

TVNZ STANDARD PURCHASE TERMS

15 August 2022

These terms and conditions (**Terms**) apply from 15 August 2022 to the supply of all goods and services ordered by TVNZ, other than where TVNZ and the Supplier have executed a formal written agreement that applies to the supply of those particular goods and services at that time. TVNZ may change these Terms from time to time. Changes to these Terms will be published on our website 30 days before the date those changes become effective, and apply to any Orders made from the date those changes become effective. It is the Supplier's responsibility to check our website regularly for any changes.

1. INTERPRETATION

Business Day means a day when New Zealand government agencies and suppliers are normally open and excludes Saturdays and Sundays, New Zealand (national) public holidays and all days between Boxing Day and the day after New Year's Day.

Confidential Information means any and all information which has been designated as confidential by a party or that reasonably ought to be considered as confidential (however conveyed or on whatever media stored) including information which relates to the business, affairs, properties, assets, trading practices, Goods, Services, developments, trade secrets, intellectual property rights, know-how, personnel, customers and and/or suppliers or agents of that party.

Contract means the contract formed between TVNZ and the Supplier under clause 2.2 for the sale and purchase of Goods and/or Services in accordance with these Terms;

Deliverables means all documents, products and materials developed by or on behalf of the Supplier as part of the Services in any form or media, including drawings, plans, diagrams, designs, pictures, computer programs, data, specifications and reports;

Delivery Date means the date specified in the Order, or if no date is specified, as soon as reasonably practicable following the date of the Order;

Delivery Location means the address for delivery of Goods and/or Services as set out in the Order;

Goods means the goods to be provided to TVNZ by the Supplier, as set out in the relevant Order;

Intellectual Property Rights means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual property rights, whether registered, in the course of being registered or unregistered;

Order means TVNZ's order for the Goods and/or Services which incorporates these Terms by reference, such order may take the form of a contract, email and/or purchase order (provided that where a contract, email or purchase order contains an estimate, that estimate has been subsequently confirmed by TVNZ to the Supplier in writing, which TVNZ will do within a reasonable time of TVNZ issuing the order);

Services means the services, including any Deliverables, to be provided to TVNZ by the Supplier, as set out in the relevant Order, and any services reasonably necessary to install or ensure the Goods comply with Supplier's obligations in these Terms;

Specifications means any descriptions or representations about the Goods and/or Services provided to TVNZ or represented by Supplier, including the Supplier's or manufacturer's published specifications about the Goods and/or Services and any specifications or requirements for the Goods and/or Services set out in the relevant Order or otherwise agreed between the parties;

Supplier means the entity from whom TVNZ purchases the Goods and/or Services; and

TVNZ means Television New Zealand Limited, a Crown owned commercial broadcaster.

2. BASIS OF CONTRACT

2.1 In the event the parties have executed a formal written agreement that applies to the Supplier's provision of the particular Goods and/or Services at that time, the terms of that agreement will apply and not these Terms.

2.2 Each Order placed by TVNZ constitutes an offer by TVNZ to purchase the Goods and/or Services in accordance with these Terms. The Order will be deemed to be accepted on the earlier of the Supplier:

(a) issuing a written acceptance of the Order; or

(b) doing any act consistent with fulfilling the Order,

at which point the Contract will come into existence. The Contract will comprise the Order, and these Terms in their form as at the date the Contract came into existence.

2.3 Where a Contract or an Order contains an estimate (for example as to quantity, units or amounts), that estimate is subject to TVNZ's written confirmation to the Supplier. TVNZ will provide written confirmation, amendment, or rejection of the estimate within a reasonable time of issuing the Order.

