

PURCHASE ORDER TERMS AND CONDITIONS

1. DEFINITIONS

In these Terms:

- a. Contract means a written contract or agreement signed by you and us for the supply of the relevant Products.
- b. Top Energy, we, us or our means both Top Energy Limited, Ngawha Generation Limited and, where the context requires all their subsidiaries, affiliates and all of their respective directors, officers, partners, employees and agents.
- c. PO means a purchase order issued by us.
- d. Price means the price stated in the PO (or other as agreed by us in writing).
- e. Terms means these PO Terms and Conditions.
- f. Products means the goods and/or services specified in the PO.
- g. You or your means the supplier specified in the PO.
- h. NZD means New Zealand Dollars.
- i. Working Day means the day of the week other than:
 - (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereigns Birthday, Matariki Day and Labour Day;
 - (b) A day in the period commencing with 25 December and ending with 2 January in the following year; and
 - (c) Northland Anniversary Day.

2. APPLICATION OF THESE TERMS

These Terms apply to all PO's issued by us, except where there is a Contract that excludes these Terms or part thereof. Where a Contract does not exclude these Terms, both the Contract and these Terms will apply to the supply of the Products and, if there is any conflict between the Contract and these Terms, the Contract prevails.

3. ORDER ACCEPTANCE

- a. A PO is an offer by us to purchase the relevant Products at the price stated in the PO and on the terms set out in the Contract (if any) and these Terms. You are deemed to accept the PO and the terms set out in the Contract (if any) and these Terms on the earlier of your acceptance of the PO verbally or in writing or you commencing to supply the Products or issuing an invoice for the Products.
- b. If not accepted within 10 Working Days of issue a PO will expire. We may withdraw the PO at any time before you accept it.
- c. Additional or different terms or pricing proposed by you, including any terms that may be included with your sales documentation (e.g. quotes, order confirmations, deliver slips or invoices), do not apply unless accepted in writing by us before you supply the relevant Products.

4. PRICE

- a. Prices must be quoted in NZD unless we agree otherwise in writing. Prices quoted must be fixed and not subject to adjustment due to foreign exchange rate fluctuations.
- b. We will include the Price in the PO when generating a PO. We will use best efforts to ensure that the Price reflects any contractually agreed pricing. However, you are responsible for checking that the Price in the PO is correct.
- c. The Price is exclusive of GST and any duty, but is otherwise inclusive of all costs, charges and taxes.
- d. The Price in a PO can only be varied if you notify us of the variation before you accept the PO and we accept the varied Price in writing.
- e. Where any deduction or withholding or payment is required by law to be made for or on account of any tax in respect of any payment made by us to you under these Terms, we will not gross up the payment due to you on account of that deduction or withholding. If we are liable to make a taxation deduction or withholding or payment on account of tax, we will be entitled to recover any such amount(s) from you.
- f. We may amend any of the drawings, specifications or instructions for Products (Amendment) and you must comply with any notification of an Amendment. If an Amendment results in a decrease or increase in your costs, or in the time for providing the Products, the parties may agree, in writing, to adjust the Price and/or the time for providing the Products, provided that you notify us of the request for such an adjustment within 5 Working Days after receipt of the Amendment notification.

5. DELIVERY

- a. Unless agreed otherwise in writing, where the Products are goods, such must be delivered “free into store” at the place of delivery stated in the PO, and where services, such must be provided at the location stated in the PO. Where we have not named a place of destination for delivery of goods or location for provision of services, you must contact us to confirm delivery/provision instructions.
- b. All goods must be adequately packaged in accordance with accepted industry practice to prevent deterioration or damage whilst in transit.
- c. Each consignment of goods must be accompanied by a delivery note stating the description of goods and PO number.
- d. You must obtain an acknowledgment of delivery from us for all Products. Our acknowledgment of delivery does not constitute acceptance of either the quality or quantity of the Products.
- e. Acceptance of partial deliveries is at our discretion.
- f. All Products must be delivered within the time specified in the PO. We may vary the delivery time and/or the delivery address at any time prior to delivery but such must be authorised by written notice of those changes.
- g. You must notify us as soon as possible (and before the specified date of delivery) after you become aware of any delay or likely delay. We may cancel the PO if you notify us of a delay or the Products are not delivered within the agreed time frame.

6. TITLE AND RISK

Title to any goods supplied to us will pass to us at the earlier of delivery or any payment by us for the goods. Risk remains with you until completion of delivery and our acceptance of the Products.

