise in each case. The Contractor will keep the FIRE SERVICE informed about delivery progress so that there are no adverse surprises for the FIRE SERVICE.
2. **Variations:** The FIRE SERVICE may vary or cancel any of its requirements for any good or service prior to completion of delivery. The Contractor will accommodate variations by the FIRE SERVICE. Fair adjustments will be made to prices and delivery requirements due to variations by the FIRE SERVICE, except if the Contractor does not give the FIRE SERVICE a written request for an adjustment within 3 working days after notice of each variation, no increase adjustment will be made. The FIRE SERVICE will not be liable for any cancellation.
3. **Compliance:** The Contractor will ensure that each good/service is:
  - (a) designed, manufactured, delivered and operates in compliance with applicable user requirements, specifications and standards; and
  - (b) compatible with each system that it will be used with.
4. **Standards/quality assurance:** The Contractor must itself, and ensure that its representatives:
  - (a) perform using due diligence, care and skill, using sufficient appropriately trained, qualified, experienced and supervised persons; and
  - (b) have and comply with standards and a quality assurance system approved by the FIRE SERVICE. If a standard is not specified, then it will be the best standard in the applicable profession/industry.

The FIRE SERVICE may observe and review anything being done by anyone. The Contractor will end the involvement with FIRE SERVICE business of any of its representatives to the extent reasonably required by the FIRE SERVICE (eg due to security or misconduct reasons).
5. **Access:** Subject to the FIRE SERVICE's security, operational and documentation requirements, the FIRE SERVICE will allow the Contractor's representatives access at reasonable times to relevant property as necessary for the delivery of each good/service. The Contractor will ensure that its representatives co-operate with other persons, and do not restrict any other person's activities during access and generally when performing this contract. The Contractor will minimise disruption, and promptly tidy up and make good any damage or problems it causes.
6. **Operational requirements:** The Contractor will:
  - (a) itself, and ensure each of its representatives and visitors, comply with the FIRE SERVICE's security, operational and documentation requirements and with applicable law;
  - (b) have and comply with its own appropriate health and safety plan, and promptly notify the FIRE SERVICE:
    - (i) if any hazard exists at relevant properties of the FIRE SERVICE due to the Contractor's representatives or visitors; and
    - (ii) of any accident or serious harm that occurs to, or is caused by, the Contractor's representatives or visitors at relevant properties of the FIRE SERVICE;
  - (c) not allow any unauthorised activity, discharge of any contaminant, or making of excessive noise, by any of its property, representatives or visitors at relevant properties of the FIRE SERVICE;

- (d) not supply any ozone depleting or hazardous substance to the FIRE SERVICE without having the necessary exemption; and
- (e) properly label and package every dangerous good and other hazardous substance it delivers to the FIRE SERVICE, and mark the good with a prominent warning and provide a Material Safety Data Sheet.
7. **Insurance:** The Contractor will have insurance cover to the extent reasonably required or approved by the FIRE SERVICE.
8. **New intellectual property:** If any new intellectual property is developed during, or as the purpose of, any delivery of a good/service to the FIRE SERVICE, it will belong to the FIRE SERVICE only.
9. **Documentation/training:** The Contractor will supply, with the goods/services, appropriate documentation in English and a reasonable amount of training to enable the FIRE SERVICE to independently install, operate and maintain each good/service. The Customer will promptly and freely provide the FIRE SERVICE with updates of that information as it becomes available. The FIRE SERVICE may freely copy any relevant information for use by the FIRE SERVICE.
10. **Acceptance:** The FIRE SERVICE may carry out any reasonable or agreed acceptance test of any good/service, component and related system. The Contractor will assist and promptly remedy any acceptance test failure at its cost. Warranty identification labels are to be attached by the Contractor and dated on completion of each servicing or supply.
11. **Payment:** Payment will be made by the FIRE SERVICE to the Contractor by the 20<sup>th</sup> day of the month following the month in which the later of:
- (a) an acceptance certificate for the relevant good/service was given by the FIRE SERVICE to the Contractor; and
  - (b) the FIRE SERVICE received a correct itemised tax invoice for the relevant good/service.
- The FIRE SERVICE may set off any amount that is or may become payable by it to the Contractor against any amount that is or may become payable by the Contractor to the FIRE SERVICE.
12. **Title:** Where the FIRE SERVICE is buying a good or output of a service, clear title passes to the FIRE SERVICE at the earlier of delivery and any payment by the FIRE SERVICE for it.
13. **Risk:** Every risk to each good/service remains with the Contractor until completion of delivery and acceptance, except when within the FIRE SERVICE's possession and control. The Contractor's representatives and anything involved in delivery are provided at the Contractor's every risk and cost.
14. **Support:** The Contractor will ensure that the FIRE SERVICE has access to the prompt supply of appropriate support (eg spares, maintenance services) on a reasonable basis throughout the expected life of each good/service.
15. **General warranties:** The Contractor assures the FIRE SERVICE that:
- (a) each good (and its components) supplied by the Contractor will be new and unused on delivery, and if a shelf life or calendar life (by time, not utilisation) or a utilisation life is applicable, at least 95% of each of those lives remain on delivery;
  - (b) each good/service supplied by the Contractor will conform as to design, quality, quantity, configuration, functionality, the samples (if any) and specifications provided to the FIRE SERVICE;
  - (c) each good supplied by the Contractor will be appropriately packaged, packed and securely stored until completion of delivery and installation by the Contractor (if applicable) to minimise damage, deterioration and theft;
  - (d) where applicable, each good will be properly installed and integrated into, and will be compatible with and will not damage, the FIRE SERVICE's relevant systems and other property;
  - (e) despite anything said or done by the FIRE SERVICE, each good/service supplied by the Contractor will for the specified warranty periods, or to the extent not specified, for at least 12

months from the later of the date of acceptance and the date of commencement of being in service with the FIRE SERVICE:

