

New Zealand Purchase Order Terms

PART 1 – General Terms and Conditions

This PART 1 applies to every Purchase Order.

1. **Definitions and Interpretation:** In this Contract:

Babcock means the relevant member of the Babcock Australasia Group as specified on the Purchase Order and its related companies (as defined by the *Companies Act 1993* (NZ)).

Contract means (in order of precedence) the Purchase Order, these Purchase Order Terms (Parts 4, 3, 2 and 1 as applicable, in that order) and any schedules and attachments to a Purchase Order, and (if executed) the Babcock Contractor Supply Agreement or similar Babcock head terms.

Delivery Date means the date for delivery of the Supplies as specified in the relevant PO or otherwise as specified in writing by Babcock.

GST means Goods and Services Tax as defined in the *Goods and Services Tax Act 1985* (NZ).

HSW Legislation means the Health and Safety at Work Act 2015, regulations and safe work instruments made under that HSW Legislation.

Intellectual Property Rights or IPR means all patents, copyrights, design rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off unfair competition rights, rights in designs, rights in confidential information (including know-how and trade secrets) and other rights in the nature of intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection anywhere in the world.

Purchase Order or PO means any document issued by Babcock for the supply by the Supplier of Supplies and includes any written amendment to that document.

Specifications means (in order of priority) (a) any description of or representation about the Supplies provided to Babcock and referred to in the Purchase Order, and (b) the Supplier's published specifications for the Supplies.

Supplies means any goods and/or services supplied under this Contract and includes any documents and materials required to be delivered in conjunction with the Supplies.

Supplier means the entity from whom goods or services are ordered as specified on the Purchase Order.

Total Price means the total price as stated on the relevant PO.

Any other capitalised word used in these Terms has the meaning given to it in the Purchase Order.

2. **Commencement and Term:** This Contract may be formed electronically with the Supplier. The binding Contract between Babcock and the Supplier will come into existence on the earlier of the date the Supplier confirms acceptance of the Contract, or the Supplier commences delivery of any of the Supplies and will continue until the delivery of the Supplies in accordance with this Contract, unless this Contract is terminated earlier in accordance with these Purchase Order Terms.

3. **Relationship of the Parties:** Nothing in this Contract is intended to, or shall be deemed to, establish any relationship of joint venture, agency, partnership or exclusive arrangement between any of the parties, nor authorise either party to make or enter into any commitments for or on behalf of the any of the other parties. The Supplier is not an employee of Babcock or its customers and is not entitled to any superannuation or other fringe benefits from Babcock or its customers. The Supplier has no right to assume or create any obligations of any kind, express or implied, in the name of or on behalf of Babcock or its customers.

4. **Delivery:** The Supplier must deliver the Supplies to the delivery address on the Delivery Date and in accordance with any delivery instructions. On delivery (if goods) or completion (if services), the Supplier must obtain the name (printed) and signature of either

the Babcock employee or a representative that receives the Supplies.

5. **Delay:** If the Supplier becomes aware of an actual or potential circumstance that has adversely affected or is likely to adversely affect its performance of its obligations under this Contract (a "Delay"), the Supplier must: (a) notify Babcock immediately (but in any event no longer than within three (3) business days) of that actual or potential Delay; (b) take all steps necessary to minimise the impact of the Delay on Babcock; and (c) comply with any work around plans agreed with Babcock and all reasonable requests made by Babcock to rectify the Delay.

6. **Inspection and Acceptance:** Babcock or its authorised agent has the right to inspect the Supplies and has the right to reject any Supplies that do not conform to this Contract. If the Supplies do not comply with the Specifications, Babcock may terminate this Contract or require the Supplier to promptly modify or resupply the Supplies, at no additional cost to Babcock, so that they comply with the Specifications. Execution of a delivery document or payment by Babcock does not constitute acceptance by Babcock.

7. **Price:** The prices are fixed and the Total Price includes all levies, duties, taxes (including GST, unless expressly stated as being exclusive of GST), insurance, packaging and delivery costs. The total amount payable by Babcock under this Contract will not exceed: (a) the Total Price; or (b) if no Total Price is stated on the PO, the amount specifically authorised in writing by the Babcock contact.

