

PGG WRIGHTSON GROUP – PROCUREMENT NON-TRADE SUPPLIER TERMS OF TRADE

1. INTRODUCTION

- 1.1 These Supplier Terms of Trade apply when PGW requests to purchase Supplies and/or Services from you in a Purchase Order.
- 1.2 By accepting a Purchase Order from PGW and/or signing a Services Agreement, you accept these Supplier Terms of Trade. These are binding on you even if not signed, and take precedence over any other supplier terms including your terms of supply. You should read them carefully and contact PGW if you have any queries.
- 1.3 Any specific terms agreed between us are contained in the Services Agreement which, when signed by both of us, forms a binding part of these Supplier Terms of Trade.
- 1.4 Where there is conflict between documents, the following apply in order of precedence:
 - 1.4.1 Any Services Agreement between us,
 - 1.4.2 These Supplier Terms of Trade, and
 - 1.4.3 A Purchase Order.
- 1.5 In these Supplier Terms of Trade and any Services Agreement;

CCLA means the Contract and Commercial Law Act 2017.

Commencement Date means the date of commencement of the Services Agreement, or if no date is specified then the date of the Purchase Order.

Delivery Depot means the place designated by PGW for delivery of the Supplies, which includes a PGW branch.

Purchase Order means any authorised purchase order for the Supplies and/or Services in PGW's current standard form issued to you.

PGW means the Retail & Water division of PGG Wrightson Limited, unless agreed otherwise.

Services mean the services supplied by you to PGW in a Purchase Order.

Services Agreement means an Agreement signed by you and PGW that sets out any special conditions relating to the supply of Services and Supplies under these Procurement Supplier Terms of Trade, including Supplies specifications, agreed price, rebates or variations in pricing dependent on volume, will be set out in the Services Agreement.

Supplies mean the Supplies in a written request or Purchase Order and may include any Services relating to those Supplies.

Supplier means you.

Supplier Terms of Trade means these Procurement Non-Trade Supplier Terms of Trade and any Services Agreement as may be varied from time to time.

2. SUPPLY

- 2.1 You agree to supply the Supplies and Services to PGW in accordance with these Supplier Terms of Trade. Your primary point of contact in PGW is the Non-Trade Procurement Team who have the authority for negotiating:
 - 2.1.1 Services Agreements
 - 2.1.2 Payment terms
 - 2.1.3 Dispute resolution.
- 2.2 PGW may obtain Supplies from other suppliers at any time. PGW is not required to exclusively purchase from you, unless specified otherwise in a Services Agreement. PGW is not required to, nor should you expect that we will, purchase or continue to purchase any particular or minimum quantities of Supplies or Services.

3. PURCHASE ORDERS

- 3.1 All orders will be in writing, using PGW's Purchase Order. PGW will send Purchase Orders to you by our preferred option and could include EDI or email.
- 3.2 The Purchase Order may specify the quantity, price, delivery date and place and other relevant details including specifications relating to the Supplies or Services. These Supplier Terms of Trade apply to each Purchase Order, and the supply, purchase and delivery of the ordered Supplies for the purposes of on-sale.

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- 3.3 PGW is not bound by, and you should not accept from us, any order not using the Purchase Order form or without an allocated Purchase Order number, or where the Purchase Order is not signed or if electronic has not been generated from PGW. You must not accept any verbal orders. If you deliver Supplies without a Purchase Order, PGW may return the Supplies and any invoice will not be paid.
- 3.4 If PGW wishes to vary an order, PGW will send you a Purchase Order generated from PGW which becomes a binding replacement order unless you advise us in writing that you cannot meet the replacement Purchase Order. If you deliver Supplies that is the subject of a variation that is not recorded in a new system generated Purchase Order, PGW may return the Supplies and any invoice will not be paid.
- 3.5 It is your responsibility to confirm that all of the details provided on the Purchase Order are able to be met. Any variation must be agreed to by PGW prior to delivery being made and must be in the form of a new system generated Purchase Order. This includes such things but not limited to quantity, price, type of goods to be delivered, and substituted Supplies. Your failure to comply with this clause may result in the invoice not being paid.
- 3.6 You are expected to provide normal supply and delivery services on the days PGW is open for business.

