

Fortysouth Group LP ("Fortysouth") - Purchase Order Terms and Conditions – effective from 22 May 2024

1. Agreement to Supply

- 1.1 If a signed agreement for the provision of the Goods and/or Services exists between Fortysouth and the Supplier, the terms of that agreement will apply and not these terms and conditions. In the absence of a written agreement these Terms of Purchase shall apply to any Purchase Order (PO) issued by Fortysouth to the Supplier and shall comprise the entire Agreement between the parties superseding and excluding any previous discussions, arrangement, representations and the Supplier's own terms and conditions. The Supplier shall be deemed on acceptance of the Order or any Delivery of Goods and Services to Fortysouth to have accepted these Terms.
- 1.2 Any estimates or forecasts of future requirements provided by Fortysouth are indicative only and are not a commitment by Fortysouth to purchase the estimated requirements.

2. Delivery

- 2.1 The Supplier must have a valid PO Number prior to supplying Goods or Services.
- 2.2 The Supplier shall supply the Goods and/or perform the Services as specified in the PO.
- 2.3 The Supplier must deliver the Goods and/or Services no later than the due date specified in the PO.
- 2.4 If any Goods or Services are subject to acceptance testing the Supplier shall ensure that all required tests have been undertaken and attest compliance with the Fortysouth requirements prior to Delivery. The Supplier shall submit a copy of the test results to Fortysouth.
- 2.5 Risk and title in the Goods shall pass on acceptance of Delivery of the Goods by Fortysouth.
- 2.6 The Supplier shall at its own cost pack, mark and label the Goods to protect against damage and deterioration.
- 2.7 The Supplier shall ship the Goods in accordance with the PO to the Delivery address by the required Delivery Date.
- 2.8 The Supplier shall ensure all deliveries of Goods or Services are accompanied by a numbered delivery docket referencing the Supplier's details, PO number, itemised description and quantity of the Goods or Services provided.

3. Pricing, Invoicing and Terms of Payment

- 3.1 The Supplier agrees to supply the Goods and Services in accordance with this Agreement in consideration for the Price specified in the PO. The Price in the PO is fixed, and no increase will be paid unless agreed in writing by Fortysouth and an amended PO is issued for the revised Price.
- 3.2 If no Price is stated on the PO or the Price is stated as not to exceed a stated value, the Supplier shall provide such information as required by Fortysouth to verify the invoiced cost such as a quotation submitted by the Supplier and accepted by Fortysouth.
- 3.3 All Prices are in New Zealand dollars inclusive of Delivery, transport and any taxes unless stated otherwise in the PO.
- 3.4 All invoices shall be submitted in arrears, if the Supplier is registered for GST be in the form of a tax invoice for GST.
- 3.5 The Supplier shall ensure that invoices contain sufficient information to enable Fortysouth to establish the accuracy of the invoice, including (without limitation) the PO number, a description of the Services provided, and breakdown of the costs as reasonably required to validate the cost such as the resources used, and applicable rates applied.
- 3.6 The Supplier's right to invoice shall not be considered acceptance that the Goods and/ or the Services comply with the requirements specified by Fortysouth.
- 3.7 If the Supplier complies with clause 3 Fortysouth shall pay the Supplier on the 20th day of the month following the month in which Fortysouth receives a valid invoice.
- 3.8 Fortysouth may withhold payment of the relevant invoices if it disputes any part of the invoice, including without limitation the Price, the Delivery, the quality, or quantity supplied of the Goods or Services.
- 3.9 Fortysouth may in addition to any other rights that it may have deduct from and set off against any monies due or that become due to the Supplier for debts owed by the Supplier to Fortysouth and which remain unpaid.