8. **Payment:** Unless otherwise agreed, the Supplier will only invoice Babcock on the completion of the services or on or after the delivery of the goods. Each invoice must itemise the GST included in the prices, state the PO number and be addressed to the Babcock contact at the address for invoices specified in the PO. Babcock will pay a correctly rendered invoice 20 days from the end of the month in which the invoice was received. Babcock is entitled to withhold payment of any invoice to the extent that it relates to Supplies that do not meet the Specifications and may set off any liability of the Supplier to Babcock against any liability of Babcock to the Supplier.

9. **Goods and Services Tax:** Where NZ GST is applicable to the supply of the Supplies, the Supplier must ensure that any invoice or other request or demand for payment constitutes a valid tax invoice in accordance with GST laws that will enable Babcock to claim tax credits in respect of Supplies to which the invoice relates and acknowledges that no amount will be due and payable by Babcock in respect of any such supply unless Babcock has received from the Supplier such an invoice. The Supplier is responsible to ensure the invoice or other request or demand for payment specifies the correct amount of GST.

10. **Risk and Title:** Risk in the Supplies will pass to Babcock when the Supplies are delivered. Title in the Supplies (other than documents or materials licensed under clause 12) will pass to Babcock or its nominee on the earlier of acceptance of or payment for the Supplies. The Supplier warrants that the Supplies will be free of any encumbrance and security interests upon delivery.

11. **Cancellation:** Babcock may cancel or reduce the quantity of Supplies by notifying the Supplier before the relevant Delivery Date or if the Supplier fails to supply the Supplies on the Delivery Date. In the case of Supplier default, Babcock will not be liable for any amounts or expenses for cancelled or reduced Supplies. Where the cancellation or reduction does not relate to a default by the Supplier, Babcock will only be liable for payments to the Supplier for Supplies accepted in accordance with clause 6 before the cancellation/reduction and any reasonable costs incurred by the Supplier that are directly attributable to the cancellation/reduction, if the Supplier substantiates these amounts to the reasonable satisfaction of Babcock.

12. **IPR:** The Supplier assigns to Babcock or its nominee ownership of all IPR in any document or material created for Babcock in the supply of the Supplies. To the extent that ownership of IPR is not assigned to Babcock or its nominee, the Supplier grants Babcock

