

## Purchase Order Terms and Conditions (New Zealand)

### PART 1 – GENERAL TERMS AND CONDITIONS

(applicable to every Purchase Order)

#### 1. Definitions

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In the Contract:

**Babcock** means the relevant affiliate of Babcock International Group PLC as specified in the Purchase Order, and any of its related companies (as defined by the *Companies Act 1993* (NZ)).

**Confidential Information** means any information that:

- (a) is by its nature confidential;
- (b) is designated by the discloser as confidential; or
- (c) the recipient knows or ought reasonably to have known is confidential in nature,

and includes all information whether disclosed orally or in writing, but does not include information which:

- (d) is or becomes public knowledge other than by breach of the Contract;
- (e) is in the possession of the recipient without restriction in relation to disclosure before the date of receipt from the discloser; or
- (f) has been independently developed, gained or acquired by the recipient without any reference to the Confidential Information.

**Contract** has the meaning given in clause 2.

**Delivery Date** means the date(s) for provision of the Supplies specified in the Purchase Order.

**Delivery Location** means the location(s) for provision of the Supplies specified in the Purchase Order.

**Goods** means the goods specified in the Purchase Order (if any) to be provided by the Supplier and any goods or component parts supplied by the Supplier as part of the Services.

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

**HSW Legislation** means the *Health and Safety at Work Act 2015* (NZ), and any related regulations or safe work instruments made under the Act.

**Jurisdiction** means New Zealand.

**Loss** means any cost (including legal costs), expense, loss, damage, claim, action, proceeding or liability whatever and however arising (whether in contract, tort (including negligence) or otherwise).

**Notifiable Incident** has the meaning given in section 24 of the *Work Health and Safety Act 2015* (NZ).

**Privacy Act** means the *Privacy Act 2000* (NZ).

**Purchase Order** means an individual purchase order issued by Babcock to the Supplier in respect of the Supplies.

**Services** means the services specified in the Purchase Order (if any) to be provided by the Supplier.

**Special Conditions** means any special conditions stated in or attached to the Purchase Order.

**Supplier** means the supplier specified in the Purchase Order.

**Supplies** comprises the Goods and Services.

**Total Price** means the price specified in the Purchase Order, including any GST component payable.

#### 2. Contract

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The Contract consists of:

- (a) the Special Conditions;
- (b) the Purchase Order (other than the Special Conditions); and
- (c) these Purchase Order Terms and Conditions.

If there is any ambiguity or inconsistency between the documents comprising the Contract, the document appearing first in the list will take precedence to the extent of any ambiguity or inconsistency.

#### 3. Commencement and Term

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The Contract will commence on the earlier of:

- (a) the date that the Supplier acknowledges acceptance of the Purchase Order; or
- (b) the date that the Supplier commences performance of the Supplies,

and will remain in force, unless terminated earlier in accordance with the Contract, until the Supplier has completed all of its obligations under the Contract.

#### 4. Existing Contracts

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Subject to the terms of the Purchase Order and any Special Conditions, if the Purchase Order is issued under the terms of an existing contract, the terms of that existing contract will apply and these Purchase Order Terms and Conditions (other than this clause) will have no effect.

#### 5. Provision of the Supplies

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The Supplier must provide the Supplies to Babcock at the Delivery Location on or before the relevant Delivery Date and in accordance with any special instructions for the delivery of the Supplies specified in the Purchase Order.

#### 6. Delay

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The Supplier must notify Babcock as soon as reasonably practicable if it becomes aware that it will be unable to provide all or any part of the Supplies by the relevant Delivery Date and advise Babcock as to when it will be able to do so.

The Supplier must take all reasonable steps to minimise any delay and comply with any reasonable requests made by Babcock to rectify the delay.

#### 7. Acceptance

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Babcock, or its authorised agent, may accept or reject the relevant Supplies within 28 days after delivery of the Supplies to the Delivery Location. If Babcock does not notify the Supplier of acceptance or rejection within the 28 day period, Babcock will be taken to have accepted the Supplies on the expiry of the 28 day period.

Babcock may reject the Supplies if they do not comply with the requirements of the Contract, including any acceptance tests specified in the Special Conditions.

