

Purchase Order - Terms and Conditions

1. INTERPRETATION

1.1 For the purpose of these Terms and Conditions and unless the context otherwise requires:

"Agreement" means the Agreement formed in accordance with Clause 2;

"Confidential Information" means any ideas, methods, trade secrets, know-how and other intellectual property in any form, furnished to Seller by Inchcape, but does not include information that is:

- (i) publicly known at the time;
- (ii) known to Seller at the time of disclosure through no wrongful act of Seller;
- (iii) received by Seller from a third party without confidential obligation, or
- (iv) independently developed by Seller.

"Goods or Services" means any goods or services supplied or provided by the Seller;

"Order" means any document evidencing the order for Goods or Services to be supplied by Seller to Subaru of New Zealand and in respect of which Subaru of New Zealand has issued the Seller with an Order number;

"Personal Information" means information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained from the information or opinion.

"Privacy Law" is any legislation, statutory instruments and any other enforceable codes or guidelines regulating the collection, use or disclosure of Personal Information that applies to Seller or Subaru of New Zealand.

"Seller" means the person or entity to whom an Order number has been issued by Subaru of New Zealand for the supply of Goods or Services, and who has agreed to supply such Goods or Services under clause 2.1.

"Subaru of New Zealand" means Inchcape Motors New Zealand Limited (NZBN 9429039698193) trading as Subaru of New Zealand, a member of the Inchcape Group of Companies.

2. ACCEPTANCE OF ORDER

2.1 Upon acceptance by the Seller of an Order the Agreement shall take effect and together with the Subaru of New Zealand Purchase Agreement (if any), shall form the entire agreement between the parties, to the exclusion of any conditions of sale appearing on any document of Seller. Any document of Seller which purports to modify the Agreement does not apply unless expressly accepted in writing by Subaru of New Zealand.

3. PRICES AND TERMS OF PAYMENT

3.1 No extra charges of any kind (including but not limited to packing, boxing, crating, delivery freight or insurance) will be paid by Subaru of New Zealand unless provided for in the Order.

3.2 Prices shown on an Order are not subject to escalation or variation for any reason whatsoever unless agreed to in writing by Subaru of New Zealand.

3.3 Seller represents and warrants that the prices quoted in an Order shall not be in excess of Seller's list, catalogue or published prices.

3.4 Invoices for Goods or Services are to be submitted to Inchcape via one of the following methods and must display the Order number. Subject to clause 5.1 (and unless contrary to law), accounts will be settled by the 20th day of the month following the month in which the invoice was received.

I. Coupa Supplier Portal (CSP): Purchase Orders can be viewed, and invoices sent electronically. This is our recommended option as Seller will have full visibility of all its orders and invoices.

II. Supplier Actionable Notification (SAN): Enables action directly from Sellers email inbox. Purchase Orders can be received, and invoices created without registering or logging in to the Coupa Supplier Portal.

III. cXML transmission: Invoices are sent in an Invoice Detail Request cXML format and posted directly to Coupa via an HTTP post.

IV. Other methods if approved and agreed in writing by the Inchcape Group Procurement Manager.

3.5 In the case of Services, progress claims are to be submitted monthly or as otherwise agreed.

3.6 Subaru of New Zealand will not pay for Services performed or Goods supplied by the Seller in excess of the Agreement. Excess Goods will be returned at the Seller's expense.

3.7 Except as otherwise specified in an Order, the price includes all local or foreign taxes (including any goods and service tax), stamp duties and other governmental charges. Any invoice must include a tax invoice complying with the legislation and is a precondition to payment.

3.8 Subaru of New Zealand is entitled to set off any amount owing at any time by Seller.

4. PACKING AND DELIVERY

4.1 The Seller shall, at its expense mark Goods with the Order number, crate, package or otherwise prepare goods for shipment in accordance with Subaru of New Zealand's instructions and otherwise will ensure safe and secure delivery to Subaru of New Zealand. The Seller will include a packing slip with the shipment of Goods.