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- (and its customers and contractors) a world-wide, non-exclusive, paid up, royalty free, perpetual licence to use, amend and copy IPR in the Supplies so that Babcock and any nominated end customer (and its respective customers and contractors) can make full use of the Supplies.
13. **Warranty:** The Supplier warrants that: (a) all goods supplied by the Supplier are: (i) new and in good condition; (ii) compliant with all relevant standards and industry codes; (iii) free from defects in design, materials and workmanship; (iv) of good and merchantable quality and fit for their intended purposes; and (v) compliant with the Specifications; (b) any services supplied by the Supplier will: (i) be supplied with the degree of skill, care and diligence that would be expected of a skilled professional experienced in providing the same or similar services; (ii) comply with all reasonable directions of Babcock; and (iii) comply with all Babcock's conduct policies (as notified to the Supplier by Babcock from time to time) and relevant standards and industry codes; and (c) the Supplies and their use and supply will not breach any obligation of confidence or infringe any IPR of any person.
 14. **Breach of Warranty:** If the Supplier becomes aware, or Babcock notifies the Supplier, that the Supplies fail to comply with any of the warranties given under this Contract, the Supplier must, without prejudice to any other rights of Babcock: (a) in the case of the warranties provided under clause 13(a), during the period of 12 months (or such longer period as may be agreed) from the acceptance of the Supplies fix or replace any non-compliance; and (b) in the case of any other warranty provided under this Contract, promptly (at Babcock's option): (i) remedy that failure (including by replacing or resupplying the Supplies), (ii) provide to Babcock a full refund of the price paid for the Supplies, or (iii) deduct in accordance with Babcock's directions the price paid for the Supplies from any amounts owing to the Supplier.
 15. **Indemnity:** The Supplier indemnifies Babcock against all costs, claims, demands, liabilities, expenses, damages and losses (on a full indemnity basis and whether incurred by or awarded against Babcock) that Babcock may sustain or incur as a result, whether directly or indirectly, of: (a) a claim that the Supplies or their use or supply breaches any obligation of confidence or infringes the IPR of any person; (b) a claim, demand, suit, action or proceeding by a third party arising from an act or omission of the Supplier in connection with this Contract whether negligent or not; (c) without limiting paragraph (b), any act or omission of the Supplier in connection with this Contract resulting in or contributing to (i) claims by any third party against Babcock in respect of personal injury or death, or (ii) loss of or damage to Babcock's or a third party's physical property; or (d) failure by the Supplier to comply with the requirements of the Contract.
 16. **Limitation of Liability:** If a Party makes a claim against the other Party for any act or omission of the other Party in relation to this Contract (including claims based in contract, tort (including negligence), common law, equity, statute or otherwise) that other Party's liability is limited in aggregate to the greater of: (a) \$200% of the total of the prices under this Contract; or (b) the insurance claimable for that liability under any policy of insurance which the Supplier is required to hold under this Contract (regardless of whether such policy is effected). The limitations of liability set out in this clause 16 will not apply with respect to: (a) claims that are the subject of indemnification for breaching any obligation of confidence or infringement of the IPR under clause 12; (b) claims for fraud or wilful default; (c) claims for breach of confidentiality in clause 23; or (d) claims for personal injury and death.
 17. **Insurance:** The Supplier must take out and maintain with a reputable insurer valid and enforceable insurance policies including: (a) Public and Product Liability insurance covering the Supplier and its Personnel against any liability to any party (including Babcock) arising out of or in connection with this Contract (and such policy must not include any exclusion of aviation liability where the end customer is Air New Zealand Limited) for an insured amount of not less than NZ\$5 million per accident or incident claim and NZ\$10M in the aggregate annually (or such other amount agreed by Babcock in writing); (b) Workers Compensation insurance covering the Supplier for any claim against it by any person employed by the Supplier outside of New Zealand who provides services in relation to this Contract in New Zealand; (c) if requested by Babcock, Property insurance covering the Supplier for any loss or damage to any property used directly or indirectly in connection with the Supplies; (d) Statutory Liability insurance for an amount of at least NZ\$2M; (e) where the Supplier uses vehicles in connection with providing the Supplies and if requested by Babcock, Third Party Motor Vehicle insurance for an amount of at least NZ\$2M; and (f) where the Supplies include services of a professional nature, Professional Indemnity insurance for an amount reasonably requested by Babcock.
 18. **Assignment and Contracting:** The Supplier must not assign the whole or any part of this Contract or use any subcontractors for supply of the Supplies without Babcock's prior written consent. If the Supplier uses a subcontractor, the Supplier remains liable for the subcontractor's performance.
 19. **Termination:** Babcock may terminate this Contract without any liability for compensation: (a) on 30 days' notice without being obliged to give any reason for so doing; or (b) immediately if the Supplier: (i) becomes insolvent or is petitioned in bankruptcy; (ii) being a company, a petition for winding up the company is presented; (iii) an order is made or an application is brought or a resolution is passed for its winding up; (iv) any step is taken to appoint a receiver or receiver and manager or administrator or liquidator to the Supplier; or (v) the Supplier makes any arrangement for the benefit of creditors; or (vi) the Supplier breaches any provision of this Contract. Any such termination by Babcock shall be without prejudice to any other of its rights.
 20. **Waiver:** The failure by Babcock to exercise any right or remedy in relation to any specific default by the Supplier, including by terminating this Contract or any part thereof when such a right arises shall not constitute a waiver by Babcock of any of its rights pursuant to this Contract.
 21. **Entire Agreement:** This Contract is the complete contract between Babcock and the Supplier in relation to the Supplies. No confirmation, shipment, delivery document, shrink-wrap licence or representation will vary this Contract.
 22. **Variation:** No variation of this Contract will be effective unless it is in writing and signed by an authorised representative of Babcock.
 23. **Confidentiality:** This Contract and any information which the Supplier obtains from Babcock relating to this Contract (whether in writing or otherwise) is Babcock's (or its nominees') confidential information unless it is: (a) public knowledge at the time it is obtained by the Supplier, or (b) in the Supplier's lawful possession prior to being obtained from Babcock. The Supplier must keep Babcock's (and its nominees) confidential information confidential, safe and secure, not disclose it to any person (except personnel of the Supplier who have a need to know) and return it when it has performed all of the work under this Contract or this Contract terminates or expires. The Supplier may not make any public statement about this Contract unless it has first obtained written consent from Babcock.
 24. **Privacy:** Where the Supplier collects any information or an opinion (including information or an opinion forming part of a database), 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 (referred to as "Personal Information") in connection with the provision of the Supplies, the Supplier: (a) must take all reasonable steps to ensure that the Personal Information is protected against misuse and loss, and from unauthorised access, modification or disclosure; (b) must not, directly or indirectly use the Personal Information except to the extent necessary to provide the Supplies; (c) must not disclose the Personal Information whether directly or indirectly to any person