- (i) be fit for the expected use and purpose; and
  - (ii) be free from any defect (including any latent defect) in design, materials, workmanship and title;
- (f) ownership, possession, modification, use or resale of any good/service supplied by the Contractor will not infringe any third party rights and the Contractor will protect the FIRE SERVICE from any infringement claim or proceeding;
- (g) no form of inducement or reward has been or will be directly or indirectly provided to any of the FIRE SERVICE's representatives.

These are additional to any other assurances given by the Contractor or implied by custom or law. The Contractor will, to the extent possible, pass on to the FIRE SERVICE the benefit of any warranty or other assurance from any other person in respect of each good/service supplied to the intent that the FIRE SERVICE may have recourse against those persons through the Contractor.

**16. Warranty claims:** The Contractor will promptly remedy each warranty claim to the FIRE SERVICE's satisfaction. The FIRE SERVICE may require repair or replacement solutions, and a temporary solution while the claim is being remedied. Components replaced or upgraded within a warranty claim will not be charged to the FIRE SERVICE. If a hard drive is not repairable at FIRE SERVICE property, the FIRE SERVICE may retain or destroy it without charge for security reasons. Warranty periods are suspended while each claim is being remedied, and then start again for the remaining warranty period on completion of remedying each defect.

**17. Compliance with laws/authorisations:** The Contractor:

- (a) will ensure it, and each good/service prior to acceptance, complies with all New Zealand, and each relevant jurisdiction's, laws, codes and standards; and
- (b) is responsible for ensuring that every necessary and prudent authorisation is obtained to ensure that it can perform this contract and the FIRE SERVICE can at all times own (where intended) and freely possess, modify, use and resell unrestricted, each good and output of each service supplied by the Contractor.

**18. Failure by Contractor:** If the Contractor:

- (a) breaches, or fails to properly or promptly perform, any of its obligations and fails to remedy the situation to the FIRE SERVICE's satisfaction within two working days after notice from the FIRE SERVICE of the breach or failure;
- (b) is or becomes insolvent or bankrupt, or is in or goes into receivership or liquidation; or
- (c) has a change of control or ownership, or a conflict of interest with the FIRE SERVICE's interests, which the FIRE SERVICE considers sufficiently inappropriate;

**the FIRE SERVICE may:**

- (d) suspend or cancel this contract (in whole or in part) by written notice to the Contractor; and/or
- (e) have the requirement performed by its own personnel or anyone else and recover damages from the Contractor.

**19. Indemnity:** The Contractor will promptly make good, and protect the FIRE SERVICE and its representatives from, any damage, problem, claim or proceedings the Contractor causes in relation to this contract.

**20. FIRE SERVICE liability limited:** To the extent allowed by law, the FIRE SERVICE will not be liable (in contract or tort, including negligence, or otherwise) to the Contractor for any indirect damage, loss (including loss of profits or business) or cost caused or contributed to by the FIRE SERVICE, any of its representatives or visitors in relation to this contract. Each of the FIRE SERVICE's representatives is also to enjoy the benefit of this provision.

21. **Confidentiality:** The Contractor will keep confidential and secure, and not misuse, any information of the FIRE SERVICE which would reasonably be expected to be proprietary, or commercially or militarily sensitive or confidential. Disclosure and use of information to the extent required by law is allowed.
22. **No assignment/subcontracting:** The Contractor may not assign or subcontract any of its benefits or burdens in respect of this contract without the FIRE SERVICE's written consent. The Contractor will keep the FIRE SERVICE informed about the involvement of subcontractors on a fully transparent basis and ensure each subcontract has passed through provisions allowing the FIRE SERVICE to directly benefit from and enforce it.
23. **Relationships:** Nothing in this document creates or evidences any legal partnership, joint venture, agency or employer/employee relationship between the parties.
24. **Waiver:** No delay or failure to act is a waiver. No waiver is effective unless it is in writing. A waiver of a breach is not a waiver of any other breach.
25. **Disputes:** If a party believes there is a dispute, it will promptly notify and give written details to the other party. If the dispute is not resolved within 10 working days by senior representatives of the parties, it will be promptly submitted to arbitration if requested in writing by the FIRE SERVICE.
26. **Governing law:** New Zealand law governs. New Zealand courts have non- exclusive jurisdiction.
27. **Interpretation:** Unless the context otherwise requires or it is specifically otherwise stated:
  - (a) "good" and "service" include any form of deliverable;
  - (b) if the Contractor comprises more than one person, each of those person's liability to the FIRE SERVICE is joint and several;
  - (c) references to a party or a person includes any form of entity and their respective successors, assigns and representatives;
  - (d) amounts are in New Zealand dollars; and
  - (e) time is of the essence.