7. PERFORMANCE STANDARDS AND QUALITY

- a. You must provide the Products:
 - i. using due diligence, care and skill;

- ii. in a timely, efficient and cost effective manner;
 - iii. using sufficiently appropriately trained, qualified, experienced and supervised personnel; and
 - iv. in accordance with accepted industry practice, all applicable laws, regulations, codes and standards of practice and our reasonable directions.
- b. You must ensure that the Products:
- i. correspond with the description and satisfy our requirements as set out in the PO, and are fit for their intended purpose;
 - ii. are of merchantable quality and free from any defects in labour, materials or performance;
 - iii. are designed, manufactured, delivered and operate in compliance with all applicable specifications and accepted industry standards and any environmental and/or quality assurance system approved or required by us;
 - iv. are new and unused on delivery unless specified otherwise in each case by us;
 - v. are compatible with the other goods available from you (as applicable); and
 - vi. meet accepted industry environmental standards in their production and operational performance, consistent with ISO 14001.
- c. Where Products are manufactured by a third party, you must ensure the Products are supported by a manufacturer’s warranty on industry standard terms or better.
- d. You must obtain all third-party consents, licences, authorisations and approvals required for you to provide the Products and provide us with these consents, licences, authorisations and approvals upon request.
- e. You must provide us with regular updates on the status of any services or works.

8. QUALITY ASSURANCE

- a. We may have the Products inspected or tested before, on or after delivery. You must facilitate inspection or testing when required.
- b. If, in our reasonable opinion, the Products do not meet the performance and quality requirements set out in these Terms, we may (without limiting our other remedies):
 - i. require you to remedy the deficiency immediately at your cost, which at our discretion will be to either repair or replace the Products;
 - ii. withhold any payment due to you until the deficiency is remedied to our satisfaction;
 - iii. deduct a reasonable amount from any payment due to you to reflect the deficiency; and/or
 - iv. reject any or all of the Products.
- c. If we reject any Products, we may (without limiting our other remedies):
 - i. require you to reimburse us for any loss of function attributable to the Products; and/or
 - ii. require you to remove the Products at your cost and reimburse us in full any payments made by us in respect of it.

9. HEALTH, SAFETY AND ENVIRONMENT

If you provide Products at our premises, then you must ensure that:

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- a. Your employees, contractors and agents are competent in health, safety and environmental matters and that they at all times identify and exercise all necessary precautions for the health and safety of all persons and the protection of the environment;
- b. You will comply with all applicable New Zealand legislation including (without limitation) the Resource Management Act 1991 and the Health and Safety at Work Act 2015;
- c. You will comply with all of our health, safety, wellbeing and sustainability requirements and procedures;
- d. You must not allow any unauthorised activity, nuisance, discharge of any contaminant, or make excessive noise on any site where we require you to provide the Products.
- e. You will perform appropriate health, safety and environmental risk assessments and implement any necessary preventative controls prior to providing the Products;
- f. You will immediately report to us all incidents involving injury or potential injury to any person or the environment or damage to property;
- g. Our premises are left secure, clean, orderly and fit for use; and
- h. All our property, including (without limitation) all security swipe cards, keys, books, records and papers, are returned to us once you have provided those Products.

10. INVOICING AND PAYMENT

- a. Subject to clauses 8b, 10d and 10e, we will pay the Price for the supply of the Products. The Price is the total amount payable by us for the supply of the Products.
- b. You must provide a valid GST invoice to us for the Price due for the Products. The invoice must include:
 - i. the PO number;
 - ii. details of the Products to which the invoice relates, including a breakdown of all labour, materials and disbursements (where applicable); and
 - iii. sufficient information to enable us to validate the claim for payment.
- c. Original invoices must be sent via email to accounts.payable@topenergy.co.nz (preferred) or mailed to: Top Energy Ltd, PO Box 43, Kerikeri 0245 Attention: Accounts Payable
- d. We are not obliged to make any payment until we have received an invoice which complies with clause 10b.
- e. Without limiting our rights under clause 8b, we may (acting reasonably) withhold any disputed amount until the dispute is resolved. We will pay undisputed amounts by the 28th day of the month following the date we receive the invoice.
- f. Invoices for part orders will not be accepted (unless agreed to prior to the supply or work commencing).
- g. We will make payment against valid invoices on the 28th day of the month following the invoice date. If the 28th falls on a weekend or public holiday, payment will be made no later than the first business day after the 28th.

11. INTELLECTUAL PROPERTY

- a. You must ensure that we have all the necessary rights (and documentation) to fully enjoy the benefits of the Products.

- b. You warrant to us that ownership (where intended), possession, use, modification or resale of the Products will not infringe any third-party rights and you must indemnify us and our customers from any related claims or proceedings. We may freely participate in any infringement proceedings.
- c. If any new intellectual property is developed during, or as the purpose of, any delivery of any Products, it will belong to us, unless otherwise agreed in writing. If we request, you must freely waive any rights and transfer every relevant proprietary interest/right to us or our nominee.