3. GOODS AND SERVICES

3.1 The Supplier will ensure the Goods and/or Services will:

(a) correspond with their description and any applicable Specification, be of satisfactory quality (within the meaning of the Contract and Commercial Law Act 2017), fit for any purpose held out by the Supplier or made known to the Supplier by TVNZ (and in this respect TVNZ relies on the Supplier's skill and judgement) and any Goods are manufactured, new and unused;

(b) where they are manufactured products, be free from defects whether actual or latent and whether in design, material and workmanship and remain so for 12 months after delivery; and

(c) comply with all applicable statutory and regulatory requirements and standards issued from time to time by any applicable organisation or recognised standards body (including but not limited to statutory and regulatory requirements and standards relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods and/or Services);

3.2 The Supplier will provide TVNZ with the benefit of any manufacturers warranties in respect of the Goods.

3.3 The Supplier confirms that it holds absolute legal and beneficial title in and to the Goods and have the unfettered right to sell and supply them and to pass good unencumbered title to TVNZ.



- 3.4 The Supplier will from the date set out in the Order and for the duration of the Contract supply the Services to TVNZ in accordance with the terms of the Contract.
- 3.5 In providing the Goods and/or Services, the Supplier will:
- (a) ensure that it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract;
 - (b) meet any performance dates for the Services that TVNZ (acting reasonably) notifies to the Supplier (time being of the essence);
 - (c) co-operate with TVNZ in all matters relating to the Goods and/or Services, and comply with all reasonable instructions of TVNZ;
 - (d) perform the Services with all reasonable, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - (e) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
 - (f) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
 - (g) observe all health and safety rules and regulations and any other security requirements that apply at any of TVNZ's premises, which will, to the extent applicable to the supply of the Goods and/or Service, be advised to the Supplier on or before the commencement of supply of the Goods and/or Services; and
 - (h) comply with any additional obligations as set out in the Specifications.
- 3.6 TVNZ may inspect and test the Goods and/or Services at any time before delivery. The Supplier will remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing will not reduce or otherwise affect the Supplier's obligations under the Contract.
- 3.7 If following such inspection or testing TVNZ (acting reasonably) considers that the Goods and/or Services do not conform or comply with the Supplier's obligations in these Terms, TVNZ will inform the Supplier and the Supplier will immediately take such remedial action as is necessary to ensure compliance.
- 3.8 TVNZ may conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 3.9 The obligations set out in this clause 3 apply equally to any Goods repaired or replaced by the Supplier pursuant to the Contract, in which case the 12 month period referred to in clause 3.1 shall be the longer of the remainder of the original 12 month period or 6 months from the date of receipt by TVNZ of the repaired or replaced Goods.
- 3.10 The Supplier agrees that TVNZ may transfer the benefit of the Supplier's obligations set out in this clause 3 to third party end users of the Goods and/or Services where TVNZ is not the end user, provided that only TVNZ can take action against the Supplier
- 3.11 The Supplier will notify TVNZ as soon as possible if the Supplier breaches, or is likely to breach, any of its representations or undertakings under these Terms.

4. DELIVERY, TITLE AND RISK

- 4.1 The Supplier will ensure that:
- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition; and
 - (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods, special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.2 The Supplier will deliver the Goods and/or Services on the Delivery Date at the Delivery Location during TVNZ's normal business hours or such other hours agreed by the parties.
- 4.3 Delivery of the Goods will be completed on the completion of unloading the Goods at the Delivery Location.
- 4.4 If the Supplier:
- (a) delivers less than 95% of the quantity of Goods ordered, TVNZ may reject the Goods; or
 - (b) delivers more than 105% of the quantity of Goods ordered, TVNZ may at its discretion reject the Goods or the excess Goods and any rejected Goods will be returnable at the Supplier's risk and expense.
- If the Supplier delivers more or less than the quantity of Goods ordered, and TVNZ accepts the delivery, a pro rata adjustment will be made to the invoice for the Goods.
- 4.5 The Supplier will promptly notify TVNZ of likely delivery delays.
- 4.6 The Supplier will not deliver the Goods in instalments without TVNZ's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all, or any defect (as determined by TVNZ, acting reasonably) in an instalment will entitle TVNZ to the remedies set out in clause 5.
- 4.7 Title and risk in the Goods will pass to TVNZ on completion of delivery.