If Babcock rejects the Supplies, Babcock may:

- (a) require the Supplier to provide, at the Supplier's cost, replacement Supplies which comply with the requirements of the Contract within a reasonable period agreed by Babcock; or
- (b) terminate the Contract in accordance with clause 15(b).

In either case and at Babcock's request, the Supplier must promptly remove any relevant Goods from Babcock's premises at its own cost.

## **8. Title and Risk**

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Title in the Goods transfers to Babcock, or its nominee, on the earlier of:

- (a) acceptance by Babcock in accordance with clause 7; or
- (b) payment by Babcock for the Supplies.

The risk of any loss or damage to the Goods remains with the Supplier until their delivery to Babcock at the Delivery Location.

If the Services include the repair of any items, the Supplier bears the risk of any loss or damage to the item being repaired from the date on which it is delivered to the Supplier until it is returned to Babcock at the Delivery Location.

## **9. Price**

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The Total Price is fixed and is inclusive of GST and all taxes, duties (including any customs duty), and government charges imposed or levied in New Zealand or overseas.

Unless expressly stated otherwise in the Purchase Order, the Total Price includes the cost of any insurance, packaging, marking, handling, freight and delivery, and any other applicable costs and charges.

## **10. Payment**

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Unless otherwise stated in the Purchase Order, the Supplier will invoice Babcock on completion of the Services or on delivery of the Goods.

Babcock must pay the Supplier within 20 days from the end of the month in which a correctly rendered invoice is received.

An invoice is correctly rendered if:

- (a) it is correctly addressed and calculated in accordance with the Contract;
- (b) Babcock has not rejected the Supplies under clause 7;
- (c) it is for an amount that does not exceed the Total Price;
- (d) it includes the Purchase Order number, and the name and contact details specified in the Purchase Order; and
- (e) it is a valid tax invoice in accordance with the GST Act.

The Supplier must promptly provide any supporting documentation and other evidence reasonably required by Babcock to substantiate performance of the Contract by the Supplier or payment of the Total Price by Babcock.

Babcock is entitled to withhold payment of an invoice to the extent that it relates to Supplies that do not meet the requirements of the Contract.

## **11. Set Off**

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If the Supplier owes any debt to Babcock in connection with the Contract, Babcock may deduct the amount of the debt from payment of the Total Price.

## **12. Intellectual Property**

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The Supplier warrants that it has all intellectual property (IP) rights and moral rights necessary to provide the Supplies to Babcock and licences those rights to Babcock, including the right to sublicense, to allow Babcock and its customers (and their customers and contractors) to have the full benefit of the Supplies.

The Supplier also warrants that the provision of the Supplies in accordance with the Contract will not infringe any third party's IP or moral rights.

## **13. Warranty**

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The Supplier warrants that:

- (a) the Goods are:
  - (i) new and in good condition;
  - (ii) compliant with all applicable industry standards and codes;
  - (iii) free from defects in design, materials and workmanship; and
  - (iv) fit for the purposes for which goods of a similar nature are commonly supplied and for any other purposes notified by Babcock to the Supplier; and
- (b) in providing the Services:
  - (i) it will use workmanship of a standard consistent with best industry standards for work of a similar nature and which is fit for its intended purpose; and
  - (ii) it will comply with all applicable industry standards and codes.

## **14. Defects**

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Notwithstanding acceptance of the Supplies under clause 7, the Supplier must remedy at its cost any defects in the Supplies notified by Babcock to the Supplier at any time within the period of 12 months, or the Supplier's or manufacturer's standard warranty period (whichever is longer), following acceptance of the Supplies by Babcock.

The Supplier will be responsible for any costs of removing the Goods and delivering any repaired or replacement Supplies to Babcock.

If the Supplier does not remedy the defect, Babcock may remedy the defect and recover the costs incurred from the Supplier.

## **15. Termination for Default**

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Babcock may terminate the Contract if:

- (a) the Supplier:
  - (i) does not deliver all of the Supplies to the Delivery Location by the relevant Delivery Date; or
  - (ii) notifies Babcock that it will be unable to deliver the Supplies to the Delivery Location by the Delivery Date,

provided that Babcock acts reasonably in exercising this right;

- (b) Babcock rejects any of the Supplies under clause 7, provided that Babcock acts reasonably in exercising this right;
- (c) the Supplier commits a material breach of the Contract that:
  - (i) is not capable of being remedied; or
  - (ii) is capable of being remedied but is not remedied within 28 days of receiving a notice from Babcock specifying the breach;
- (d) the Supplier becomes bankrupt or insolvent, except to the extent that the exercise of a right under this clause 15(c)(ii) is prevented by law; or
- (e) the Supplier breaches any of its obligations under clause 18, 38, or 41 (if applicable).

