

New Zealand GENERAL TERMS AND CONDITIONS OF PURCHASE



For Ventia NZ Operations Limited only (NZBN 9429038074141), formally Broadspectrum (NZ) Limited.

TMD-9000-LE-0003

The following terms and conditions of trade will be incorporated into every contract between Ventia NZ Operations Limited (or any Related Entity) and the Supplier for the supply of goods and/or services.

1. DEFINITIONS AND INTERPRETATION

Definitions: In these terms and conditions:

"Business Day" or **"Business Days"** means a calendar day, excluding Saturdays, Sundays, public holidays and any day falling within the period from 24 December to 5 January (inclusive).

"Deliverables" means the supply of Goods, and (where applicable) the provision of any incidental services, and/or the performance of the Services by you pursuant to our Order.

"Delivery Date" means the date or dates specified in the Order on which the Goods are required to be delivered and/or Services are to be performed.

"Drug and Alcohol Procedure" means Ventia's drug and alcohol procedure as amended from time to time and notified to you.

"Goods" means the machinery, plant, equipment, materials and other items of any kind to be supplied under the Order and includes any and all parts thereof.

"GST" means goods and services tax in terms of the Goods and Services Tax Act 1985.

"Hazard" has the meaning given to that term in the Health and Safety in Employment Act 1992.

"Health and Safety Rules" means all rules, laws, regulations, policies, codes and guidelines relating to health and safety in the workplace including those specified in the Acts, codes of practice, industry best practice and the Health and Safety Policy.

"Mandatory Safety Rules" means the mandatory safety rule as amended from time to time, notified to you, and set out in our Ventia external website at the following link: [mandatory safety rules](#)

"Order" means the purchase order, request, statement, instruction or any other form utilised by us for ordering Goods and/or Services from time to time.

"Price" means the price of the Deliverables as agreed between you and us subject to any variation in accordance with these Terms and, unless otherwise agreed in writing, is expressed to be exclusive of GST.

"Related Entity" means a Related Company as defined in the Companies Act 1993, including where there is indirect or direct ownership of a Related Company by Ventia's ultimate parent Ventia Services Group Pty Limited (ABN 53 603 253 541).

"Services" means the services to be performed under the Order.

"Site" means the place or places specified in the Order to which the Goods are to be delivered/Services are to be performed by you.

"Terms" these terms and conditions of purchase as may be amended by us from time to time.

"Warranty Period" means that period of 12 months, or such other period as agreed, commencing on the later of:

- the Delivery Date; and
- if applicable, the date of acceptance of the Goods or completion of the Services (as the case may be).

"We", "us" or "our" means the Ventia entity listed as the Purchaser on the front of the Order (including a Related Entity) whether acting as agent or on its own behalf.

"You" means the party, listed as the Supplier on the front of this Order, being the party to whom the Order is issued.

2. TERMS APPLYING

Application of Terms: You acknowledge and agree that in accepting our Order (expressly or by conduct) that:

- these Terms will apply to any Deliverables supplied or performed by you; and
- these Terms will be or are deemed to be incorporated into, and form part of, each Order as if these Terms were set out or implied in full; and
- if there is any conflict between our Order and your quotation and/or confirmation of such Order, our Order will prevail. No variation or modification of these Terms will be binding on us unless accepted by us in writing.

3. SUPPLIER'S OBLIGATIONS

- Supply of Deliverables:** In accepting our Order, you will provide the Deliverables to us, as directed by us, in accordance with these Terms.
- Goods supplied:** All Goods must be new and unused, and suitable for the purpose(s) for which they are required.
- Skill and care:** If Services are to be performed by you, or on your behalf, whether as Services or incidental to the supply of Goods, you will, and will ensure that your employees, agents and subcontractors, perform such Services in a proper, professional and workmanlike manner, and exercise that degree of care, skill and diligence that would reasonably be expected of a skilled and experienced operator engaged in New Zealand in the same type of undertaking under the same or similar circumstances.
- Suitable qualifications:** You will ensure that your employees, agents and subcontractors are appropriately skilled and qualified for the performance of the Services and hold any relevant certifications required in respect of the performance of such Services.
- Expertise:** You acknowledge that we are relying on your expertise in supplying the Deliverables.

