

Terms and Condition of Purchase

1. Scope of Terms

1.1 All purchases of Goods and/or Services by **Accessible** from the Supplier shall be subject to these Terms. All other terms and conditions are expressly excluded.

1.2 **Accessible's** agents and representatives have no authority to make any oral representations, statements, warranties, conditions or agreements that conflict with these Terms.

2. Definitions

In these Terms, unless the context otherwise requires, the following definitions shall apply:

ACC means Accident Compensation Corporation.

accessible means Environmental Health Management Services Limited.

Applicable Requirements means all statutes, regulations, bylaws, statutory instruments, delegated or subordinated legislation and codes of practice that are applicable to the provision of the Goods, or the performance by the Supplier of its obligations under these Terms or otherwise applicable to the Supplier.

Assessor means a person approved by either MOH or ACC to undertake assessments of Customers and submit an application or request to accessible for Goods or Services on behalf of Customers.

Customer means an organisation or company or a person with a disability and is approved by either MOH, ACC, or Accessible to receive disability or rehabilitation equipment to support that person's disability or rehabilitation needs.

Goods means to any products, items or equipment purchased by **accessible** from the Supplier.

MOH means Ministry of Health.

Purchase Order means a purchase order issued by **accessible** to the Supplier for the provision of Goods and/or Services.

Services means services to support the disability or rehabilitation needs of Customers which may include, but is not limited to, installation of disability or rehabilitation equipment.

Supplier means the supplier of Goods or Services to **accessible**.

Terms means these terms and conditions of purchase.

WAND means Web Assisted Notification of Devices, a database established by the Medicines (Database of Medical Devices) Regulations 2003 to collect information about medical devices supplied in New Zealand. It is a mandatory requirement for importers,

exporters and local manufacturers to notify their medical devices to the database.

Working Days means Monday to Friday, excluding New Zealand public holidays, from 8am to 5pm.

3. Supply of Goods

Supply of Goods

3.1 From time to time, **accessible** may notify the Supplier that **accessible** requires the Supplier to provide a quote for the supply of certain Goods or Services. The notice will include:

- (a) The specifications for the Goods or Services;
- (b) The quantity of Goods to be supplied to **accessible**;
- (c) The delivery point(s);
- (d) times or windows that must be complied with by the Supplier in delivering the Goods or providing the Services; and
- (e) any other relevant information as determined by **accessible**.

3.2 As soon as practicable after receipt of the notice provided in accordance with clause 3.1 the Supplier must provide **accessible** with a quote for the total amount that will be payable by **accessible** in consideration for the Supplier supplying the relevant Goods or Service set out in the notice served under clause 3.1. **accessible** may accept the Supplier quote by issuing a Purchase Order for the Goods at the quoted price. Upon the issue of the Purchase Order the Supplier must supply the Goods or Services in accordance with these Terms.

3.3 **accessible** is under no obligation to purchase:

- (a) any minimum amount of Goods or Services from the Supplier; or
- (b) purchase any Goods or Services unless a Purchase Order has been raised by **accessible**.

Delivery Timeframes, Non-Supply, and Alternative Supply

3.4 Purchase orders are valid for 90 days from the date of issue. Purchase orders will expire beyond this period. If an order will not be fulfilled within 90 days contact **contact@accessible.co.nz** to discuss prior to expiry. Supplier Invoices must be sent to this email address **account@accessible.co.nz**

3.5 The Supplier will ensure that all Goods are delivered to the delivery point specified in the Purchase Order.

3.6 If the Supplier is unable to meet the timeframes for delivery of Goods as set out in the Purchase Order, ('**Unavailable Item**'), the Supplier must:

- (a) as soon as it becomes aware of the delay, immediately inform **accessible**; and

- (b) offer an alternative item from its product range or an alternative item sourced from another supplier. The alternative goods offered must be the same or similar in 'form-fit-and-function' as the Unavailable Item and cost no more than the Unavailable Item.

Inspection and Acceptance

- 3.7 The Supplier acknowledges that the signing of a delivery note on behalf of **accessible** or a Customer does not constitute acceptance of any Goods. **accessible** or Customers will have ten (10) Working Days following receipt of the Goods to inspect the condition of the Goods. If **accessible** or a Customer do not notify the Supplier of its rejection of the Goods within that period, **accessible** will be deemed to have accepted those Goods.
- 3.8 Notwithstanding clause 3.6 above, **accessible** or a Customer may reject any Goods, after they have been accepted, if the Goods do not comply with the warranties set out in clause 3.16.
- 3.9 For any Goods rejected in accordance with clause 3.7, the Supplier will, within ten (10) Working Days of receiving notice of **accessible's** or the Customer's rejection of the Goods, at **accessible's** sole and absolute discretion, and at the Supplier's sole risk and expense:
 - (a) repair the Goods;
 - (b) replace the Goods; or
 - (c) remove the Goods.