The Supplier may terminate the Contract if Babcock does not pay the Supplier's correctly rendered invoice within 60 days of it becoming due in accordance with clause 10.

## **16. Termination for Convenience**

In addition to any other rights it has under the Contract, Babcock may at any time terminate the Contract or reduce its scope by notifying the Supplier in writing.

If Babcock gives such a notice, the Supplier must:

- (a) stop work in accordance with the notice;
- (b) comply with any reasonable directions given by Babcock; and
- (c) mitigate all loss, costs, and expenses in connection with the termination or reduction, including those arising from affected subcontracts.

Babcock will only be liable for payments to Supplier for Supplies accepted in accordance with clause 7 before the effective date of termination and any reasonable costs incurred by the Supplier that are directly attributable to the termination or reduction, provided the Supplier substantiates these amounts to the reasonable satisfaction of Babcock.

The Supplier will not be entitled to profit anticipated on any part of the Contract terminated.

## **17. Access and Records**

At Babcock's request (acting reasonably), the Supplier must permit Babcock and its nominees timely and sufficient access to the Supplier's premises and records relevant to the Contract to:

- (a) undertake quality audits and quality surveillance (as defined in AS/NZ ISO 9000) of the Supplier's quality system and/or the production processes related to the Supplies; and
- (b) monitor the Supplier's work, health and safety and environmental compliance in connection with the provision of the Supplies.

## **18. Security and Safety**

If Babcock provides the Supplier with access to any Babcock or Babcock customer place, area, facility, or equipment, the Supplier must comply with any security and safety requirements notified to the Supplier by Babcock or of which

the Supplier is aware and ensure that its officers, employees, agents and subcontractors are aware of and comply with any such security and safety requirements.

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 must:

- (a) comply with, and ensure that all subcontractors comply with, the applicable HSW Legislation when performing work under the Contract in New Zealand; and
- (b) where applicable, comply with, and 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 with Babcock, its customers, the Supplier or any subcontractors (as the case may be) and any other person who, concurrently with Babcock, its customers, the Supplier or any subcontractors (as the case may be), has a work health and safety duty under the HSW Legislation in relation to the same matter.

The Supplier must ensure, so far as is reasonably practicable, that the Supplies are without risk to the health and safety of persons who use the Supplies for a purpose for which they were designed or manufactured.

Without limiting its obligations under the Contract, at law or in equity (and subject to any foreign government restrictions), the Supplier must provide, and use its reasonable endeavours to ensure that its subcontractors provide, to Babcock within 14 days of a request by Babcock any information or copies of documentation requested by Babcock and held by the Supplier or subcontractor (as the case may be) to enable Babcock and its customers to comply with their obligations under the HSW Legislation relating to the Contract.

The Supplier must not provide Supplies containing asbestos (as defined in the *Health and Safety at Work (Asbestos) Regulations 2016 (NZ)*) and must not take any asbestos onto Babcock or Babcock customer premises in connection with providing the Supplies.

If a Notifiable Incident occurs in connection with work carried out under the Contract:

- (c) on Babcock or Babcock customer premises;
- (d) which involves Babcock or Babcock customer personnel; or
- (e) which involves a Babcock or Babcock customer specified system of work,

the Supplier must:

- (f) immediately report the incident to Babcock;
- (g) promptly provide Babcock copies of any notices or other documentation provided to, or issued by, the relevant regulator in relation to the Notifiable Incident;
- (h) provide Babcock with such other information as may be required to facilitate the notification to or investigation by any regulator of the Notifiable Incident in accordance with the HSW Legislation; and
- (i) provide other reasonable assistance required by Babcock to undertake mandatory incident reporting.

## 19. Insurance

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The Supplier must procure and maintain such insurances and on such terms and conditions as a prudent supplier, providing supplies similar to the Supplies, would procure and maintain.