4. CHANGES TO ORDERS

- Variations permitted:** We may request a variation to the Deliverables at any time after placement of an Order and before delivery or performance, and the Price will be adjusted accordingly.
- Cancellations permitted:** In addition to the termination rights under section 16 below, we may cancel any Order, or any part thereof, at any time by giving written notice to you to that effect. Except where such cancellation is due to a breach by you of these Terms and subject to clause 4.3, in the event of cancellation we will pay to you the actual cost to you of any goods and/or raw materials if you hold goods and/or raw materials or have placed orders for goods and/or raw materials which cannot be cancelled (as evidenced to our satisfaction) and such goods and/or raw materials have been purchased or ordered solely for the purpose of our Order and can only be used for such purpose.
- Consequences of cancellation:** You will take all reasonable steps to reduce the payment to be made by us under clause 4.2 by allowing us to deduct the fair value of any goods or materials which you may be able to re-use, sell or otherwise dispose of but, except where we are in breach of our obligations under these Terms, you will not dispose of such goods or materials without our prior written consent. In respect of those goods or materials which you are unable to re-use, sell or otherwise dispose, you will deliver those goods or materials to us prior to our being obliged to pay for such goods or materials and, upon such delivery, property and risk of loss and damage, to those goods and materials will pass to us.

5. PRICE AND PAYMENT

- Price:** Unless otherwise agreed, the Price is the price for the Deliverables specified in our Order and is the only amount we must pay. Any difference between the price to you of such Deliverables between the date of our Order and the Delivery Date, whether due to circumstances beyond your control or otherwise, is to be to your account and the Price will not be adjusted under any circumstances without our prior written consent.
- Inclusive price:** Unless otherwise agreed, all Prices quoted to us are in New Zealand currency, fixed and not subject to escalation, inclusive of any taxes (except GST), levies, duties, insurance, freight (including all packaging, tagging, delivery to the Site), revenue or

other charges whatsoever relating to the Deliverables.

- Quotes:** Unless otherwise agreed, any quotation given by you must be valid for 30 days after notice to us.
- Payment terms:** Unless otherwise agreed, payment will be made by us to you by the 30th day of the month following the date on which we receive an appropriate tax invoice, together with detailed delivery/consignment dockets, for the Deliverables. Invoices must quote the relevant Order number and may be rejected if they fail to do.
- Construction Contracts Act 2002 ("Act"):** If this agreement constitutes a construction contract to which the Act applies then you must serve on us a payment claim showing the estimated value of the Services completed by the last day of the month. Any such payment claim shall not constitute a tax invoice. We will, within 20 Business Days from the last date for submission of the payment claim, provide a payment schedule to you. If the scheduled amount is less than the payment claim submitted we will indicate the manner in which the scheduled amount was calculated and the reason for the difference between the scheduled amount and the claimed amount. If the difference is because we are withholding payment on any basis we will set out our reasons for withholding payment. The payment schedule will not constitute a buyer created invoice. A tax invoice must be issued by you for the equal value of the payment schedule before payment will be made, in accordance with clause 5.4.
- Set Off:** We may set off any amounts due to you against any monies owed or estimated to be owed by you to us.

6. INVOICES AND SHIPPING DOCUMENTS

Documentation: A full set of documents is to be rendered for each shipment and forwarded only to us on the day of shipment. All invoices and shipping documents must show our Order number. Any loss of profits, bonding or wharf charges or consequential damages arising from not adhering to these requirements will be payable by you to us.

7. INSPECTION, TESTING AND ACCEPTANCE

- Inspection:** We are entitled at all reasonable times during manufacture and prior to delivery to inspect, examine and test, on your premises or elsewhere, the materials, workmanship and performances of the Goods. Such inspection will not relieve you of your responsibilities in relation to any warranty or any other conditions of the Order nor will it affect our right to reject the Goods at anytime thereafter.
- Installation:** Where the Order includes any installation by you, you must promptly complete (and certify completion of) installation in the manner required by us and during times approved by us with minimum disruption.
- Acceptance tests:** After installation we may carry out any reasonable acceptance tests on the Goods (in whole or part). If any of the Goods fail any acceptance test you will, at your cost, immediately remedy any defect, fault or problem. You will assist us with testing (and re-testing) as and when requested.
- Re-testing:** Deliverables will not be considered accepted until they have passed any acceptance tests required by us and are in conformity with any drawings, designs and specifications.
- If no tests required:** Goods not required to be tested will be deemed to be accepted by us within 14 days after delivery, unless we advise otherwise.

8. REJECTION

Rejection rights: Without prejudice to any other right or remedy we may have, we reserve the right to reject the whole or any part of the Goods if the Goods are not in conformity with the description in the Order or not in accordance with the drawings, designs and specifications. Any rejected Goods may be returned, at your cost, with moneys paid by us being immediately repaid by you.