Title and Risks

- 3.10 The Supplier acknowledges that from time to time in title to and risk in any Goods will pass to **accessible's** Customer at the time that the Goods are delivered to the delivery point specified in the relevant Purchase Order.
- 3.11 Title to and risk in any Goods purchased by **accessible** will pass to **accessible** immediately when the Goods are delivered to the delivery point specified in the relevant Purchase Order.
- 3.12 Where Goods are returned by **accessible** to the Supplier pursuant to these Terms, the risk in those Goods will pass back to the Supplier at the time the Goods are delivered to the Supplier. Title to the returned Goods will pass to the Supplier when:
 - (a) those Goods have been replaced; or
 - (b) **accessible** has received a refund for the amounts paid for those Goods.

- 3.13 The Supplier will insure the Goods for their full replacement value, for any damage or loss that occurs to the Goods during the time that the Supplier carries the risk in the Goods

Set-up and Installation of Goods

- 3.14 The Supplier will liaise with **accessible** and/or the Customer in relation to the set-up and installation of

the Goods. The Supplier will use its reasonable care in installing the Goods and do so at its own cost (unless agreed otherwise in writing).

Product Recall / Product Corrections

- 3.15 If the Supplier recalls any Goods, then the Supplier will:

- (a) provide formal written notice to **accessible** as soon as it becomes aware of the recall. The notice must, at minimum, include information on the Goods affected and, where possible, serial numbers of the Goods affected and/or Purchase Order information;
- (b) contact any affected Customer directly to inform them of the recall issue and the steps the Supplier will take to rectify or remedy the issue;
- (c) immediately rectify or remedy the issue at the Supplier's sole cost.

- 3.16 **Accessible** will provide all reasonable assistance to the Supplier in order for the Supplier to carry out its obligations in clause 3.14 above.

Warranties

- 3.17 The Supplier warrants that the Goods:

- (a) are of good and merchantable quality, meet the specifications required of the Goods, are free from defects, and are fit for the purpose intended by **accessible**;
- (b) are free from any security interest;
- (c) are new and unused on delivery, unless otherwise agreed with **accessible**;
- (d) are dispatched with instructions on safe and correct use, service and maintenance requirements, and any other information required for the safety of **accessible**, its personnel, and Customers;
- (e) comply with all Applicable Requirements and will not put **accessible** in breach of any Applicable Requirements;
- (f) comply with any legislation, health and safety standards, applicable environmental policies, and any quality assurance system approved or required by **accessible**;
- (g) are WAND registered, if applicable, and the Supplier is able to provide proof of registration as and when requested by **accessible**.

- 3.18 The Supplier must ensure that **accessible** and/or the Customer is able to receive the benefit of any manufacturer's warranties or guarantees that are given in respect of the Goods.

- 3.19 The Supplier's warranty and guarantees set out in these Terms will apply for the greater of twelve (12) months from the date of delivery or the warranty period generally available to the Supplier's customers

who purchase the Goods (the 'Warranty Period'). If a claim is made in respect of Goods during the Warranty Period, the Supplier will be responsible for:

- (a) the cost of repairing or replacing the Goods;
- (b) providing a temporary item whilst the Goods is being repaired or in the process of being replaced; and
- (c) any associated collection and delivery costs.

3.20 The Supplier further represents and warrants on a continuing basis that:

- (a) it has all rights to supply the Goods and that it will pass free and clear title to the Goods to **accessible**, or **accessible's** Customers;
- (b) the supply, possession, use, modification and/or resale of such Goods will not breach the intellectual property rights of any third party;
- (c) the Goods will be delivered by the dates specified in the relevant Purchase Order, or, where no time is specified, within a reasonable period of time of receiving the Purchase Order;
- (d) it will not invoice for the Goods until Goods have been delivered.

Asset Tracking

3.21 Where requested, the Supplier agrees to asset track Goods as directed by **accessible**.

4. Provision of Services

Provision of Services

4.1 In providing the Services the Supplier must:

- (a) Perform the Services to the best of its knowledge and experience, and exercise the degree of care, skill, and diligence reasonably expected of a person engaged to carry out the same or similar service;
- (b) maintain high standards of professionalism, integrity and ethical behaviour at all times;
- (c) complete the Services within any timeframe specified in the Purchase Order, or promptly notify **accessible** where the Supplier becomes aware that there may be a delay in the provision of the Services;
- (d) comply with all legislation, **accessible** policies and instructions relevant to the completion of the Services.