4. DELIVERY

- 4.1 Unless otherwise agreed in writing, you must deliver the Supplies that PGW has ordered under a Purchase Order:
- 4.1.1 to the Delivery Depot specified in the Purchase Order; and
 - 4.1.2 on the date specified in the relevant Purchase Order, or if no date is specified or otherwise agreed, within 5 working days after the date on which PGW issued that Purchase Order (Delivery Date).
- 4.2 Unless otherwise agreed in writing, you will deliver in full all Supplies ordered under each completed Purchase Order. We only accept back orders or split shipments in exceptional circumstances that require PGW's prior approval.
- 4.3 PGW has a current Delivered In Full On Time (DIFOT) standard of:
- 4.3.1 In Full 95% - measured as quantity ordered v received, and
 - 4.3.2 On Time 95% - measured as delivery of the Supplies to the Delivery Depot by the Delivery Date.
- 4.4 If:
- 4.4.1 the ordered Supplies have not met the DIFOT standard in clause 4.3.2; or
 - 4.4.2 the ordered Supplies have been damaged during transit; or
 - 4.4.3 the Supplies delivered do not comply with the relevant descriptions or specifications supplied; or
 - 4.4.4 there is any shortage or divergence from the Purchase Order as per clause 4.2,
- then either:
- (a) the Purchase Orders (or part of those orders) for such Supplies may be cancelled at PGW's discretion; or
 - (b) if PGW has paid for the Supplies, PGW may return the Supplies to you at your cost and you must produce a credit note within 7 days or at PGW's request supply a full refund plus any associated costs within 5 working days.

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5. RISK AND TITLE

- 5.1 If you have organised the freight of the Supplies from your depot to PGW:
- 5.1.1 Risk passes to PGW when the ordered Supplies are delivered to the Delivery Depot.
 - 5.1.2 Delivery is deemed to have been made immediately after the ordered Supplies are unloaded at the Delivery Depot and signed for by an authorised representative of PGW.
- If PGW has organised the freight of the Supplies from your depot to PGW, risk passes to PGW and delivery is deemed to have been made, on signed collection of the ordered Supplies by the PGW carrier.
- 5.2 Title to Supplies ordered by PGW will pass to PGW when those specific Supplies have been paid for in full.
 - 5.3 Without prior written notice and agreement between both parties, you may not take possession of any Supplies which have been ordered and delivered to PGW.
 - 5.4 All Supplies must be supplied to PGW free of any security interests, liens, charges or other encumbrances.
 - 5.5 You acknowledge and accept that these Supplier Terms of Trade do not create a "security interest" (as that term is defined in the Personal Property Securities Act 1999) and, accordingly, you must not register a financing statement in relation to the supply of Supplies on the Personal Property Securities Register. You will immediately upon PGW's request remove any financing statement registered against PGW on the Personal Property Securities Register.