9. DELIVERY

- Delivery Date:** You will provide the Deliverables at the Site on the Delivery Date. It is a condition of the Order that delivery time/s is/are of the essence. If for any reason whatsoever you are unable to meet an Order by the Delivery Date/s you must notify us at once and apply in writing for acceptance by us of the extension of time required. We will not be obliged to allow any extension of time claimed by you and we reserve the right to cancel the Order in whole or in part if any delivery is not made as stipulated.
- Customs information:** Customs Invoices bills of lading and shipping specifications, all in quadruplicate, the whole properly completed and certified in accordance with New Zealand customs regulations are to be forwarded under registered airmail or couriered to us on the day of shipment.
- Delivery to site:** Delivery will not take place until the Goods have been delivered to the Site and you have provided all drawings, designs, specifications and technical information including, but not limited to, installation, operation, repair and maintenance manuals, and all other documents agreed to be provided, stipulated in the Terms or otherwise reasonably required in order for us to use the Goods for their intended purpose.
- Failure to deliver:** If you fail to deliver the Goods by the Delivery Date or we cancel an Order (in whole or part) due to your delay, you will indemnify us for any losses, damages, claims, demands, costs and expenses (including solicitor and own client costs) suffered or incurred by us as a result of your failure or our cancellation.
- Free from encumbrances:** You warrant that the Goods will be delivered free from liens, charges, security interests, encumbrances, mortgages or other defects in title.

10. PACKAGING AND TAGGING

- Responsibility for packaging:** You will bear the cost of replacing or rectifying any damage to Goods resulting from improper packing. All Goods will be packed so that they will not be damaged during transport by road, sea or air, or by storage, loading or unloading. Large items or boxes will be suitably lugged, battened or packed to allow loading and unloading with crane and slings. Small items will be packed in containers suitable for ease of handling and storage. Exposed machine parts to be joined in the field will be coated with a rust preventative which may be readily removed in the field but not during transport or storage. All items will be clearly identified with our equipment number and Order number by use of stencils or metal tags. Each container will have an individual packing slip either enclosed or attached in a suitable weatherproof container, detailing all items packed within the container.
- Wooden packing:** Any wooden packing material must comply with the requirements of the New Zealand Forest Produce Import and Export Regulations 1989/235 and the appropriate certificate must accompany the shipping documents. The use of hay, straw and chaff as packing materials is prohibited and you will certify that none has been used. Where insect infestation is proved, you will bear the cost of fumigation or replacement of packing at the New Zealand port.