Sub-contracting

4.2 The Supplier may not sub-contract the provision of the Services to any person or body without the express written agreement of **accessible**.

4.3 Subcontracting the Services will not affect the Supplier's obligations and liability under these Terms.

Facilities and Equipment

4.4 The Supplier will provide all facilities, equipment and vehicles required to perform the Services. All costs and expenses incurred by the Supplier relating to any facilities, equipment, or vehicles that the Supplier may use in the course of providing the Services shall be borne by the Supplier, unless otherwise agreed by **accessible**.

4.5 Where any facilities, equipment or vehicles belonging to **accessible** are used by the Supplier for the purpose of providing the Services, the Supplier must exercise all due care and diligence in the use, handling, and storage of **accessible** property, and will reimburse **accessible** for any damage inflicted upon **accessible** property as a result of the negligence or recklessness of the Supplier.

Independent Contractor

4.6 The Supplier acknowledges and agrees that it is in all respects providing the Services as an independent contractor and not an employee of **accessible** and is not entitled to pledge the credit of **accessible** nor enter into any legally binding agreement on behalf of **accessible**, unless specifically authorised in writing by **accessible** to do so.

4.7 The Supplier shall not represent itself as **accessible's** agent or representative nor give cause for anyone to believe that it is **accessible's** agent or representative without **accessible's** prior written authorisation.

4.8 The Supplier shall be solely liable for all of its debts, losses, expenses and taxation on its income, and for its own ACC levies.

5. Consumer Guarantees Act

5.1 It is acknowledged by the parties that any Goods or Services supplied by the Supplier to **accessible** are to be used by Customers and are of a kind ordinarily acquired for personal, domestic, or household use, and as such is governed by the Consumer Guarantees Act 1993.

5.2 To the extent they cannot be excluded, the Supplier agrees to comply with the warranties in the Consumer Guarantees Act 1993.

6. Trial of Goods

Objective of Trials

6.1 From time to time **accessible** may request the Supplier to provide specific Goods for the purpose of trialling the Goods. The objective of trialling Goods is to ensure that the most cost effective and appropriate

product is identified that meets a Customer's needs before the Goods are purchased.

- 6.2 Goods that are valued at over \$500 will be available for trial at the discretion of the Supplier. If the Supplier agrees to the trial of the Goods, that trial will be subject to this clause 6.
- 6.3 The parties agree that Goods valued under \$500 cannot be trialled. Where there is a request to trial Goods under \$500, **accessible** will direct the Assessor to purchase the Goods instead.

Trial Process and Timeframes

- 6.4 On approval from **accessible**, Goods may be trialled for up to twenty (20) Working Days from the date when all Goods for a complete solution are received and set up for trial. The components of the complete solution may be sourced from the Supplier or multiple suppliers.
- 6.5 The Supplier will be responsible for arranging with the Assessor the delivery, set up, and, where the trial is unsuccessful, the collection of the trial Goods.
- 6.6 Where the trial is unsuccessful, **accessible** will provide a Purchase Order to the Supplier to invoice freight costs for the collection of the unsuccessful trial Goods.
- 6.7 The Supplier will proactively manage the trial process and timeframe with the Assessor, and agrees to keep **accessible** informed of progress, including delivery and set up timeframes, and trial outcomes.
- 6.8 If a further trial period is requested by the Customer or Assessor, the Supplier agrees to extend the trial period for a further twenty (20) Working Days. The total trial period, including the trial extension, will not exceed forty (40) Working Days.
- 6.9 At or before the initial trial request, the Supplier will provide the Assessor with a preliminary quote detailing the total cost to purchase the trial Goods. Where the trial is successful, the Supplier will provide the Assessor with a final quote to purchase the trial Goods.
- 6.10 Once the Assessor has advised **accessible** that the trial is successful and submitted the final quote, **accessible** may issue to the Supplier a Purchase Order based on the final quote to purchase the Goods. These Terms will apply to that sale and purchase.

Trial Equipment Liability

- 6.11 The Supplier is responsible for and assumes all liability for the trial Goods whilst in transit to and from the Customer's property, and during the trial period.
- 6.12 Where the trial Goods are damaged, abused, misused, neglected or lost by the Customer or Assessor during the trial period, the Supplier will liaise directly with the Assessor.