5. REMEDIES

- 5.1 If the Goods are not delivered and/or the Services are not performed by the Delivery Date, or do not comply with these Terms in any way, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, TVNZ may, acting reasonably and taking into account the detriment TVNZ will suffer as a result of the delivery failure or defect and the extent to which TVNZ contributed to the failure, exercise one or more of the following remedies:
- (a) terminate the Contract;
 - (b) reject the Goods and/or Services (in whole or in part) and, in respect of Goods, return them to the Supplier at the Supplier's own risk and expense;
 - (c) require the Supplier to promptly repair or replace the rejected Goods or remedy the Services at Supplier's cost, or to provide a full refund of the price of the rejected Goods (if paid) or of sums paid in advance for Services that the Supplier has not provided;
 - (d) refuse to accept any subsequent performance of the Services and/or subsequent delivery of the Goods which the Supplier attempts to make;



- (e) recover from the Supplier any costs reasonably incurred by TVNZ in obtaining substitute goods and/or services from a third party;
 - (f) claim damages for any other costs, loss or expenses reasonably incurred by TVNZ which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract; and
 - (g) without prejudice to any of TVNZ's other rights and remedies, charge storage and transportation expenses reasonably incurred by TVNZ if the Supplier fails to deliver Goods and/or Services at the times specified in an Order or at such time TVNZ deems acceptable for delivery.
- 5.2 The Supplier will indemnify TVNZ against all loss, cost or damage that TVNZ incurs arising out of or in connection with any delay in supply of the Goods and/or Services due to the fault of the Supplier, except to the extent that such loss, cost or damage is contributed to by TVNZ or any representatives of TVNZ.
- 5.3 These Terms will apply to any repaired or replacement Goods and/or Services supplied by the Supplier.
- 6. PRICE AND PAYMENT**
- 6.1 The price of the Goods and/or Services will be the price as confirmed in the Order, or, if no price is confirmed in the Order, the price set out in the Supplier's published price list in force as at the date the Contract came into existence.
- 6.2 The price of the Goods and/or Services:
- (a) excludes Goods and Services Tax (**GST**) (which TVNZ will additionally be liable to pay to the Supplier subject to the Supplier being registered for GST, and TVNZ's receipt of a valid GST invoice); and
 - (b) includes all other government or value added taxes, withholding taxes, duties, charges, imposts and levies including penalties thereon (**Other Taxes**), and no further amounts shall be payable for such. If any amounts paid by TVNZ to Supplier are subsequently assessed by the relevant taxation or other authority to be subject to Other Taxes, TVNZ may in its discretion, withhold an amount equal to the Other Taxes assessed so as to set off those amounts against any future payments to be made by TVNZ provided that TVNZ gives the Supplier reasonable notice of its intention to withhold the amount; or require Supplier to pay an amount equal to the Other Taxes assessed in which case Supplier must pay the amount to TVNZ on request and TVNZ will pay the amount to the relevant authority; and
 - (c) includes the costs of packaging, insurance and carriage of the Goods; and
 - (d) will be the full and exclusive remuneration of the Supplier in respect of supply of the Goods and the performance of the Services.
- 6.3 The Supplier must invoice TVNZ for the price of the Goods and/or Services following delivery of the Goods or provision of the Services to which the invoice relates. The Supplier will ensure that the invoice includes the date of the Order, TVNZ's purchase order number, the Supplier's GST registration number and any supporting documents that TVNZ may reasonably require. Invoices must be sent electronically to the TVNZ invoice mailbox advised by TVNZ. Invoices must not be issued prior to delivery of the Goods and/or Services unless agreed by TVNZ.
- 6.4 Subject to the Supplier's compliance with these Terms and there being, in TVNZ's reasonable view, no manifest errors or discrepancies and subject to the invoice being received by TVNZ following delivery of the Goods or provision of the Services to which the invoice relates, TVNZ will pay such sums as are due on correctly rendered undisputed invoices on or before the 30th of the month following the date upon which TVNZ received the invoice.
- 6.5 The Supplier will maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier will allow TVNZ to inspect such records at all reasonable times on request.
- 6.6 TVNZ may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to TVNZ against any liability of TVNZ to the Supplier, provided that TVNZ has given the Supplier reasonable advance written notice of the set off.
- 6.7 To the maximum extent permitted by law, a party's total liability to the other party in connection with any Order to which these Terms apply, is limited to direct loss only, up to a maximum of the value of Goods and/or Services provided by the Supplier in the 12 months prior to the date on which the liability arose. Neither party will be liable under or in relation to this Contract for any indirect or consequential loss or damage or special loss or loss of profits, arising out of or in connection with this Contract.
- 6.8 Nothing in clause 6.7 limits or excludes:
- (a) a party's liability to the extent that such a limitation or exclusion of liability is not permitted by applicable law;
 - (b) either party's liability for fraud or wilful default;
 - (c) either party's liability for breach of clause 8.3; or
 - (d) the Supplier's liability to TVNZ for any liability, expense, cost or damage arising from or relating to any claim brought by a third party against TVNZ that any Intellectual Property supplied by the Supplier to TVNZ under this Contract breaches the Intellectual Property rights of any third party, except where and to the extent that such infringement arises directly from TVNZ's breach of this Contract.
- 7. INDEMNITY AND INSURANCE**
- 7.1 The Supplier will indemnify TVNZ against all loss, cost or damage incurred by TVNZ to the extent the Supplier caused such loss, cost or damage and that loss cost or damage arises out of or in connection with claims made against TVNZ:
- (a) that the Goods and/or Services infringe a third party's Intellectual Property Rights; and
 - (b) by a third party arising out of or in connection with the supply of the Goods and/or Services.
- 7.2 Supplier will maintain for the term of the Contract, and for six months following its termination or expiry, public liability and professional indemnity insurance cover with a reputable insurance company. Except where the Order specifies a lower limit or a different type of insurance, each policy must have a limit of no less than NZD\$5 million for any one claim or series of claims arising out of one event.
- 8. INTELLECTUAL PROPERTY, CONFIDENTIALITY AND PRIVACY**
- 8.1 Where any licence or other authorisation from any person is required to own, possess, use or resell any Goods and/or Services or any component the Supplier will, at no extra cost to TVNZ, procure an irrevocable and unrestricted licence on a non-exclusive and transferable basis for TVNZ to own, possess, use and resell the Goods and/or Services.
- 8.2 All Intellectual Property Rights in any Goods or Deliverables specifically developed for TVNZ as part of the provision of any Goods or Services will become the property of TVNZ on creation.