4. Warranties

- 4.1 In addition to all other warranties, guarantees, conditions or other terms expressed or implied by law or otherwise, the Supplier warrants to Fortysouth that:
 - (a) the Goods and Services conform with the Agreement;
 - (b) the Goods and/or Services comply with any Specification (or samples) supplied by Fortysouth or agreed between the parties, will be fit for the purpose that Fortysouth makes known to the Supplier and will comply with all New Zealand applicable laws, regulations, and codes of practice;
 - (c) all Goods are free from defects in design, material, and workmanship, of merchantable quality;
 - (d) all Services provided are performed by persons with the requisite skill and experience, with due care and diligence and in accordance with best industry practice and are fit for purpose;
 - (e) the Supplier will cover any costs and expenses of Fortysouth resulting from a failure to meet the performance requirements and/or Specifications set out in the PO or made know to the Supplier. At Fortysouth's option the Supplier shall promptly repair, replace or a full refund any costs paid by Fortysouth;
 - (f) any third-party materials or data provided by the Supplier to Fortysouth do not infringe any Intellectual Property Rights of third parties;
 - (g) at the time of Delivery, the Goods will be free of any security interest, lien or other encumbrance; and
 - (h) the Goods and/or Services will be Delivered at the time specified on the PO or, if not specified within a reasonable time of placing the Order.
- 4.2 The Supplier provides a warranty for the Goods and Services against any defects in its manufacture or supply for a period of 12 months or such longer period as may be defined by the requirements or the Suppliers standard terms of trade from the date of Delivery of the Goods and Services.

5. Default, Cancellation and Termination

- 5.1 If the Supplier breaches any term or any other condition or warranties contained in this Agreement or PO, Fortysouth at its sole option and without prejudice to any other remedy right may:
 - (a) If the term relates to Goods may reject the Goods in whole or part and return the Goods to the Supplier at the Supplier's risk and expense and the Supplier must reimburse Fortysouth for cost incurred in respect of the returned Goods, or require the Supplier to replace, repair, reinstate or re-supply the Goods to the required Specification at the Supplier's expense. Alternatively, Fortysouth may have the Goods replaced, repaired, or re-supplied by another party and recover the costs of doing so from the Supplier;

- (b) If the term relates to Services may require the Supplier to perform the Services again to the required standard at the Supplier's expense so that they conform to the Terms of Purchase or may have the Services re-supplied by another party and recover the cost of doing so from the Supplier; and
 - (c) Suspend payment for the Goods and/Services until the breach has been remedied to Fortysouth's reasonable satisfaction.
- 5.2 Fortysouth may at its option cancel any PO to the extent unperformed without cause. Fortysouth's only obligation in the event of cancelling a PO will be to pay for Goods delivered or Services performed in compliance with the PO prior to the cancellation.
- 5.3 If Fortysouth cancels a PO for Goods specially manufactured or fabricated for Fortysouth without cause the Supplier shall on receipt of the cancellation notice immediately cease such work and do everything possible to minimise any further costs:
- (a) The Supplier shall make a written claim to Fortysouth within 20 Working Days setting out the costs incurred as a result of the cancellation of the PO less any costs the Supplier has been able to save or re-purpose;
 - (b) Fortysouth has the right to audit the adjusted cost specified in the written claim; and
 - (c) When satisfied that the adjusted cost specified in the written claim is appropriate Fortysouth will issue a revised PO for the agreed sum providing the variation or cancellation of the PO is not a result of a default or action by the Supplier.
- 5.4 Fortysouth may, terminate the Agreement including outstanding POs at any time and for any reason on giving the Supplier 10 Working Days' written notice. Undisputed invoices for Goods and Services rendered prior to the effective date will be honoured, but Fortysouth will have no further liability to the Supplier.
- 5.5 Fortysouth may immediately terminate this Agreement including outstanding POs on written notice if the Supplier commits a breach of this Agreement which is not capable of being remedied or where the breach can be remedied, the Supplier does not remedy the breach within 10 Working Days.
- 5.6 Fortysouth may immediately terminate this Agreement by written notice to the Supplier if:
- (a) there is any change in effective control of the legal or equitable ownership of the Supplier without Fortysouth's written consent;
 - (b) if the Supplier becomes bankrupt, ceases to carry on business, has an application made to liquidate its business, enters into a compromise with its creditors, or becoming or being presumed to be unable to pay its debts; and
 - (c) the Supplier or its employees or contractors commit fraud in regard to any supply under this Agreement.
- 5.7 Termination of the Agreement and/or cancellation of a PO does not affect any responsibilities which are intended to continue or come into effect after the Agreement terminates. By their nature the following clauses are intended to survive the expiry or termination of the Agreement clauses 3 to 8 and 13.5 or are necessary to give effect to such surviving rights and obligations.