At a minimum, this must include:

- (a) Workers compensation insurance as required by New Zealand law or regulation;
- (b) Public and Products Liability insurance covering the Supplier and its personnel against any liability to any party (including Babcock) arising out of or in connection with the Contract, for an insured amount of at least NZ\$5,000,000 per occurrence and NZ\$10,000,000 in the aggregate annually;
- (c) Statutory Liability insurance for an insured amount of at least NZ\$2,000,000; and
- (d) Professional Indemnity insurance (only if the Supplies include the provision of Services of a professional nature), for an insured amount of at least NZ\$5,000,000 per claim.

## 20. Indemnity

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The Supplier indemnifies Babcock in respect of any Loss in connection with any action, claim, dispute, suit, or proceeding brought by a third party in respect of:

- (a) the death or personal injury of any person;
- (b) loss of or damage to any third party property;
- (c) an infringement or alleged infringement of that third party's IP rights or moral rights in connection with the Supplies; or
- (d) a breach or alleged breach of any obligation of confidentiality owed to that third party in connection with the Supplies.

## 21. Limitation of Liability

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Each party's aggregate liability to the other for any Loss arising out of or in connection with the Contract is limited to the greater of:

- (a) 150% of the total fees paid or payable by Babcock under the Contract; or
- (b) NZ\$500,000.

This limitation does not apply to any liability of a party for:

- (c) personal injury and death;
- (d) loss of, or damage to, property;
- (e) breach of intellectual property rights, confidentiality, privacy, or security obligations;
- (f) fraud or fraudulent misrepresentation;
- (g) the indemnities in clause 20(c) and 20(d); or
- (h) any other liability which cannot be limited or excluded by applicable law.

Neither party has any liability to the other, however arising (whether in contract, tort (including negligence) or otherwise), for any loss of use, revenues, profits, goodwill, bargain, opportunities, or anticipated savings, or for any indirect, consequential, or special loss or damage.

The liability of each party to the other for any Loss is reduced to the extent that any wilful, unlawful, or negligent act or

omission of the other party (or its affiliates, employees, contractors, or agents) caused or contributed to the Loss.

## 22. Confidentiality

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The parties may disclose Confidential Information to each other during the course of the Contract. Each party must keep the other party's Confidential Information confidential to itself and not disclose it to any third party without the disclosing party's prior written consent, other than when required by law.

The recipient must take all precautions that are reasonably necessary to prevent any theft, loss or unauthorised use or disclosure of the disclosing party's Confidential Information and promptly notify that party of any suspected or actual unauthorised use or disclosure of the Confidential Information.

On expiry or termination of the Contract, or upon the reasonable written request of the disclosing party, the recipient must promptly return or destroy all Confidential Information of the disclosing party in its possession, power, or control, provided however that the recipient may retain a copy of the Confidential Information as required by law or in accordance with its standard backup or recordkeeping procedures and the terms of this clause 22 will continue to apply to any retained Confidential Information.

The Supplier may not make any public statement about the Contract, or disclose the existence of the Contract or any of its terms and conditions to a third party without Babcock's prior written consent.

## 23. Privacy

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If the Supplier obtains any personal information in the course of delivering the Supplies, the Supplier must comply with all requirements of the Privacy Act. In particular, the Supplier must:

- (a) collect, use and disclose personal information only for the purposes specified in the Contract, and in accordance with the Privacy Act and any other applicable privacy laws;
- (b) protect personal information from misuse, interference, loss, unauthorized access, modification or disclosure in accordance with the Privacy Act and any other applicable privacy laws;
- (c) promptly notify Babcock of any actual or suspected data breaches involving personal information, and cooperate with Babcock in responding to and mitigating the effects of such breaches, in accordance with the Privacy Act;
- (d) assist Babcock in fulfilling its obligations under the Privacy Act, including by providing information, cooperation and assistance as reasonably requested by Babcock;
- (e) ensure that all personnel who have access to personal information are aware of and comply with the Privacy Act and any other applicable privacy laws; and
- (f) upon the expiration or termination of the Contract, promptly return or destroy all personal information that it has collected, used or disclosed in the course of providing services under the Contract, in accordance with the Privacy Act and any other applicable privacy laws.

## 24. Notices

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Any notice to be given under the Contract must be in writing, delivered by hand, registered post, or email, and be signed by an authorised officer of the party giving the notice.