- 8.3 Neither party (each a **Receiving Party**) shall disclose any Confidential Information of the other party (**Disclosing Party**), or the existence or terms of this Contract, to any third party without the Disclosing Party's prior written consent, except where disclosure of any such information is required by law. Confidential Information may only be used by a Receiving Party to complete the relevant Order, and must be immediately returned to the Disclosing Party on request.
- 8.4 If the Supplier receives personal information (within the meaning in the Privacy Act 2020) from TVNZ at any time during the term of the Contract, the Supplier will at all times comply with its obligations under the Privacy Act 2020. The Supplier expressly agrees that it will not transfer any personal information belonging to TVNZ or its customers/viewers out of New Zealand without TVNZ's prior written consent. The Supplier agrees that if it suffers a privacy breach, it will notify TVNZ as soon as practicable (and in any event, within 24 hours of becoming aware) and will provide TVNZ of all details about the privacy breach as TVNZ may require in order to comply with its reporting obligations under the Privacy Act 2020.

9. COMPLIANCE WITH RELEVANT LAWS AND POLICIES

- 9.1 In performing its obligations under the Contract, the Supplier will comply with all applicable laws, statutes, regulations and codes from time to time in force.
- 9.2 The Supplier in performing its obligations under the Contract will also comply with the Supplier Code of Conduct issued by the Procurement Functional Leader (see www.procurement.govt.nz) and any TVNZ policies notified to the Supplier from time to time. TVNZ will disclose TVNZ policies to the Supplier prior to commencement of the provision of Goods and/or Services, to the extent such policies are relevant to the provision of those Goods and/or Services.