6. Indemnity

- 6.1 The Supplier will fully protect, indemnify and hold harmless Fortysouth from and against any liability, losses, damages, actions, proceedings, claims, demands, costs and expenses including legal costs on solicitor and client basis, incurred as a result of a breach by the Supplier of any of its obligations under this Agreement including without limitation any Loss or damage arising out of, or in connection with:
- (a) any personal injury, illness or death to any person;
 - (b) damage to any property;
 - (c) any other Loss or damage of any kind caused or contributed by the Goods and Services;
 - (d) the Supplier's gross negligence, fraud or willful default in performing the Supplier's obligations under this Agreement; and
 - (e) any claim that the Goods and Services or the use of the Goods and Services infringes or allegedly infringes the Intellectual Property Rights of any person.
- 6.2 Fortysouth shall have no liability whatsoever to the Supplier for Loss. Fortysouth's total aggregate liability to the Supplier is limited to the Price or such other amount as agreed between Fortysouth and the Supplier.
- 6.3 The Supplier shall keep full records and documentation in relation to the Services and this Agreement (Records) evidencing compliance of its obligations and shall maintain the records for at least 10 years or longer if required by law. The supplier will upon request from Fortysouth provide copies of such Records to Fortysouth.
- 6.4 The Supplier shall prior to commencing work maintain at all times such insurances as necessary to protect Fortysouth against the risks inherent in providing the Goods and / or Services. The Supplier must insure Goods until the time of Delivery (including installation if required), for performance of Services until the completion of work or the defect liability period as appropriate. The Supplier will maintain such insurance on such terms and amounts as are reasonably acceptable to Fortysouth at its own expense and with reputable insurer(s) with a financial strength rating of, or equivalent to A- or higher on the Standard and Poor's rating scale. The Supplier will provide copies of insurance certificates to Fortysouth on request.

7. Intellectual Property

- 7.1 All Intellectual Property owned by either party and existing prior to the commencement of the supply of Goods and /or Services will remain the exclusive property of that party.
- 7.2 The Supplier agrees that all new Intellectual Property that arise or is created by the Supplier in the course of supplying the Goods and /or will be Fortysouth's exclusive property.
- 7.3 The Supplier will where necessary grant Fortysouth an irrevocable, perpetual, royalty free, non-exclusive license to use the Supplier's or a third parties owned Intellectual Property as necessary to enable Fortysouth to use and fully exploit the performance of the Goods and/or Services supplied under this Agreement.

8. Confidentiality

- 8.1 All Confidential Information provided by Fortysouth will remain the property of Fortysouth and the Supplier must:
- (a) keep all Confidential Information confidential and use the Confidential Information only for the purpose of the Agreement and /or PO;
 - (b) not disclose any Confidential Information to any person without the prior written consent of Fortysouth (unless required by law) and
 - (c) return the Confidential Information to Fortysouth upon Fortysouth's request at any time or if no request is made, upon termination of the Agreement.
- 8.2 The Supplier shall not use Fortysouth's name or brand in advertising its business or activities without Fortysouth's prior written consent and will comply with all reasonable terms and conditions upon which the approval was given.

9. Relationship of Parties

- 9.1 Nothing in the Agreement creates or evidences any relationship of employment, trust, agency, joint venture, partnership, or any other fiduciary relationship between the parties unless specifically provided otherwise. No party has authority to bind or incur debts on behalf of the other party.
- 9.2 Fortysouth may whenever reasonably required conduct a review of the Supplier's performance under this Agreement and the Supplier agrees to cooperate and provide such access, records and assistance as may be reasonably required by Fortysouth or its representatives to complete the review.
- 9.3 Fortysouth has entered into this Agreement on a non-exclusive basis and nothing in this Agreement restrict Fortysouth from performing or procuring the Goods and/or Services from any other party. Nothing in this Agreement requires Fortysouth to allocate additional volumes of work or any future work to the Supplier.

10. Assignment and Subcontracting

- 10.1 The Supplier may not assign, novate, subcontract, or otherwise transfer any of the rights, benefits or obligations under this Agreement without the prior written consent of Fortysouth, which may not be unreasonably withheld. A change in the management or control of the Supplier or the sale of a major part of the Supplier's business or assets will be deemed an assignment for the purpose of this clause.
- 10.2 Where Fortysouth consents to the Supplier assigning, novating, subcontracting or transferring any of its obligations under, or aspects of, this Agreement to a third party, the Supplier will remain fully responsible for all obligations to Fortysouth under this Agreement.

