

Standard Conditions for the Purchase of Goods and Services

1 Definitions and Interpretation

1.1 In these Conditions the following words have the following meanings:

"**CBRE**" means CB Richard Ellis (FM) Ltd (IRD 168 01 81) whose registered office is at Level 9, 188 Quay St, Auckland, 1010, New Zealand;

"**Contract**" means any contract between CBRE and the Supplier for the provision of Goods and Services, incorporating these Conditions and the Proposal;

"**Defective Goods**" means any Goods that do not comply with the Proposal or any agreed specifications;

"**Goods**" means the goods to be supplied by the Supplier to CBRE as set out in the Proposal;

"**Insolvency Event**" means:

- (a) bankruptcy proceedings are commenced against the Supplier, or the Supplier is declared bankrupt;
- (b) any step that is taken to enter into any compromise, amalgamation or arrangement between the Supplier and its creditors;
- (c) any step that is taken by a mortgagee to enter into possession or dispose of the whole or any part of the Supplier's assets or business;
- (d) any step is taken to appoint a receiver, a statutory manager, a trustee in bankruptcy, a liquidator, an interim liquidator, an administrator or other like person to the Supplier or to the whole or part of the Supplier's assets or business;
- (e) the Supplier suspends payment of its debts generally; or
- (f) the Supplier is or becomes unable to pay its debts when they are due or it is or is presumed to be unable to pay its debts pursuant to section 287 of the *Companies Act 1993*;

"**Price**" means the price for providing the Goods and Services stated in the Proposal;

"**Proposal**" means the proposal from CBRE for the Goods and Services which is attached to these Conditions and which is incorporated into the Contract;

"**Services**" means the services as set out in the Proposal;

"**Supplier**" means the person(s), firm or company who provide the Goods and Services to CBRE;

1.2 References to any statute or statutory provision shall include (i) any subordinate legislation made under it, (ii) any provision which it has modified or re-enacted (whether with or without modification), and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification).

2 Basis of Contract

2.1 Subject to any variation under Condition 2.2 the Contract will be subject to these Conditions to the exclusion of all other terms and conditions (including without limitation any terms or conditions which the Supplier purports to apply in any document whatsoever and whenever).

2.2 Any variation to these Conditions and any representations about the Goods and Services shall have no effect unless expressly agreed in writing and signed by an authorised signatory of CBRE.

3 Provision of the Services

3.1 The Supplier undertakes, represents and warrants to CBRE that:

- (a) the Services shall be carried out strictly in accordance with the requirements and terms as stated in the Contract; the Services will be performed by appropriately qualified, experienced and trained personnel with the highest level of skill, care and diligence and in a good workmanlike manner in accordance with the Contract;
- (b) it will comply with and ensure that its personnel comply with all relevant legislation (including the Health and Safety in Employment Act 1992), regulations, codes of practice, guidance notes and other requirements of any relevant government or governmental body;
- (c) it will comply with any reasonable instructions and guidelines issued by CBRE from time to time and the safety and security standards and site procedures and codes of CBRE or those of CBRE's customers;
- (d) it will supply CBRE with such information and reports (including copies of such documents and other material) as CBRE reasonably requires in relation to the provision of the Services; and
- (e) time is of the essence for performance of the Services and the supply of the Goods under the Contract.
- (f) the Services will comply with the warranties contained in the Consumer Guarantees Act 1993, as if that Act applied to the Contract.

3.2 CBRE shall be entitled to require the Supplier forthwith (and without any compensation being payable) to remove any member of its personnel from the provision of the Services at any time. Where a replacement for such personnel is required, the Supplier shall replace such personnel promptly.

3.3 In performing the Services, the Supplier shall operate as, and have the status of, an independent contractor and shall not operate or have the status of agent, employee or representative of CBRE.

4 Supply of the Goods

4.1 The Supplier must deliver the Goods to the agreed location for that delivery and in accordance with the agreed requirements as to the date on or by which those Goods are to be delivered or the period within which those Goods are to be delivered (which requirements the Supplier acknowledges to be an essential term of the Contract).