10. ENVIRONMENTAL SUSTAINABILITY

- 10.1 TVNZ is committed to continuously improving the environmental sustainability of its business practices and seeks to achieve positive environmental outcomes through sustainable supply chains that minimise impacts on the environment.
- 10.2 Consistent with the above objective, the Supplier agrees to:
- Comply with all applicable laws, regulations and standards relating to the mitigation of impacts on, and protection of, the environment, in providing the Goods and/or Services;
 - Use best endeavours to reduce the environmental impact of the Supplier's Goods and/or Services and improve environmental sustainability at all stages of performance of the Contract;
 - Continually review and improve its policies, systems, and procedures to reduce environmental impacts and improve environmental sustainability associated with the supply of the Goods and/or Services; and
 - Consider opportunities to introduce innovative solutions in delivering the Goods and/or Services to reduce environmental impacts and improve environmental sustainability.
- 10.3 TVNZ may, acting reasonably, request information from the Supplier to demonstrate how the Supplier is complying with the Supplier's obligations at clause 10.2 above. The Supplier will respond to any information request within 30 working days or as otherwise agreed with TVNZ.

11. TERMINATION

- 11.1 TVNZ may terminate for convenience the Contract in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice, and the Supplier will discontinue all work on the Contract. If TVNZ terminates the Contract in accordance with this clause 11.1 TVNZ must pay the Supplier for Goods and/or Services provided up to the termination date (if any) and, if applicable, any unavoidable fixed or sunk costs that the Supplier can show it reasonably incurred (solely for the purpose of fulfilling its Contract to TVNZ) prior to receiving TVNZ's termination notice and that the Supplier cannot reasonably mitigate, including through reuse or redeployment to another customer of the Supplier.
- 11.2 Without limiting its other rights or remedies, either party may terminate the Contract (**Terminating Party**) with immediate effect by giving written notice to the other party (**Terminated Party**) if the Terminated Party:
- commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of being notified in writing to do so; or
 - ceases operations or becomes subject to any form of insolvency or other external administration.
- 11.3 Termination of the Contract will not affect any of the parties' rights and remedies that have accrued as at termination.
- 11.4 Clauses 5.1, 7 and 8 and those clauses that by implication survive termination of the Contract will continue in full force and effect following termination of the Contract.

12. GENERAL

- 12.1 No waiver of any breach of the Contract will be deemed to be a waiver of any other or any subsequent breach. The failure of any party to enforce any provision of the Contract at any time will not be interpreted as a waiver of the provision.
- 12.2 The Contract constitutes the entire agreement between the parties and supersedes all previous written agreements and/or commitments including any Supplier standard terms (whether or not provided to TVNZ at any time), provided that, where a confidentiality agreement has previously been signed by the parties, that confidentiality agreement will continue in full force and effect, except to the extent of any inconsistency with the Contract. Nothing in this clause 12.2 limits the statutory or common law rights of either party.
- 12.3 The parties acknowledge and agree that neither party has the authority to bind the other party.
- 12.4 The Supplier will not assign, transfer, subcontract or otherwise deal with the Contract or any of its rights or obligations under the Contract whether in whole or in part, without the prior written consent of TVNZ, such consent not to be unreasonably withheld. If TVNZ consents to any subcontracting by the Supplier, the Supplier will remain responsible for all the acts and omissions of its subcontractors as if they were its own.
- 12.5 TVNZ may assign, transfer, subcontract or otherwise deal with the Contract or any of its rights or obligations under the Contract whether in whole or in part, without the prior written consent of the Supplier, and the Supplier will take such action (including execution



of documents) as TVNZ requests to facilitate any such assignment or transfer. TVNZ will remain responsible for all the acts and omissions of its subcontractors as if they were its own.

12.6 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it will be deemed modified to the minimum extent necessary to make it valid, legal and enforceable.

12.7 The Contract will be governed by and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.