12. WARRANTY

- a. You warrant that:
 - i. at the time of the passing of the title in any Products supplied to us (as specified in clause 6), you have the right to sell the Products and the Products are free from any charge or encumbrance in favour of you or any third party; and
 - ii. the Products meet the performance and quality requirements set out in these Terms.
- b. Unless specified otherwise in the relevant PO or Contract, this warranty in clause 12 applies for the greater of at least 12 months from delivery or the warranty period generally available to your customers if longer.

13. FAILURE

- a. In the event of any breach or failure by you, or inability to perform the required obligations within a reasonable period of time, we may:
 - i. give you 5 Working Days’ notice to remedy the breach or failure; or
 - ii. where the breach is not capable of remedy, suspend or cancel the PO by written notice to you.
- b. Where we have given notice under clause 13a and you have not remedied the breach, we may immediately suspend or cancel the PO by written notice to you.
- c. Where we cancel or suspend a PO under clause 13a or 13b we may procure replacement goods or services elsewhere and recover from you any reasonable additional costs we incur.

14. INDEMNITY

- a. You will at all times indemnify us in respect of any loss, damage or expense suffered or incurred by us as a consequence of:
 - i. any act, error or omission by you or your personnel; and/or
 - ii. any breach by you of any warranty or other obligation under these Terms, except to the extent that loss, damage or expense arises out of an act or omission by us.
- b. Your maximum liability under or in connection with any PO whether arising in contract, tort (including negligence) or otherwise is limited to \$2,000,000 (two million NZD).
- c. Clause 14b above excludes death, disability and proceeds from insurance related to breach in relation to this Contract.

15. INSURANCE

- a. You must at your own expense, ensure that you have in place:
 - i. adequate insurance to cover standard commercial risks and the indemnities under these Terms; and

- ii. adequate insurance to cover any loss or damage of the Products in transit from you to us; and
- iii. other insurance we reasonably require.

b. You must provide us with evidence of your compliance with clause 15a upon our request.

16. CONFIDENTIALITY

- a. You must keep confidential and secure, and not misuse, any information of ours that would reasonably be expected to be proprietary, commercially sensitive or confidential.
- b. Disclosure and use of information by either party is allowed to the extent required by law or to the extent necessary to perform the supply of the Products.
- c. You must stop using and return to us, or destroy if so directed by us, our property and information as requested by us.

17. PUBLICITY

You must not represent or publicise in any way to anyone that you are a supplier to us, or allow media releases or advertising that names us or suggests us without our prior written consent.

18. CLAIMS AGAINST US

- a. In no event will we be liable for any indirect or consequential loss, damage or expense including any loss of profit or revenue, economic loss, loss of contract.
- b. To the maximum extent permitted by law, our maximum liability under or in connection with any PO whether arising in contract, tort (including negligence) or otherwise is the total amount which would be payable under the PO if all Products had been provided in accordance with the PO and these Terms.
- c. Any claim against us, whether arising in contract, tort (including negligence) or otherwise must be in writing and delivered within 6 months of the event to which it relates and our liability in relation to any claim will not exceed the value of the PO to which the claim is connected.

19. LEGAL COMPLIANCE

- a. You must comply with all applicable laws, rules, regulations, bylaws, standards, codes of practice, and our current policies and procedures in providing the Products.
- b. Where your employees and/or representatives are accessing any of our information, data or systems, you will comply with industry best practice and Top Energy Supplier Cyber Security Policy located at <https://topenergy.co.nz/tell-me-about/top-energy-group/publications-and-disclosures>

20. MODERN SLAVERY

- a. We reject any form of modern slavery practices in our operations and supply chains. You will take reasonable steps to identify, assess and address risks of modern slavery practices in the operations and supply chains used in the delivery of the Products. Should you become aware of modern slavery practices, you will:
 - i. take all reasonable action to address or remove such practices; and
 - ii. as soon as reasonably practicable, notify us of such practices and the action taken or proposed to address or remove them.
- b. You will provide to us, on request, reasonable evidence of compliance with clause 20a.

21. GENERAL

- a. You are an independent supplier to us. No legal partnership, principal/agent or joint venture relationship between you and us is created or evidenced by a PO.
- b. These Terms may only be varied by agreement in writing and signed by us.
- c. For us to waive a right under these Terms, that waiver must be in writing and signed by us.
- d. You may not assign, novate, subcontract or transfer any right or obligation under a PO or these Terms, without our prior written consent. Any subcontractors working on any site where we require the Products to be provided must meet our requirements for subcontractors. You remain liable for the performance of your obligations despite any approved assignment, subcontracting, or transfer.
- e. The guarantees implied by the Consumer Guarantees Act 1993 (as amended or supplemented from time to time) are expressly excluded from these Terms as we are acquiring the Products for the purpose of a business.
- f. These Terms are governed by, and must be interpreted in accordance with, the laws of New Zealand.
- g. Each party submits to the non-exclusive jurisdiction of the courts of New Zealand in relation to any dispute connected with the Products or these Terms.