6. SUPPLIES

- 6.1 You guarantee and warrant that all Supplies must be of acceptable quality, fit for their purpose and acceptable in appearance and finish. The Supplies must also be safe, durable and free from defects, and comply with all Acts, standards, regulations, policies, rules, laws and specifications relating to those Supplies prior to supplying any PGW store. All packaging must meet all statutory safety standards and list appropriate handling guidelines. You will meet all valid guarantee and warranty claims on Supplies including those under the CCLA. PGW excludes all warranties which may be implied as being given by PGW into these Supplier Terms of Trade by law, to the extent permitted by law.
- 6.2 **Disputes over faulty Supplies** - you agree to follow the process below:
- 6.2.1 You agree to honour your Supplier Warranties. **Supplier Warranties** mean your own Supplies warranties in place, all statutory warranties that apply to your Supplies and also your express Supplies warranty in clause 6.2 of these Supplier Terms.
 - 6.2.2 If your Supplies are faulty and/or fail your Supplier Warranties, you may get a claim from us. We will tell you as soon as we know about the claim. When a claim happens, we both agree to the steps below.
 - 6.2.3 You will work constructively and quickly with us to resolve the claim to our satisfaction. This may include PGW's standard processes in clauses 6.4 and 6.5 for returning faulty Supplies to you, you refunding the purchase price, and Supplies recalls.
 - 6.2.4 As well as our repair, replacement or refund rights, you will pay us for our costs and losses caused by the Supplies fault and warranty breach. We both agree that:
 - a. These are usually financial costs, but can include other consequential costs and losses such as lost time or productivity.
 - b. You only have to pay reasonably foreseeable costs and losses.
 - c. Your compensation should put PGW in the position we would have been in if the Supplies had done what they were supposed to. You don't have to pay for costs and losses that are not caused by your conduct, or your Supplies or that relate to something independent of your business, after the Supplies left your control.
 - d. You will cover us under clause 6.2 and your Supplier Indemnity in clause 8.1 of these Supplier Terms.
 - 6.2.5 If you disagree that there is a fault or a valid claim, then you agree to the following if requested by PGW:
 - a. Attend mediation with PGW if requested by PGW; and/or
 - b. Pay any claims in the interim without prejudice to your defence.
 - 6.2.6 If you won't discuss the claim, follow the process above nor resolve the claim to PGW's satisfaction, then PGW can seek formal dispute resolution or take legal action.

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- 6.3 **Returns** – If any Supplies are faulty, defective or otherwise in breach of these Supplier Terms of Trade, then PGW will notify you that the Supplies are faulty, defective or otherwise. At your option, PGW will return the Supplies to you or destroy the Supplies (in either case, at your cost) and if you do not make an election, PGW will return the Supplies to you (at your cost). PGW must receive a credit note for the Supplies or at the request of PGW a refund in full, within 5 working days. Otherwise PGW reserves the right to deduct the price of the Supplies and all our costs from any amount that is payable to you and if these amounts exceed the amount that is payable to you, you must refund the balance remaining in full within 5 working days of receipt of a written request from us.
- 6.4 **Recalls** - If for any reason you recall any Supplies (whether because the Supplies are dangerous, defective, in breach of any law or for any other reason), then you must pay us for all our direct costs associated with recalling the Supplies, including freight and insurance; distribution costs including staff time; advertising and public notification costs; and the cost of destroying the recalled Supplies (if we decide). PGW must receive a credit note for the Supplies and all costs or at the request of PGW a refund in full, within 5 working days.