4.2 The Supplier must ensure that the Goods are accompanied by appropriate delivery documents which include a full description of the Goods and a reference to the Proposal together with any other documents necessary to enable checking of the Goods to take place at the time of delivery.

4.3 CBRE will be taken to have accepted delivery of Goods when a delivery document for those Goods has been signed by a representative of CBRE and given to the Supplier.

4.4 CBRE will not be obliged to pay for Goods unless a delivery document for those Goods has been signed by a representative of CBRE and given to the Supplier.

4.5 Title in the Goods will be transferred to CBRE at the earlier of the date of payment or the date of delivery and risk in the Goods will pass from the Supplier to CBRE at the time that a delivery document for those goods has been signed by a representative of CBRE and given to the Supplier.

4.6 Following delivery of the Goods, the Supplier will not hold any Security Interest (as defined in the Personal Property Act 1999) in the Goods and has no right to register a financing statement in respect of the Goods in the Personal Property Securities Register.

5 Defective Goods

5.1 Without prejudice to any other right or remedy it may have, whether under the Contract, under statute or otherwise, CBRE is entitled to reject any Goods which are Defective Goods, by giving notice to the Supplier to such effect, and elect to either have the Goods replaced, or if CBRE has paid for the Goods, that payment, refunded.

5.2 All Defective Goods will become the property of the Supplier, and if held by CBRE, will be held at the Supplier's risk.

5.3 In the event that CBRE elects to receive a refund in relation to Defective Goods, the following terms apply:

(a) the Supplier will refund CBRE the Price of all Defective Goods, within 72 hours of receipt of written notice from CBRE; and
(b) all expenses incurred by CBRE that are directly related to the process of returning Defective Goods to the Supplier must be borne by the Supplier, with any such expenses paid by CBRE to be reimbursed immediately by the Supplier.

5.4 In the event that CBRE elects in its sole discretion to have the Defective Goods replaced, within 72 hours of receipt of written notice from CBRE, the Supplier must immediately replace the Defective Goods with Goods that satisfy the Proposal and any specifications.

6 Warranties in respect of the Goods

6.1 The Supplier warrants that it is a condition of the Contract that:

- (a) all Goods manufactured by the Supplier, and supplied in accordance with the Contract will for a period of 12 months from the date the Goods are delivered to the delivery point:
 - (i) be fit for the purpose or use intended by CBRE; and
 - (ii) be of merchantable quality and free from any defect in material or workmanship;
- (b) the benefit of any warranty or guarantee given to the Supplier by any manufacturer, importer or sub-supplier of all or any part of the Goods will be transferred or available to CBRE;
- (c) all Goods manufactured and supplied will be newly manufactured and comply strictly with any specifications forming part of the Proposal and any published manufacturers specification and comply with the samples (if any) provided by the Supplier to CBRE;
- (d) in addition to its rights under a Proposal, the Contract or these Conditions, CBRE may also claim the benefit of all rights given to buyers generally in respect of the purchase of goods or services under the *Sale of Goods Act 1908*, the *Fair Trading Act 1986* and the *Consumer Guarantees Act 1993* (as if that Act applied to the Contract) or by any other applicable law;
- (e) the Goods and the use of them will not infringe any intellectual property rights of any third party; and
- (f) all Goods will comply with relevant laws and all relevant New Zealand standards and codes relating to the Goods.

7 Price and Payment

7.1 In this Condition 7, the expressions "Goods and Services Tax ("GST")", "Recipient", "Supplier", "Supply" and "Tax Invoice" have the meanings given to those expressions in the *Goods and Services Tax Act 1985 (GST Act)*

7.2 Unless otherwise agreed in writing the Price shall be exclusive of any GST.

7.3 If GST is payable by the Supplier on any supply made under the Contract the Recipient will pay to the Supplier an amount equal to the GST payable on the Supply. Subject to the supply of a Tax Invoice that amount will be paid at the same time the consideration for the Supply is payable under the agreement and will be paid in addition to the consideration. The Supplier shall provide the Recipient with a Tax Invoice in respect of the Supply.