4.2 Goods are to be shipped to the delivery point set out in the Order by the due date set out in the Order.

4.3 The time for delivery shall be of the essence. If the Seller does not comply with the delivery schedule, Subaru of New Zealand may cancel the Order without liability.

5. INSPECTION AND ACCEPTANCE

5.1 Goods shall be deemed not to have been accepted until Subaru of New Zealand has inspected the Goods, conducted acceptance tests and signified its acceptance. Goods will not be accepted with a remaining shelf life of less than 80%.

5.2 If Subaru of New Zealand determines that supplied Goods in whole or part do not conform to the Agreement it may, without prejudice to any other remedies available to it:

- (a) return (at the Seller's expense) the whole or any part of the Goods for repair, replacement or credit;
- (b) repair the Goods at the Seller's expense; or
- (c) require the Seller to fix any defects.

5.3 If Subaru of New Zealand determines that supplied Services do not conform to the Agreement in whole or in part, it may, without prejudice to any other remedies available to it:

- (a) require the Seller to supply the Services again; or
- (b) arrange to have the Services supplied by a different Seller at the Seller's expense; or
- (c) require the Seller to provide it with a credit equal to the price of the Services;

5.4 Where the Seller is supplying Goods to specifications, Subaru of New Zealand reserves the right to inspect these items and Seller's facilities at reasonable times during any stage of manufacture.

6. TITLE AND RISK

Risk of loss for Goods shall pass to Subaru of New Zealand at the delivery point specified in the Order. Title to the Goods shall pass to Subaru of New Zealand on dispatch of the Goods from the Seller.

7. TERMINATION

7.1 This Agreement may be terminated immediately by either party by written notice if the other party:

- (a) breaches a provision of this Agreement and if capable of remedy, fails to remedy within seven (7) days after having been given written notice;
- (b) passes a resolution for its winding up or a receiver or manager or official manager is appointed, or a liquidator or provisional liquidator is appointed; or
- (c) enters into a scheme of arrangement with its creditors or has a judgment entered against it or is declared a bankrupt.

7.2 Upon termination Seller shall deliver at its sole expense all Goods which have been paid for by Subaru of New Zealand, whether completed or not.

7.3 Subaru of New Zealand may terminate this Agreement, without cause, on 30 days' written notice to the Seller.

7.4 In the event of any termination under this clause 7, the Seller shall have no further claim against Subaru of New Zealand for the payment of any moneys to the Seller under or in connection with this Agreement, whether by way of further moneys payable to the Seller for the future supply of Goods or Services or compensation for any alleged loss or damage sustained by the Seller (including without limitation any special, incidental, consequential or indirect damages or any economic loss or loss of profits), other than for any amounts outstanding in respect of the price for Goods or Services

ordered prior to the date of termination.

8. NON-EXCLUSIVE APPOINTMENT

Seller acknowledges that Subaru of New Zealand is free to use other Sellers of similar Goods and Services to those provided by the Seller and Subaru of New Zealand is not bound to use the Goods or Services of the Seller at any particular level.

9. WARRANTY

9.1 The Seller warrants that the Goods are, free and clear of all liens, charges and encumbrances and that the Seller has good title to the Goods, and

- (a) all Goods :
 - (i) shall be free from defects in materials and workmanship and be of acceptable quality and fit for the purpose;
 - (ii) shall conform to the Agreement; and
 - (iii) shall be free from defects in design;
- (b) the Goods and Services, (including all materials used and labour performed with respect to the Goods and Services) shall:
 - (i) conform with current Australian Standard Specifications and Codes unless otherwise specified;
 - (ii) comply with all applicable laws;
 - (iii) strictly conform with the Agreement; and
 - (iv) in the case of materials, be fit for the purpose intended and in the case of labour, be rendered with due care and skill.