7. COMPLIANCE WITH LEGISLATION AND POLICIES

- 7.1 **Health and Safety** - You must comply with the Health and Safety at Work Act 2015 (“the Act”). When operating in any of PGW’s premises or outlets, comply with all policies and regulations affecting PGW, including but not limited to its hazard identification policy and other Health and Safety in Employment policies notified to you, or of which you are aware, from time to time. You will immediately:
- 7.1.1 notify PGW if any person employed or engaged to perform any activity for the purposes of these Supplier Terms of Trade is harmed in any way;
 - 7.1.2 notify PGW if PGW will or is likely to be in breach of the Act as a result of your failure to comply with the Act; and
 - 7.1.3 do all acts and things as PGW reasonably directs to ensure that both you and PGW continue to comply with the Act and/or to remedy any breach of the Act, including, if so directed, carrying out in good faith and with all due diligence, any safety procedures.
- 7.2 **Employment Practices** – you must treat your employees fairly and comply with internationally recognised standards and/or applicable legislation relating to voluntary employment, no child labour, minimum wages, reasonable working hours, no harsh or inhumane treatment, no discrimination, and freedom of association.
- 7.3 **Compliance with Laws** - You must comply with all relevant laws and regulations applying to your manufacture, supply and/or delivery of the Supplies from time to time, including but not limited to governing protection of the environment, occupational health & safety, and labour and employment practices wherever you do business. You will indemnify PGW for all expenses and losses PGW incurs as a result of your failure to comply with such laws. PGW’s rights, powers and remedies provided for in these Terms are in addition to, do not limit or exclude (or otherwise adversely affect), any right, power or remedy provided to us by law including under Part 3, subpart 4 of the CCLA unless expressly stated. PGW can elect in its sole discretion whether these Terms or any law inconsistent with these Terms applies, to the extent such law may be contracted out of. You acknowledge that these Terms contain clauses that are for the benefit of any third party purchaser of Supplies, and may if elected by PGW for the purposes of the Part 2, subpart 1 of the CCLA be enforced by that third party purchaser. The United Nations Convention on Contracts for the International Sale of Goods is excluded from these Terms.
- 7.4 **GLOBALG.A.P.** – If required by PGW, your Supplies must comply with the GLOBALG.A.P Standards and Certification System.
- 7.5 **Access to PGW Premises** - You (including any of your employees, agents or nominees) may enter any of PGW’s premises or outlets in the ordinary course of business only. You must comply with PGW’s reasonable directions, policies and requests while accessing its premises or outlets.
- 7.6 **Supply for Business Purposes** - The supply of Supplies and Services is between two businesses and the Consumer Guarantees Act 1993 does not apply. However, that Act will continue to apply in relation to your obligations to consumers.
- 7.7 **Hazardous Substances** - For any substance or chemical recognised as hazardous, you will provide Material Safety Data Sheets (MSDS) to accompany the Supplies and additionally publish them on your website. If this requirement cannot be met you will advise the PGW Procurement Specialist in writing immediately advising how your responsibilities are being met.
- 7.8 **Corporate Social Responsibility** - PGW reports on Corporate Social Responsibility in its annual report which is available on our website www.pggwrightson.co.nz. PGW expect its suppliers to be a community provider of Services and Supplies which contribute to a sustainable quality of life for all our stakeholders. PGW requires its suppliers to likewise hold, meet and report on their own Corporate Social Responsibility and sustainability policies, and PGW may request evidence of your compliance with this requirement.
- 7.9 **Ethical Behaviour** - You must not give any corporate hosting, payments, bribes, incentives or gifts directly to PGW employees without prior agreement of the PGW Procurement Specialist, nor undertake any action in relation to these Supplier Terms of Trade which a reasonable person would otherwise consider to be unethical, illegal or improper.
- 7.10 **Genetically Modified Organisms** – All Supplies that you supply must be GMO free.

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8. INDEMNITY AND INSURANCE

- 8.1 In addition to PGW's rights under the CCLA, you will keep PGW indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature, including, claims for personal injury, damage to property and consequential loss (including loss of profits), which may arise from your act, error, omission, negligence, default or breach of these Supplier Terms of Trade, or which may be made against PGW or which PGW may sustain, pay or incur as a result of or in connection with: the Supplies or Services unless such cost, claim, demand, expense or liability is directly and solely attributable to the negligence of PGW or the negligence of a duly authorised employee or agent of PGW.
- 8.2 PGW excludes all liability for any losses or claims that you may incur. PGW has no liability for and does not endorse any content, advertising, Supplies or Services you provide.
- 8.3 PGW is at no time liable in any way whatsoever for any Services it performs in respect of any Supplies supplied by you, if it performs the Services strictly on the advice or basis of your or a third party manufacturer's oral or written instructions or Supplies manual, or if it performs the Services in conjunction with your personnel.
- 8.4 You will maintain at your own cost adequate insurance cover acceptable to PGW in respect of your potential liability under these Supplier Terms of Trade, including Supplies and public liability insurance, and professional indemnity insurance where services are provided, and on any terms set out in the Services Agreement. Upon request, you will provide PGW with a certificate of insurance confirming that the insurance cover is current.