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11. PROTECTION OF PERSONS & PROPERTY IN RELATION TO SERVICES

- 11.1 (a) **HSEA:** You will be familiar with the requirements of the Health and Safety at work Act 2015. Evidence of this will be required, prior to the performance of any Services, in the form of a Hazard identification schedule and emergency action plan. Your site safety officer must also be identified as well as the format and programme for employee safety meetings.
- (b) **Management Plans:** You will provide information required by Ventia in preparing the requirements for the relevant Health, Safety and Environmental (HSE) Management Plan, Sustainability Plan, Work Plans and Quality Plans. You will comply with the requirements of such plans in so far as they apply to the Subcontract Works. Any costs associated with such HSE management plan shall form part of the Service Fee. No variation will be granted for any costs incurred by You relating to such plan.
- 11.2 (a) **Safety:** You will comply with all applicable laws, statutes and regulation governing your provision of Goods and/or Services, including (where appropriate) but not limited to: the Safety Manual – Electricity Industry, your safety and health plans, your obligations under the Health and Safety in Employment Act 1992 and the Electricity Act 1992 (including all regulations and, where appropriate, Codes of Practice made under those Acts). You will further comply with any other obligations in relation to ensuring the safety of your employees and any other persons for whom you are deemed responsible, hazard management, information for employees, training and supervision of employees, and any other statutory or regulatory safety obligations.
- (b) **Mandatory Safety Rules:** You must comply with the Health and Safety Rules at all times, including the Mandatory Safety Rules and Drug and Alcohol Procedure, defined above.
- (c) The Mandatory Safety Rules represent a minimum standard and where other Health and Safety Rules apply a more stringent standard, those Health and Safety Rules will apply in place of the corresponding Mandatory Safety Rules.
- 11.3 **Specific obligations:** You will at all times be bound by, comply with and:
- (a) ensure that you and your employees, agents, contractors or subcontractors comply with all of our Health and Safety policies and those of our customer/principal/employer. This specifically includes our Drug and Alcohol Procedure which provides for "random" testing:
- (i) In the event that your employee, agent or representative is required to undertake a drug and alcohol test in accordance with the Drug and Alcohol Procedure while on an Assignment, and he or she either:
- Fails to produce a laboratory confirmed negative test result; or
 - refuses to be tested; or
 - is absent from the testing without reasonable cause; or
 - is otherwise in breach of the Drug and Alcohol Procedure;
- then,
- (ii) You must immediately remove that employee, agent or representative and provide a replacement acceptable and at no further cost to Us, and You shall be liable for the drug and alcohol test.
- (b) ensure that you and your employees, agents or subcontractors are aware of all Hazards and how such Hazards should be avoided;
- (c) present to our nominated person, prior to the commencement of any Services, the on-site safety plan you will be implementing, which will include a site specific Hazard identification schedule, action plan and means of compliance, or where we have a site safety plan confirm you will comply with our plan;
- (d) have company rules and procedures, standards of training and experience, use only safe equipment, identify Hazards and institute control measures, avoid accidents and have specific job instructions, procedures, work permits and emergency procedures in place in relation to the Services and will demonstrate such measures if requested so to do;
- (e) report to us all identifiable Hazards coming to your attention, or which should reasonably have been known to you, as a result of the activities carried out by you;
- (f) ensure that your employees, agents and subcontractors are appropriately trained and qualified, with suitable experience, in the proper use of all plant, equipment, objects and substances to be used at the Site;
- (g) provide protective safety clothing to your employees, agents and subcontractors and ensure that such persons wear such protective safety clothing;
- (h) ensure that, where necessary, first aid equipment is installed and maintained in the Site;
- (i) immediately notify us of any incidents of which you become aware at the Site and provide us with such assistance as we may require to conduct an incident investigation; and
- (j) ensure your employees, agents and subcontractors, at your and their own cost and at all times, maintain all authorisations, licences and consents necessary for you to undertake the Services and will arrange for any inspections required by law.

12. RISK AND PROPERTY IN GOODS

- 12.1 **Risk:** All risk in and for any Goods passes to us on delivery to the Site provided that we have signed a receipt or delivery docket.
- 12.2 **Property:** Property in the Goods will pass to us upon delivery to the Site, except where payment is made prior to delivery in which case property in the Goods will pass to us on payment.
- 12.3 **Damage to Goods:** If any of the Goods are damaged or destroyed prior to property in them passing to us, we will be entitled, at our option and without prejudice to our other rights and remedies under these Terms or at law, to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable for those Goods. The production of these Terms by us is sufficient evidence of our right to receive insurance proceeds without the need for any person dealing with us to make further enquiries.

13. INSURANCE

- 13.1 **Supplier insurance:** In providing Deliverables to us, you must:
- (a) effect and maintain public liability insurance for the sum of \$5,000,000 being the amount that may be paid out arising from one single accident or event.
- (b) effect and maintain insurance for the sum \$5,000,000 against public liability arising from the use of any motor vehicle belonging to you, or under your care, custody or control.
- (c) effect and maintain All Risks Insurance covering the Services for a sum equal to the greater of the Price and \$1,000,000. This insurance cover will provide for the cost of demolition, disposal and preparation for replacement works, associated professional fees and supervision costs and the value of goods and materials to be supplied by you as part of the Services.
- 13.2 **Evidence:** You will provide, on our request, evidence of the insurances required under this section 13 in the form of a certificate of currency from your insurance company showing, where applicable:
- (a) that we are covered as a joint insured (when we request so to be);
- (b) that the policy(ies) does not restrict our rights to claim against you or any of your agents or subcontractors;
- (c) that the policy(ies) does not exclude liability due to vibrations, removal or weakening of supports for land or buildings;
- (d) that the policy(ies) does not exclude consequential losses;
- (e) the policy number(s);
- (f) the expiry date(s); and
- (g) the signature of the insurance company.

14. DRAWINGS AND SPECIFICATIONS

Intellectual property rights: All registered and unregistered intellectual property rights (including copyright) in any drawings, designs and specifications supplied by us in connection with the Order will remain vested in us. It is your responsibility to ensure that all drawings, design and specifications used have been certified for construction and that all Goods are manufactured, or Services performed, according to such drawings, designs and specifications or any subsequent revisions thereof.