A notice is deemed to be delivered:

- (a) if delivered by hand, on delivery to the address set out in the Purchase Order;
- (b) if sent by registered post, on delivery to the address set out in the Purchase Order; or
- (c) if transmitted by email, immediately unless the sender receives an automated reply stating that the email was not delivered.

## **25. Subcontracting**

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Subcontracting the whole or any part of the Supplier's obligations under the Contract will not relieve the Supplier of its obligations under the Contract.

On request, the Supplier must provide to Babcock the details of all subcontractors engaged in providing the Supplies. The Supplier acknowledges that Babcock may be required to disclose such information to its customer(s).

## **26. Business Ethics**

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The Supplier warrants that neither the Supplier nor (so far as it is reasonably aware) any of its officers, employees, agents, and subcontractors:

- (a) have been convicted of any offence involving bribery, corruption, fraud or dishonesty;
- (b) have been or are currently under investigation, inquiry or enforcement proceedings by a government, administrative or regulatory body regarding an offence or alleged offence regarding bribery, corruption, modern slavery, fraud, or health safety and environment;
- (c) have been listed by a government agency as being disqualified, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programs or contracts;
- (d) (if the Supplier is an entity registered outside of Australia or New Zealand) is an entity controlled or owned by a government or government controlled entity; or
- (e) is an entity controlled by a director or officer who is a government official.

The Supplier must promptly notify Babcock if it becomes aware of any circumstances that would prevent it from repeating the warranties contained in this clause.

Babcock and the Supplier must comply with the Code of Business Conduct available at [www.babcock.com.au/suppliers](http://www.babcock.com.au/suppliers).

## **27. Authorisations**

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The Supplier must obtain and maintain in force any necessary licences, accreditations, permits, registrations, regulatory approvals, export licences, or other documented authorities required by law and necessary for the delivery of the Supplies, and arrange any necessary customs entry for the Supplies.

On request, the Supplier must promptly provide a copy of any such authorisations to Babcock.

## **28. Compliance with Laws**

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The Supplier must comply with and ensure its officers, employees, agents and subcontractors comply with the laws from time to time in force in the jurisdictions in which any part of the Contract is to be carried out (including in New Zealand and overseas).

## **29. Survival**

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The expiry or termination of the Contract 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 termination.

## **30. Negation of Employment and Agency**

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The Contract and any cooperation of the parties contemplated under the Contract will not be deemed or construed to create any partnership, joint venture, employment, franchise or agency relationship between Babcock and the Supplier. The Supplier is an independent contractor operating a business wholly separate from and not controlled by Babcock.

## **31. Miscellaneous**

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The Contract may only be amended by a written document signed by both parties.

The delay or failure of any party to exercise any right or remedy provided under the Contract or by law does not constitute a waiver of that right or any other right or remedy.

If any part of the Contract is found to be illegal, unenforceable, or invalid, it will be severed from the Contract and the remaining portions of the Contract will remain in full force and effect.

Neither party may assign or novate any of its rights or obligations under the Contract without the other party's consent.

## **32. Entire Agreement**

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This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes any prior discussions, representations, understandings, or written agreements.

## **33. Governing Law**

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The Contract is to be governed by and construed in accordance with all applicable laws in force in the Jurisdiction from time to time, and the parties submit to the non-exclusive jurisdiction of the courts of the Jurisdiction.

## **PART 2 – NEW ZEALAND DEFENCE FORCE SPECIFIC TERMS**

(applicable only to Purchase Orders which relate to a New Zealand Defence project or where Babcock's end customer is the New Zealand Chief of Defence Force)

If there is any ambiguity or inconsistency between the terms of this Part 2 and the terms of Part 1, Part 2 will take precedence to the extent of any ambiguity or inconsistency.

## **34. Definitions**

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In this Part 2:

**Intellectual Property** 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.

**NZDF** means His Majesty The King in Right of His Government in New Zealand acting by and through the Chief of Defence Force (i.e. the Crown).

**NZDF Vessel** means any vessel owned or leased and controlled by NZDF.

### **35. Intellectual Property**

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Title in, and ownership of all Intellectual Property associated with any deliverable or material developed by the Supplier in connection with the Contract (**Foreground IP**) vests on its creation in NZDF and will be owned by NZDF in all countries of the world.