7.4 The Supplier shall issue the invoice(s) for the Goods and Services in accordance with the Proposal. All invoices must be issued promptly. CBRE is not liable to pay any invoice issued more than 90 days after its due date.

7.5 Unless otherwise stated in the Proposal, CBRE shall pay the Price by the first business day of the second month of invoice date, in which CBRE receives the invoice issued in accordance with Condition 7.4.

7.6 The Supplier shall maintain complete and accurate records of the time spent and materials used in providing the Goods and Services in such form as CBRE shall approve. CBRE may inspect such records at all reasonable times upon written notice.

7.7 Without prejudice to any other right or remedy available, CBRE shall be entitled to exercise the right to set off any amounts against any amounts payable by CBRE to the Supplier under or in relation to the Contract.

8 Confidentiality

8.1 The parties shall keep and procure to be kept secret and confidential all information disclosed or obtained as a result of the relationship of the parties under the Contract and shall not use nor disclose the same save for the purposes of the proper performance of the Services, the supply of the Goods or with the prior written consent of the other party.

8.2 The obligations of confidentiality in this Condition 8 shall not extend to any matter which the non disclosing party can show is in or has become part of the public domain other than as a result of a breach of the obligations of confidentiality under these Conditions; or was in its written records prior to the date of the Contract; was independently disclosed to it by a third party; or is required to be disclosed under any applicable law, or by order of a court or governmental body or other competent authority.

9 Indemnity and Insurance

9.1 The Supplier acknowledges that CBRE places particular reliance upon the provisions of the Contract and in addition to any other remedy available to CBRE the Supplier irrevocably and unconditionally agrees to indemnify CBRE, its employees, sub-contractors and agents in full and on demand and keep them so indemnified against all claims, demands, actions, proceedings and all direct and indirect damages, losses, costs and expenses (including without limitation legal costs on an indemnity costs basis and other professional advisers' fees, economic loss, loss of profit, future revenue, reputation, goodwill, anticipated savings) and any consequential loss made against or incurred or suffered by any of them and whether

wholly or in part resulting directly or indirectly from the matters listed below (whether or not such losses or the consequences of the matters listed below were foreseeable) which were caused by, relate to or arise from the provision of the Goods and Services, any direct or indirect breach or negligent performance or failure or delay in performance of the Contract by the Supplier or any infringement of third party intellectual property rights caused by the Goods and Services or their use by CBRE or its clients.

- 9.2 During the term of the Contract, the Supplier shall maintain in force with a reputable insurance company public liability insurance in the amount of \$10 million and the Supplier shall, on CBRE's request, produce the insurance certificate giving details of cover and the receipt for the current year's premium.
- 9.3 The provisions of this Condition 9 shall survive termination of this Agreement, however arising.

10 Limitation of Liability

- 10.1 In no event shall CBRE be liable to the Supplier or any third party for any incidental, indirect, special, punitive or consequential losses or damages, or damages for any loss of profits, loss of revenue, loss of business or goodwill, data or data use arising out of or in connection with the Contract whether in an action in contract or tort (including negligence) or other legal theory, whether or not CBRE has been advised of the possibility of such losses and/or damages.

11 Termination and the Consequences of Termination

- 11.1 Without prejudice to any other remedies that it may have, CBRE shall have the right to terminate the Contract in whole or part forthwith by written notice to the Supplier, effective from the date of service of such notice (and to claim the excess cost of obtaining replacement items) if the Supplier commits a breach of the Contract or these terms, and fails to remedy the breach within the time specified by CBRE in written notice so to do.
- 11.2 In addition, CBRE shall be entitled to terminate the Contract in a similar manner if the Supplier:
- (a) suffers an Insolvency Event;
 - (b) merges with or is acquired by a third party; or
 - (c) attempts to assign any of its rights or obligations under the Contract.
- 11.3 CBRE may terminate the Contract at its own discretion for any reason, upon giving one (1) month's written notice to the Supplier.
- 11.4 Upon termination, the Supplier shall deliver to CBRE such work in progress or completed items as maybe requested.
- 11.5 Following termination of the Contract, CBRE shall have no liability to the Supplier beyond payment for Goods and Services accepted by CBRE prior to the notice of the termination and for such additional Goods and Services specifically requested in writing and accepted by CBRE, and neither party shall have any further rights or obligations in relation to the other.