Communications / Reporting

- 6.13 The Supplier will acknowledge all trial requests within two (2) Working Days of receipt and must confirm with **accessible** and the Assessor whether the Goods requested is available for trial, and provide a

timeframe for delivery and set-up of the trial Goods as per the Assessor's direction.

- 6.14 The Supplier will actively maintain communication with the Assessor to ensure the trial timeframe remains timely, and any issues can be addressed if the trial is unable to be completed within the agreed timeframe.

7. Price and Payment

Contract Price

- 7.1 **Accessible** will pay the price for the Goods as specified in a relevant Purchase Order (the "Contract Price").

Invoicing

- 7.2 The Supplier must provide **accessible** with a GST invoice, and will be in a format and contain such information reasonably requested from time to time by **accessible**.
- 7.3 Subject to clause 7.4 invoices must be paid by the end of the month after the month in which the invoice is received.
- 7.4 If **accessible** objects to any portion of an invoice, **accessible** will give written notice to the Supplier and specify the reason(s) for the disagreement. Upon receipt of such notice, the Supplier will within five (5) Working Days review the disputed invoice or any part of the disputed invoice and notify **accessible** if it considers the invoice to be correct or not. If the Supplier notifies **accessible** that it considers the disputed invoice or part of the invoice to be incorrect, it will immediately cancel and issue a replacement / new invoice or, if agreed with **accessible**, issue a credit note.
- 7.5 If the Supplier notifies **accessible** that it considers the disputed invoice or disputed portion of the invoice to be correct, the invoice will be deemed to be in dispute and both Parties agree to resolve the dispute in accordance with the dispute resolution process in clause 11.

Rights to set-off, deductions, or withholding of payment

- 7.6 **Accessible** may deduct from any amount payable to the Supplier, any amounts due from the Supplier to **accessible** or required to be deducted by law.
- 7.7 If the Supplier fails to deliver the Goods in accordance with these Terms, payment of invoice may be withheld by **accessible** until all Goods are delivered accordingly.
- 7.8 If the Supplier fails to perform the Services in accordance with these Terms, the fees payable may be abated or withheld by **accessible**.

8. Confidentiality and Privacy

- 8.1 The Supplier shall, as a continuing obligation, keep entirely secret and confidential these Terms, including the Purchase Order any other information connected to the supply of the Goods and Services from the Supplier to **accessible**. Specifically, the Supplier shall

not disclose any matters in relation to the Contract Price or contract negotiations.

8.2 The Supplier shall, as a continuing obligation, keep entirely secret and confidential all information of a secret, confidential, or proprietary nature concerning the business or affairs of **accessible**, (or any party with which the Supplier has contact with on **accessible's** behalf), of any kind which can reasonably be regarded as being sensitive to, or of commercial value, which may come to the Supplier's knowledge as a result of performance of its obligations under these Terms.

8.3 The obligation of confidentiality shall not, apply to information that:

- (a) is already known to the party to which it was disclosed;
- (b) is in, or becomes, part of the public domain without a breach of these Terms;
- (c) is obtained from third parties which have no obligation to keep confidential to the contracting parties;
- (d) is agreed in writing between the parties not to be confidential; or
- (e) is required to be disclosed by law.

8.4 In the course of supplying Goods or providing Services, the Supplier may come into possession of personal information relating to Customers, **accessible** staff and other contractors. The Supplier shall, as a continuing obligation, keep entirely secret and not disclose to any third parties any personal information relating to Customers, **accessible** staff or contractors.

8.5 If the Supplier becomes aware of any breaches of confidentiality or breaches of privacy, the Supplier must advise **accessible** immediately.

9. Intellectual Property

9.1 **accessible** acknowledges and agrees that it does not, and will not otherwise have or acquire, any rights in any intellectual property owned or used by the Supplier in connection with the Goods.

9.2 All intellectual property owned by either party and existing prior to the commencement of the issue of a Purchase Order will remain the exclusive property of that Party during the term of this Terms and afterwards.

9.3 Neither party will use the other party's intellectual property in any manner whatsoever other than for the purpose of completing the Services.

9.4 Neither party will modify, adapt or replicate the other party's intellectual property without first obtaining the written permission of the other party.

9.5 Unless otherwise agreed, any intellectual property produced, created, discovered, conceived of or developed by the Supplier during its provision of Services shall be the sole and exclusive property of

accessible, and the Supplier agrees to irrevocably waive its author's rights in any such property.