10. Privacy and Data Protection

10.1 Where Seller collects any Personal Information either directly from the Customers or from Subaru of New Zealand, in connection with the provision of the Services, Seller must:

- i. take all reasonable steps to ensure that the Personal Information is protected against misuse and loss, and from unauthorised access, modification or disclosure, including as may be required under Privacy Laws;
- ii. not use the Personal Information except to the extent necessary to provide the Goods or Services and any related, ancillary services;
- iii. not disclose the Personal Information to any third party (who is not an employee, agent, consultant or related body corporate of Seller who requires such Personal Information for the purpose of providing the Goods or Services or any related, ancillary services) without the prior written consent of Subaru of New Zealand except in the case of disclosure pursuant to an access request under the Privacy Laws; or which is required or authorised by or under law;
- iv. in addition to its obligations to destroy information under the Privacy Laws, if requested by Subaru of New Zealand, destroy all copies of the Personal Information which are no longer required for the provision of the Goods or Services.

10.2 Seller must notify Subaru of New Zealand as soon as reasonably practicable if Seller receives any communication from (or on behalf of) any individual to whom the Personal Information relates, concerning any request that Seller provide access to Personal Information; or any complaint in relation to that Personal Information pursuant to Privacy Laws and Seller must take no other action in relation to any such communication (including making any response to the individual concerned) until Seller consults with Subaru of New Zealand except to the extent that such action is required by law.

10.3 Seller must, at least once in each calendar year, allow Subaru of New Zealand to audit Seller's compliance with Privacy Laws when providing the Goods or Services. Seller will provide reasonable assistance and access upon receiving reasonable notice to assist Subaru of New Zealand with the conduct of such an audit.

11. PROPRIETARY RIGHTS, CONFIDENTIALITY

11.1 All Confidential Information furnished to Seller for the purposes of this Agreement and all its' property rights remain the property of Subaru of New Zealand. It shall be treated by Seller as confidential and it will not in whole or in part be used, communicated, copied, disclosed, sold or reproduced for any purpose whatsoever, except in the performance of the Agreement, or with the express written permission of Subaru of New Zealand.

11.2 On completion, cancellation or termination of the Agreement, or at any time if Subaru of New Zealand so requests in writing, Seller shall immediately return to Subaru of New Zealand all documents supplied by Subaru of New Zealand to Seller for purposes of the performance of the Agreement.

12. INTELLECTUAL PROPERTY

12.1 Nothing in these Terms and Conditions is intended to transfer ownership of Background Intellectual Property Rights. The Seller grants Buyer an irrevocable, non-exclusive, transferable, royalty-free licence (with the right to sub-licence), to use Background Intellectual Property Rights in connection with the Services and for the use, repair, maintenance, upgrade or modification of the Services or any associated Goods.

12.2 Subject to clause 12.1, the Seller:

- a. presently assigns to Buyer all existing and future Intellectual Property Rights created by the Seller or the Seller's personnel in performing the Services; and
- b. acknowledges that by virtue of this clause all such existing Intellectual Property Rights are vested in Buyer and on their creation, all such future Intellectual Property Rights will vest in Buyer. The Seller shall, at its cost, do all things reasonably requested by Buyer to enable Buyer to assure further the rights assigned under this clause.

12.3 The Seller:

- a. warrants that Buyer's use of the Goods will not infringe any author's moral rights under the *Copyright Act 1994*; and
- b. shall indemnify Buyer and Buyer's personnel against any claims, or costs, expenses, liability, losses or damage suffered or incurred by Buyer and Buyer's personnel arising out of, or in any way in connection with, any actual or alleged infringement of any author's moral rights under the *Copyright Act 1994*.

12.4 For the purposes of this clause, Buyer's use of the material provided by the Seller includes Buyer's right to reproduce, publish, copy, adapt, communicate to the public, destroy or in any way change the Goods or part of the Services:

- a. with or without attribution of authorship;
- b. in any medium; and
- c. in any context and in any way, it sees fit.

12.5 The Seller warrants that Buyer's use of the Services and any associated Goods shall not infringe any third-party Intellectual Property Rights. The Seller shall indemnify Buyer against any loss, costs (including legal fees) and expenses arising from any claim by a third party in respect of the Services and associated Goods including a claim that the use of any Supply constitutes an infringement of any third-party Intellectual Property Rights. The Seller shall at Buyer's option and at the Seller's expense either replace such infringing part with a non-infringing part or modify such part so as to render it to be non-infringing (in either case, to deliver the same functionality and performance as the infringing part), or procure for Buyer the right to use such a part.