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- without the prior written consent of Babcock; (d) may disclose the Personal Information to its personnel to the extent that they have a need to know for the purpose of providing the Supplies; (e) must provide appropriate training to its personnel that will be disclosed Personal Information with respect to the correct handling of the Personal Information so as to minimise the risk of accidental security breaches; (f) must ensure that its internal operating systems only permit authorised personnel to access the Personal Information; (g) must immediately notify Babcock when it becomes aware that use or disclosure of the Personal Information is required or authorised by or under law; and (h) must comply with all applicable privacy legislation and all guidelines issued by relevant regulatory bodies. On termination or expiry of this Contract, the Supplier must promptly return to Babcock or, if requested by Babcock, destroy all copies of the Personal Information, in which case any right to use, copy or disclose that Personal Information ceases.
25. **Compliance with laws:** The Supplier must comply with all applicable laws, statutes and regulations touching or concerning this Contract including but not limited to those laws, statutes and regulations relating to anti-bribery and anti-corruption, health safety and environment, privacy and import and export control. The Supplier warrants that it holds, and will continue to hold, all licences, permits and authorisations necessary to provide the Supplies. Where there is a conflict, the law outlined in clause 30 will apply. The Supplier must not do or omit to do anything that will cause or lead to a breach of Babcock's Code of Business Conduct (<https://www.babcock.com.au/our-policies/>).
26. **Business Ethics:** The Supplier warrants and represents that neither the Supplier nor, so far as the Supplier is aware, any person associated with it: (a) has been convicted of any offence involving bribery or corruption, fraud or dishonesty; (b) has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the applicable laws and regulations from clause 25; (c) has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contract; (d) where the Supplier is an overseas entity (outside of Australia and New Zealand), the Supplier is not controlled or owned by a government or a government controlled entity; or (e) no officer or director of the Supplier or any person who has power of control or decision over the Supplier is a government official or has a familial relationship with a government official. The Supplier shall promptly notify Babcock if, at any time during the term of this Contract, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in this clause 26 at the relevant time. The Supplier will fully comply with any judgement against it from any court or tribunal (including overseas jurisdictions but excluding judgements under appeal or instances where the period for appeal or payment/settlement has not expired) relating to a breach of workplace relations law, occupational health and safety law or workers' compensation law.
27. **Babcock premises and equipment:** If the Supplier uses facilities or equipment owned or controlled by Babcock or its customer (as applicable) in the course of this Contract, the Supplier: (a) acknowledges that such equipment and facilities remain the property of Babcock or its customer (as applicable); (b) will exercise due care and skill in using the equipment and facilities; (c) will only use the equipment and facilities for the purposes of this Contract; (d) will comply with all reasonable directions from Babcock or its customer (as applicable) regarding safety and security; (e) will keep the equipment and facilities in good condition; (f) will immediately notify Babcock of any loss of or damage to the equipment or facilities; (g) uses the equipment and facilities at its own risk.
28. **WHS compliance:** Where the Supplies are designed, manufactured, supplied, installed, commissioned or constructed by the Supplier within New Zealand or the Supplier imports the Supplies into New Zealand (and is an importer for the purposes of the HSW Legislation), the Supplier shall: (a) comply with, and shall ensure that all subcontractors comply with, the applicable HSW Legislation when performing work under the Contract; and (b) where applicable, comply with, and must ensure that all subcontractors comply with, the obligation under the HSW Legislation to, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with Babcock, Babcock's customer(s), the Supplier or the subcontractors (as the case may be) and any other person who, concurrently with Babcock, Babcock's customer(s), the Contractor or the subcontractor (as the case may be), has a work health and safety duty under the HSW Legislation in relation to the same matter.
29. **Access and Records:** Upon request the Supplier shall give access to Babcock, its customer or any person authorised by Babcock or its customer to premises or accounts to any of its records directly relevant to or impacting on the performance of work under this Contract.
30. **Applicable Law:** The laws of New Zealand apply to this Contract and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
31. **Survival:** The expiry or termination of this Contract for any reason will not affect the coming into force or the continuation in force of any of its provisions which expressly or by implication are intended to come into force or continue in force on or after the termination.
- PART 2 – New Zealand Defence Force Specific Terms**
This Part 2 is only applicable where the end customer is Her Majesty the Queen in right of Her Government in New Zealand acting by and through the Chief of Defence Force. In this instance Part 3 would not be applicable.
32. **Definitions and Interpretation (applicable to this Part 2 only):**
 In this Contract:
Confidential Information: for the purposes of this Part 2 only means any information (written, electronic or otherwise): (a) relating to the terms of this Contract; (b) relating directly or indirectly to any aspect of the Navy's operations; (c) relating to the business of Babcock or the Supplier; (d) disclosed by either party to the other on the express basis that such information is confidential; or (e) which might reasonably be expected by either party to be confidential in nature;
DMC Work: means goods and services to be provided by Babcock or the Supplier on the terms of this Contract and includes: (a) all Navy Work; (b) any Defence work as advised from time to time;
Intellectual Property: for the purposes of this Part 2 only means trade marks (including logos and trade dress), domain names, copyright, patents, registered designs, circuit layouts, rights in computer software, rights in data, databases and lists, rights in inventions, Confidential Information, know-how and trade secrets, operating manuals, quality manuals and all other intellectual property, in each case whether registered or unregistered (including applications for the grant of any of the foregoing) and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world, and all rights of action, powers and benefits of the same;
Navy: means Her Majesty the Queen in right of Her Government in New Zealand acting by and through the Chief of Defence Force.
33. **Intellectual Property:** For the purposes of this Part 2 only, where the Navy is the end customer: in carrying out DMC Work or complying with Babcock's obligations under this Contract (for the purposes of