10. Indemnities and Liabilities

10.1 The Supplier shall at all times, indemnify and keep indemnified **accessible** against all damages, losses (including any loss of profits, data or business opportunity), actions, suits, claims, demands, costs, charges, expenses or liability whether direct, indirect or consequential, and whether arising in contract, tort, equity or otherwise, resulting from any failure of or negligence of the Supplier (including its servants, agents and representatives) in performing its obligations to **accessible** under these Terms. This indemnity, however, will not apply to the extent that the Supplier's performance has been prevented by a failure on **accessible's** part to perform a material obligation under these Terms.

10.2 The Supplier indemnifies **accessible**, its employees, agents and officers against all claims, demands, actions, proceedings, costs (including solicitor and own Customer costs), losses, expenses and damages, which are made or brought against any of the indemnified parties or incurred or suffered by those parties, directly in connection with the deduction or payment of tax in connection with payments made by **accessible** to the Supplier under these Terms. **accessible** will be entitled to offset any such claim from any payments to the Supplier in the event that **accessible** is assessed for any such tax.

10.3 Nothing in these Terms limits **accessible's** rights against the Supplier at common law or equity or under the provisions of the Contract and Commercial Law Act 2017.

10.4 Where Services are provided, **accessible** may require the Supplier to maintain professional indemnity insurance and/or public liability insurance. The type of insurance, amount of insurance to be held, and duration of the insurance policy will be negotiated and agreed between the parties prior to the commencement of the Service and will be reflected in the relevant Purchase Order.

10.5 Under no circumstances will **accessible** be liable to the Supplier for any of the Supplier's indirect or consequential loss, costs or damages, (including loss of profit,) arising from, or in connection with these Terms or any Purchase Order, whether such claim arises under contract, tort, statutory liability or otherwise. To the extent permitted at law **accessible's** aggregate liability to the Supplier shall be limited to the Contract Price associated with the Purchase Order to which the claim arises.

11. Dispute Resolution

11.1 If a dispute arises under in connection with these Terms or any Purchase Order, neither party may commence any court proceedings relating to the dispute unless it has first complied with sub-clauses 11.2 and 11.3 below. However, nothing in this clause 11 restricts or limits the rights of either party to obtain

urgent injunctive relief or to terminate a Purchase Order where these Terms provide such right.

11.2 The parties, agree in the first instance to use their best efforts to resolve any dispute that may arise in connection with these Terms through good faith negotiations.

11.3 If the parties fail to resolve the dispute in accordance with clause 11.2 within ten (10) Working Days, the parties may refer the dispute to arbitration. If the dispute is referred to arbitration, the arbitrator shall be appointed by the President of the New Zealand Law Society and each party shall meet its own costs.

12. Termination

Immediate termination by accessible

12.1 **accessible** may immediately terminate a Purchase Order by written notice to the Supplier if any of the following occurs:

- (a) the Supplier commits a material breach of these Terms and fails to remedy that breach within ten (10) Working Days following receipt of a written notice from **accessible** specifying the breach and requiring it to be remedied; or
- (b) the Supplier suffers an insolvency event.

Consequences of termination or expiry

12.2 On termination of any Purchase Order:

- (a) subject to any rights of deduction or set-off, **accessible** must immediately pay the Supplier for Goods validly provided up to the date of termination or for Services completed up to the date of termination, except those in dispute; and
- (b) any provision in these Terms intended to survive termination will remain in full force and effect.

13. Force Majeure

13.1 Neither Party shall be liable for any delay in performing or failure to perform its obligations under Terms if such delay is caused by circumstances beyond the reasonable control of that party and for which it was not responsible.

14. Notices

14.1 All notices and other communications required or permitted pursuant to these Terms shall be in writing and shall be delivered personally, emailed, or sent by courier post (and promptly confirmed by courier post). Any such notice shall be deemed given when so delivered personally, or sent by email, or the next working day after sending by courier post.

15. Severability

15.1 Should any part or portion of these Terms be held invalid, the remainder of these Terms shall continue in force and effect as if the invalid provisions had been deleted provided however that the parties to these

Terms may negotiate a valid and enforceable provision and replacement of the invalid provision.

16. Survival

16.1 On termination or expiry of Terms, clauses 8 (Confidentiality and Privacy), 9 (Intellectual Property), 10 (Indemnities and Liabilities), and all other provisions of these Terms that are intended to do so, will continue in full force and effect. In addition, termination shall not prejudice potential claims by **accessible** regarding breach or non-performance by the Supplier of any of its obligations under these Terms.

17. Entire Agreement

17.1 These Terms supersedes any prior arrangements, understandings, promises or agreements made or existing between the Parties in relation to the subject matter of these Terms and constitutes the entire understanding between the parties on that matter.