11. Health and Safety Obligations

- 11.1 The Supplier will take all reasonably practicable steps to:
- comply with all health and safety legislation, regulations, applicable codes of practice and standards, Fortysouth health and safety policies and procedures and any standard operating procedures;
 - have, and keep current all relevant Health and Safety qualifications required to perform its obligations under this Agreement, including if requested completing Fortysouth qualifications;
 - ensure the health and safety of all personnel including but not limited to workers, subcontractors, service providers, Fortysouth staff, visitors, and the public in the area under the Suppliers control; and
 - immediately provide and consult Fortysouth regarding any health and safety matters relating to the Services and allow Fortysouth or its nominated representative access to audit the Supplier's health and safety compliance.
- 11.2 The Supplier shall prior to commencing the Services undertake a site-specific risk assessment and prepare and implement a site-specific health and safety plan applicable to the Services.
- 11.3 The Supplier will immediately notify Fortysouth of all health and safety events.

12. Notices

- 12.1 Any notice given must be in writing to the usual physical address or email address of Fortysouth or the Supplier. It will be taken as given by the sender and received by the intended recipient:
- if posted, 3 Working Days after posting: or
 - if emailed, when it is received by the recipient's computer terminal if received by 5.00 p.m. on a Working Day or otherwise on the following Working Day.

13. General

- 13.1 This Agreement supersedes all previous arrangements and understandings in respect of its subject matter and embodies the entire agreement between the parties.
- 13.2 Conduct of Fortysouth including its employees shall not constitute a waiver of these Terms and the rights available to Fortysouth under this Agreement nor acceptance of any terms set out in any document provided by the Supplier to Fortysouth.
- 13.3 Fortysouth may from time to time amend these Terms by providing notice in accordance with clause 12.
- 13.4 If any provision of this Agreement is illegal, invalid or unenforceable then where the provision can be modified to give it a valid and enforceable operation of a partial nature, the parties agree to modify it to the minimum extent to achieve that result and in any other case the provision may be severed from this Agreement, in which event the remaining provisions of the Agreement operate as if the severed provision had not been included.
- 13.5 This Agreement is governed under the laws of New Zealand. The parties irrevocably submit to the non-exclusive jurisdiction of the Courts of New Zealand.

14. Definitions

In this Agreement unless the context otherwise requires, the following words and expressions shall have the following meanings ascribed below:

Agreement means the Purchase Order and these Terms of Purchase.

Confidential Information includes the terms of this Agreement (including the details of any Purchase Order), identified, or treated as confidential by the owner of the information, which might reasonably be expected by either party to be proprietary, confidential or commercially sensitive in nature.

Delivery means the physical receipt or possession and control of the Goods from the Supplier to Fortysouth

Delivery Date means the date when the Supplier has undertaken to deliver the Goods to Fortysouth or perform the Services.

Fortysouth means Fortysouth Group LP, or any related companies named in a Purchase Order

Goods mean the Goods order by Fortysouth as specified in the Purchase Order

Goods and Services mean the Goods and /or Services ordered by Fortysouth as described in the Purchase Order

GST means the goods and services tax in terms of the Goods and Service Act 1985, at the rate prevailing at the time.

Intellectual Property Rights means copyright, all rights in relation to inventions (including patents) registered trademarks, service marks, registered and unregistered designs, circuit layouts and Confidential Information, and all other rights anywhere in the world resulting from intellectual activity.

Loss includes but is not limited to any damage, loss (including loss of profit and loss of expected or anticipated profit) liability, cost, claim, charge, expense, outgoing or payment (whether direct or indirect, unforeseeable, consequential, or incidental).

Price means the price of Goods and Services in accordance with this Agreement as set out in the Purchase Order excluding GST.

Purchase Order, Order or PO means any document issued by Fortysouth to the Supplier requesting the supply of Goods or Services, whether in the agreed form or otherwise and includes any specifications, drawings or other documents identified as forming part of the Purchase Order.

Purchase Order Number means the number set out in the Order as related to that particular purchase.

Services mean the Services ordered by Fortysouth as specified in the Purchase Order

Specification means the specifications for the Goods and Services as set out in a Purchase Order and any other specifications communicated in writing to the Supplier.

Supplier means the person, company, corporate entity identified in the Purchase Order as the supplier of the Goods or Services

Working Day means the hours between 8.30am and 5.30pm on any day of the week except Saturday, Sunday, a national public holiday recognised in New Zealand, or regional holidays where the services are provided.