12 Disputes

- 12.1 If there is any dispute between the parties concerning the Goods and Services, the dispute shall be referred to the relevant managers of the parties who shall use all reasonable endeavours to resolve the dispute themselves within 7 days of the dispute arising. If the managers are unable to resolve the dispute in that period, the dispute shall be referred to the managing directors of the parties who shall use all reasonable endeavours to resolve the dispute themselves within 14 days of the dispute originally arising.
- 12.2 If the parties fail to come to an agreement at the end of the period specified in Condition 12.1 above, then either party may refer the dispute to mediation or an alternative form of dispute resolution; however, nothing in this Condition shall prevent the parties commencing or continuing court proceedings at any time.
- 12.3 Neither party shall be obliged to follow the procedures set out in Conditions 12.1 and 12.2 above where that party seeks injunctive relief against the other, provided that there is no delay in the prosecution of the application.

13 Subcontracting, Assignment and Third Party Rights

- 13.1 The Supplier shall not assign, charge, subcontract, transfer or otherwise deal with its interest under the Contract or any part of it without the prior written consent of CBRE.
- 13.2 CBRE shall be entitled to novate, assign or sub-contract its interest in and obligations under the Contract or any part thereof to any third party upon written notice to Supplier. CBRE shall have no further obligations to the Supplier in respect of any matter relating to such novation or assignment on and from the date of the notice provided to the Supplier pursuant to this Condition 13.2

14 Force Majeure

Neither party shall be liable for any failure to perform or delay any of its obligations under the Contract due to circumstances beyond its reasonable control and outside the ordinary course of business including (but no limited to) fire, flood, acts of God, war, civil commotion, terrorism, strikes or other industrial disputes and acts of government. If the period of default continues for more that 30 days, the other party shall be entitled to terminate the Contract immediately by giving written notice and any failure of a third party to comply with its obligations to provide items to the parties which are necessary for the performance of this Contract.

15 Notices

- 15.1 Notices for the purpose of the Contract shall be in writing. A notice given to a party at that party's address set out in this Contract or at such other address as may be substituted by written notice from such party to the other shall:
- (a) in the case of prepaid post, be presumed to be given 2 days after the date of posting;
 - (b) be presumed to be delivered at the time of delivery if delivered during normal business hours; and
 - (c) be presumed to be given upon receipt by the sender of a satisfactory transmission confirmation report indicating due transmission without error in the case of facsimile transmission.

16 General

- 16.1 Nothing in the Contract shall create, or be deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between the parties. The relationship of the parties is that of principal and independent contractor and the Supplier is solely responsible for payment of its own income tax, accident compensation levies and any other relevant taxes, levies or fees.
- 16.2 The rights and remedies of either party in respect of the Contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by such party to the other nor by any failure of, or delay by the said party in ascertaining or exercising any such rights or remedies. Any waiver of any breach of the Contract shall be in writing. The waiver by either party of any breach of the Contract shall not prevent the subsequent enforcement of any subsequent breach of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.
- 16.3 If at any time any one or more of the Conditions of the Contract (or any sub-Condition or paragraph or any part of one or more of these Conditions) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from the Contract and the validity and/or enforceability of the remaining provisions of the Contract shall not in any way be affected or impaired as a result of that omission.
- 16.4 The Contract sets out the entire agreement between the parties in relation to the Goods and Services.

17 Law and Jurisdiction

- 17.1 The Contract shall be governed by and must be construed in accordance with the law in force in New Zealand and the parties submit to the exclusive jurisdiction of the courts in New Zealand in respect of all matters or things arising out of the Contract and these Conditions.