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this clause 33, “**Navy Foreground**”) will, from the time of such creation, be owned by the Navy in all countries of the world.

- 34. Ownership of certain information:** Without limiting clause 33 and for the purposes of this Part 2 only, the Navy will own all Intellectual Property in: (a) all technical and operational information (including reports, specifications, plans, designs, drawings, calculations, formulae and data) generated by Babcock or the Supplier in performing DMC Work; (b) all information generated jointly by Babcock, the Supplier and the Navy (including any operations manuals developed by the parties); (c) any records held by Babcock regarding subcontractors engaged by Babcock in performance of this Contract, including all agreements between Babcock and its subcontractors; (d) any information entered into any electronic information system that is used by either party in the performance of this Contract; and (e) all design and manufacturing information relating to any product developed for the Navy or a Defence entity by Babcock or the Supplier under this Contract.
- 35. Security policies:** The Supplier must comply with all Navy security policies, orders and directives, including but not limited to Defence Force Orders 51, 101 and 102 (to the extent relevant).

PART 3 – Air NZ GSE Specific Terms

This Part 3 is only applicable where the end customer is Air New Zealand Limited. In this instance Part 2 would not be applicable.

36. Definitions and Interpretation (applicable to this Part 3 only):

In this Contract:

Air NZ means Air New Zealand Limited (NZBN 9429040402543) and its related companies (as defined by the Companies Act 1993 (NZ)).

Head Contract means the separate agreement between Babcock/Babcock and Air NZ for Babcock/Babcock to implement and provide Ground Support Equipment (GSE) asset management services for Air NZ. This Contract enables Babcock/Babcock to fulfil its obligations to Air NZ under the Head Contract.

- 37. Novation:** The Supplier consents to this Contract being novated from Babcock to a related company or to Air NZ and will do all things reasonably required by Babcock to give effect to such novation if requested by Babcock.
- 38. Air NZ Code of Conduct:** The Supplier acknowledges and will comply with the Air NZ Supplier Code of Conduct available at <https://www.airnewzealand.co.nz/sustainability-sourcing-supplier-code-conduct>. If the Supplier cannot access the above document for any reason it must immediately notify Babcock.

PART 4 – Special Conditions

This PART 4 applies to every Purchase Order.

To be inserted if applicable.

A copy of this Contract can also be downloaded at

<https://www.babcock.com.au/suppliers>