9. PRICING

- 9.1 You must notify PGW of an impending price change at least 90 consecutive days prior to the requested effective date. Communications can be directed to procurement@pggwrightson.co.nz addressed to the Non-Trade Procurement Team. Sending the communication does not deem acceptance or receipt by PGW.
- 9.2 The cost price of any Supplies may only be increased once the PGW Non-Trade Procurement Team agrees to the price change in writing. If agreed, any price change will only take effect on a date 60 consecutive days after the date PGW has agreed in writing, rounded out to the next 1st day of the month. Until the price change becomes effective, all ordered Supplies will continue to be supplied to PGW at the lower existing price. Further:
- 9.2.1 No price increases can take effect during December or January in any year.
- 9.2.2 Price decreases are effective immediately.
- 9.3 You will not, with respect to any Supplies, offer any terms of trade to any particular PGW outlet which are more favourable to PGW (as a purchaser) than the existing Supplier Terms of Trade agreed with, and applicable to, PGW generally unless PGW has agreed to the new terms in writing. If you offer to any particular PGW outlet terms of trade which are more favourable without PGW's consent in writing, then:
- 9.3.1 the more favourable terms of trade you have offered will be deemed to apply, not only to that particular outlet to which the offer has been made but to all PGW outlets generally; and
- 9.3.2 these Supplier Terms of Trade will be deemed to be amended accordingly with effect on and from the date of your offer to that particular PGW outlet.
- 9.4 All samples of goods and display stock will be supplied free of charge.

10. PAYMENT

- 10.1 PGW will pay your invoices/credit notes by direct credit on the 2nd to last working day of the second month following date of invoice unless agreed otherwise in a Services Agreement.
- 10.2 To ensure prompt payment, of your invoice/credit note they must contain all the information that is necessary to enable us to match and pay your invoice/credit note. It must state that it is a "Tax Invoice" specifies PGW's relevant Purchase Order number; your GST number, and bank account details. Invoice/ credit notes must relate to one purchase order only, any invoices/credit notes that relate to multiple orders will be returned to the supplier unpaid. Invoices must be sent daily with the last invoices/credit notes being received by PGW no later than the 2nd working day of the new month following date of invoice.
- 10.3 Invoices/Credit Notes and statements are to be sent to PGG Wrightson, Private Bag 1961, Dunedin 9054. Attention Accounts Payable, or
- 10.3.1 by PDF e-mailed to apinvoice@pggwrightson.co.nz
- 10.3.2 by EDI at PGW's request.
- 10.4 If PGW is unable to match your invoice/credit note to a valid Purchase Order or where there is a discrepancy in an invoice/credit note between the Supplies, prices and quantities PGW has received and the Purchase Order, PGW will, within ten working days of receipt of the invoice, notify you of the discrepancy or our reason for disputing the invoice. PGW may withhold payment for any disputed invoices until the discrepancy or dispute (as the case may be) is resolved.

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- 10.5 You will process all credit notes within 5 working days of receiving a request for an approved credit note from PGW.
- 10.6 PGW must receive a written statement from you detailing all invoices due for payment, no later than the 5th working day of the new month following the date of invoice for supply of the Supplies or Services. PGW must also receive a statement for any account that is in credit balance. Failure to supply a statement may result in the account being unpaid.
- 10.7 You authorise PGW to apply (without prior notice) any moneys payable or held or received by PGW (or, for the avoidance of doubt, any subsidiary of PGW) for or on your behalf on any account in or towards payment of any amount owing to or by PGW. PGW may at any time (including when amounts are owing in respect of more than one transaction) apply or appropriate any moneys received from or owing to you in any manner and in any order and to any amounts owing to or by PGW that PGW thinks fit (despite any direction to the contrary and whether before or after any default by you).

11. TERM & REVIEW

- 11.1 These Supplier Terms of Trade commence on the Commencement Date. A Services Agreement commences on the date specified in it. PGW may terminate these Supplier Terms of Trade and/or a Services Agreement between us at any time by giving you written notice. You may terminate these Supplier Terms of Trade and/or a Services Agreement and/or cease supplying specific Supplies to us by giving us three calendar months prior written notice, except where an agreed term is listed in the Services Agreement in relation to these Supplier Terms of Trade and/or specific Supplies. Subject to clause 12.5, all Purchase Orders made up to the date of termination will be fulfilled by both parties unless PGW specifies otherwise.
- 11.2 You agree to meet PGW in good faith on a regular basis to review the Services Agreement and these Supplier Terms of Trade.
- 11.3 PGW may at any time discontinue purchasing any or all of your Supplies, whether quantities or particular Supplies, for any period of time, at our sole discretion. PGW has no obligation to provide you with reasons for its decision or to provide you with reasonable notice of the discontinuation. If PGW exercises its discretion to discontinue, you will not make any claim against PGW for any damages or otherwise.