12.6 For the purposes of this clause:

- a. **Background Intellectual Property Rights** means Intellectual Property Rights of a party which:
 - a. are in existence prior to the date of issue of the associated Purchase Order; or
 - b. come into existence after the date of issue of the associated Purchase Order otherwise than in connection with that Purchase Order;
- b. **Intellectual Property Rights** means all intellectual and industrial property rights, including but not limited to all rights protected or recognised under copyright, patents and applications, know-how, confidential information and trade secrets, computer programs or graphics, source codes or the like, registered designs, circuit layout rights, trademarks, service mark and applications for registration of trademarks and any contractual rights which may exist in relation to any innovation or work.

13. INSURANCE AND INDEMNITY

13.1 Seller shall indemnify Subaru of New Zealand from and against any and all proceedings, claims, demands, losses, costs, damage and expenses arising out of a defect in the Goods or in respect of any act, omission or negligence of Seller or any of its officers, employees, agents or representatives in connection with the Goods or Services to be provided under this Agreement or otherwise in connection with Seller's performance or breach of this Agreement.

13.2 The Seller shall, if requested by Subaru of New Zealand, at its sole expense, effect proper insurances against all risks arising under this

agreement (including public liability, product liability and workers compensation insurance) and shall, if required by Subaru of New Zealand, produce evidence of the currency and validity of any such policy.

14. SURVIVAL OF CLAUSES

Clauses 10, 11, 12 and 13 shall survive the termination or expiry of the Agreement.

15. WAIVER

A waiver by Subaru of New Zealand of a breach or default of Seller under this Agreement shall not be a waiver of any subsequent default and failure of Subaru of New Zealand.

16. ASSIGNMENT

The Seller shall not without the previous consent in writing of Subaru of New Zealand assign or transfer this Agreement or sub-Agreement any part of the work required to be done under this Agreement.

17. WORK HEALTH & SAFETY

- 17.1 The Seller warrants and covenants that in connection with the supply of Goods or Services under this Agreement, the Seller will comply with any relevant work health and safety legislation applicable in the jurisdiction.
- 17.2 Seller will also supply to Subaru of New Zealand all information relevant to the safe use of Goods or Services whether formally requested or not.
- 17.3 Subaru of New Zealand appoints the Seller as principal contractor under the relevant WH&S laws whenever applicable. Without limiting the obligations of the Seller under any applicable WH&S legislation, Subaru of New Zealand expects the Seller to comply with all relevant WH&S legislation, ensure its subcontractors comply with their respective obligations, ensure plant and equipment complies with safety standards, keep necessary records, identify the geographical scope of works, and immediately inform Subaru of New Zealand of all incidents on site of an WH&S nature.

18. CODE OF CONDUCT AND MODERN SLAVERY

- 18.1 The Seller agrees that it will at all times comply with Inchcape Group Code of Conduct for Suppliers (which can be viewed at: <https://www.inchcape.com.au/html/links/Inchcape-Code-of-Conduct-for-suppliers.pdf>) in supplying the Goods or Services to Subaru of New Zealand.
- 18.2 The Seller must immediately notify Subaru of New Zealand if becomes aware of a breach of the Inchcape Group Code of Conduct for Suppliers.
- 18.2 The Seller acknowledges, agrees and warrants that neither the Seller nor any of its sub-contractors have or will utilise slave, prisoner, child, or any other form of forced, involuntary, or unpaid/underpaid labour in connection with the provision of the Goods or Services.

19. SEVERABILITY

If any part of this Agreement or the application thereof to any person or circumstances shall become void, voidable or otherwise unenforceable, that part shall be severed, and the balance of this Agreement shall remain in full force and effect.

20. GOVERNING LAW

The laws of New Zealand govern this Agreement. The parties submit to the exclusive jurisdiction of the courts of New Zealand.