15. PATENTS, ETC

Infringement: You warrant and guarantee that neither the Deliverables, nor our use by them, infringe or will infringe any patent, copyright, design or trademark, foreign or domestic, and you agree to indemnify us and our agents, employees, affiliated companies and all those persons, companies or bodies using the Deliverables, against any and all liabilities, losses, damages, claims and expenses by reason of any claim, patent, copyright, design or trademark, foreign or domestic, resulting from the supply, use or sale of the Deliverables. This clause will not be applicable to any Goods which are manufactured in accordance with drawings and specifications supplied by us.

16. TERMINATION

Rights to terminate: If you fail to comply with any obligation in these Terms, and fail properly to remedy the situation to our satisfaction within five working days after we notify you of the breach or failure, or if you are or become insolvent or bankrupt, go into receivership or liquidation, or amalgamate with any other person, then we may terminate any Order and:

(a) withhold any payment otherwise due to you;

(b) immediately return any Goods or cease any Services at your risk and expense without obligation to pay any further sum and/or, if paid for, we will receive a refund;

(c) recover from you any direct or indirect damages, losses or costs (including legal costs) suffered by us.

17. INDEMNITY

- 17.1 **Your indemnity:** You unconditionally and irrevocably agree to indemnify us from and against any action, suit, claim, demand, loss, damage, cost or expense (including, but not limited to, damaged property, plant or equipment) arising as a direct or indirect result of any act or omission by you or your employees, agents or subcontractors howsoever caused.
- 17.2 **Our liability:** Except to the extent required by law, neither party shall have any liability (under statute, contract or tort, including negligence) to the other party or any other person for any loss of profits, income or savings, or any loss of a financial nature, or for any indirect or consequential damage, loss, cost or expense suffered by the other party or any other person.
- 17.3 **Survival:** The provisions contained in clause 17 will remain in full force and effect until all the obligations now and at anytime hereafter liable to be satisfied by you to us have been fully satisfied and the provisions of clause 17 will survive any termination of our relationship with you under section 16 or otherwise.

18. GUARANTEE AND WARRANTY

- 18.1 **Guarantee:** Without limiting any of our other rights and remedies available under the Terms or at law, and without limiting any other warranty provided elsewhere in these Terms or at law, you guarantee the Deliverables against any omissions, defects or failures whether due in whole or in part to faulty design, materials or workmanship or any other cause which occurs (whether or not apparent) at any time during the Warranty Period, notwithstanding that such omissions, defects or failures come to our attention at any time after expiry of the Warranty Period.
- 18.2 **Remedies:** Without limiting any of our other rights, if you breach your obligations under clause 18.1, you will, at our option and at your expense:
- (a) refund the Price for and, where applicable, remove, such of the Goods that are non-conforming;
- (b) repair, modify or replace such Goods; and/or
- (c) resupply the Services;
- and you will be liable for all resulting costs and expenses incurred by us, including, but not limited to, any costs and expenses incurred by us in recovering the Goods, returning them to you and/or re-installing and recommissioning them. Any Goods repaired/replaced or Services resupplied will be subject to a further full Warranty Period.
- 18.3 **We may repair etc:** We may, at our option, have any repair, modification or replacement of the Goods or resupply of the Services referred to in clause 18.2 undertaken by a third party or undertake the repair, modification, replacement or resupply ourselves, and all resulting costs and expenses will be borne by you.

19. MEDIATION

Dispute resolution: Any dispute in connection with these terms will, no later than 20 Business Days after the dispute has arisen, be referred to mediation before a single mediator chosen by the President of the Auckland District Law Society.

20. INDEPENDENT CONTRACTOR

Independent contractor: The relationship between us and you is, and will be for all purposes, that of a company and an independent contractor, and nothing in these Terms will be taken as construing any other relationship.

21. ASSIGNMENT AND SUBCONTRACTING

Consent required: You may not assign or subcontract any of your rights or obligations in respect of an Order, or these Terms, without the prior written approval of Ventia. Our approval of a subcontractor will not relieve you of your obligations under the Order.

Ventia may assign, novate, transfer or otherwise dispose of any of its rights and obligations under the Order.

22. APPLICABLE LAW

Governing law: These Terms and each Order are governed by, and is to be construed in accordance with, the laws for the time being in force in New Zealand.

23. ENTIRE AGREEMENT

Entire Agreement: These Terms constitute the entire agreement between you and us and supersede all previous communications, oral or written, relating to the subject matter of the Order. No subsequent representations or agreements by us or any of our agents or employees will be binding on us, unless in writing and signed by us.

24. LANGUAGE

English: All written documents to be supplied by you and all communications between you and us will be in the English language.