12. MISCELLANEOUS

- 12.1 **Severability** - If any part of these Supplier Terms of Trade is illegal, unenforceable or invalid, the remaining Terms are not affected. However, we will negotiate in good faith to agree any other means by which the effect of that condition can be retained.
- 12.2 **Confidentiality** - Both parties agree to keep confidential any information about the business affairs of the other party and to take all appropriate steps which are necessary or desirable to ensure that such confidential information is not disclosed without the prior written consent of the other party. You are responsible and accountable to ensure that all your employees and contractors do not disclose any detail of the Services Agreement to any third party including any PGW employees whom are not directly involved in purchasing from you. This clause will not apply to information that is already in the public domain, or information that is required to be disclosed by law or by the listing rules of any applicable recognised stock exchange.
- 12.3 **Waiver** - If either you or PGW fail to require performance of any obligations by the other under these Supplier Terms of Trade, that will not affect the right to require that obligation to be performed at a later time, nor will a waiver by either you or PGW of a breach of any part of these Supplier Terms of Trade amount to a waiver of any subsequent breach.
- 12.4 **Intellectual Property** - PGW has the exclusive right, title and interest in or to its Intellectual Property and you acknowledge that you do not have any rights in PGW's Intellectual Property. You will not use PGW's Intellectual Property without its prior approval. You warrant that the Supplies do not breach the Intellectual Property rights of any third parties, and you indemnify PGW fully in respect of any such breach. You agree that you will not knowingly breach the Intellectual Property rights of any third parties in your dealings with PGW.
- 12.5 **Force Majeure** - neither party is liable for any failure to perform or delay in performance of its obligations caused by circumstances beyond its reasonable control, including but not limited to fire, storm, flood, earthquake, landslide, explosion, accident, war, rebellion, insurrection, riot, civil commotion, protest, sabotage, epidemic, quarantine restrictions, labour disputes, labour shortages, transportation embargoes, acts of God, acts of government or any agency thereof or judicial action. If a party is unable to fulfil its obligations due to circumstances beyond its reasonable control that party must as soon as reasonably possible notify the other party in writing of the circumstances. The performance of each party's obligations will be suspended to the extent affected by such delay or failure and each party will be granted an extension of time for performance equal to the period of such delay or failure, except that if the delay or failure continues for more than 10 working days, either party may terminate the affected Purchase Order without penalty or payment.
- 12.6 **Variation**: PGW may in its absolute discretion change these Supplier Terms of Trade at any time by publication on our website www.pggwrightson.co.nz. The change will take effect from the time specified. A written Services Agreement between PGW and you may only be varied by written agreement between us both.
- 12.7 **Typographical Errors**: PGW reserves the right to correct any typographical or clerical errors contained in a Purchase Order or payment advice.
- 12.8 **Disputes** - If a dispute arises, we will meet in the spirit of goodwill to attempt to resolve it.
- 12.9 **Relationship** - The relationship between PGW and you is as buyer and seller. There is no partnership, joint venture, employment relationship, or agency (unless agreed for specific Supplies separately or in a Services Agreement).

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- 12.10 **Assignment** - You must not assign or subcontract any of your rights or obligations under these Supplier Terms of Trade or a Services Agreement without our prior written consent (which may be withheld at our sole discretion). PGW may transfer its rights and obligations under these Supplier Terms of Trade by notifying you in writing.
- 12.11 **Governing Law** - New Zealand law governs these Supplier Terms of Trade and the parties submit to the exclusive jurisdiction of the New Zealand courts.
- 12.12 **No Solicitation** - You agree that, while these Supplier Terms of Trade are current and for the period of 12 months after they end, you will not (whether on your own account or for any other person) solicit or entice, or endeavour to solicit or entice, away from PGW any employee, officer, contractor, agent or consultant of or to PGW.