The vesting of ownership in NZDF of all Foreground IP does not apply to Intellectual Property in any pre-existing material (including software, documentation, or data) which is incorporated or embedded in that deliverable or material (**Background IP**).

In such circumstances, the Supplier grants to NZDF (or will ensure the grant of) a royalty free, irrevocable, non-exclusive, perpetual, worldwide licence (including the right to sublicense) of the Background IP to use, copy, adapt, expand, develop, or otherwise change, the pre-existing material.

### **36. Ownership of Certain Information**

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Without limiting clause 35, NZDF will own all Intellectual Property in:

- (a) all technical and operational information (including reports, specifications, plans, designs, drawings, calculations, formulae and data) generated by the Supplier and any subcontractors in providing the Supplies;
- (b) all information generated jointly by Babcock, the Supplier, and/or NZDF (including any management plans developed by the parties);
- (c) any records held by Babcock or the Supplier regarding subcontractors engaged by Babcock or the Supplier in performing the Contract, including all agreements between Babcock and the Supplier, and with their respective subcontractors;
- (d) all NZDF data made available to the Supplier by Babcock or NZDF, or which relates to NZDF Foreground IP;
- (e) any information entered into any electronic information system that is used by NZDF, Babcock and the Supplier in performing the Contract; and
- (f) all design and manufacturing information relating to any product developed for NZDF, any branch of the New Zealand Defence Force, the Ministry of Defence, or any other Crown body by the Supplier or any subcontractors under the Contract.

### **37. Defence Materiel**

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Notwithstanding any other provision of the Contract, any materiel furnished by the Supplier under the Contract:

- (a) will become the property of NZDF upon the earlier of:
  - (i) payment for the materiel by Babcock to the Supplier; or

- (ii) delivery of the materiel to NZDF Vessels or premises; and

- (b) must be free of any incumbrances and security interests.

### **38. NZDF Policies**

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The Supplier must comply with:

- (a) all NZDF physical, personnel, and information security policies, orders, and directives, including Defence Force Orders 51 (Vol 1, 2 and 4), 101 and 102 (to the extent relevant); and
- (b) if the Supplier accesses the Devonport Naval Base Defence Area (**DNBDA**), any other relevant NZDF requirements or directions given by Babcock or NZDF including in respect of security, safety, operations, vaccinations, staff and building procedures, protocols and regulations.

### **39. NZDF Access**

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In addition to any rights granted under clause 17, the Supplier acknowledges and agrees that:

- (a) NZDF (and its nominated representatives) has the right (at reasonable times) to inspect, test, and evaluate any and all works provided by the Supplier, and may access (at reasonable times) the Supplier's premises for the purposes of conducting such inspections, tests and evaluations; and
- (b) NZDF (and its nominated representatives) and/or any external auditor may (at reasonable times) access the Supplier's premises for the purposes of conducting any audits which NZDF and/or the external auditor reasonably considers are necessary.

### **40. Novation**

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The Supplier acknowledges that the Contract may be assigned or novated to NZDF (at NZDF's request) and consents to such assignment or novation. The Supplier will do all things reasonably required to give effect to such assignment or novation if requested.

### **41. Information Systems and Information Security**

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In respect of information systems used by the Supplier to deliver the Supplies, the Supplier must:

- (a) ensure that its systems comply with the requirements of ISO 27001; and
- (b) notify Babcock if any cloud computing systems are used.

If the Supplier has access to, stores, processes, or transmits any NZDF data, information, or material (including NZDF Confidential Information and Foreground IP) (collectively **NZDF Data**), it must:

- (c) on request, advise Babcock of the type, extent, and location of NZDF Data held by the Supplier and the processes and procedures used to manage and control access to it; and
- (d) not (without Babcock's written consent), transfer, store or make available any NZDF Data:
  - (i) outside New Zealand; or
  - (ii) on any cloud computing system if the relevant NZDF Data is classified as RESTRICTED or higher; and

- (e) ensure that NZDF Data is only accessed by its personnel with a need-to-know it to carry out their obligations under the Contract.

#### **42. NZDF as Beneficiary**

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Notwithstanding any other provision of the Contract, the Supplier acknowledges and agrees that NZDF shall be a third-party beneficiary to the extent of the rights and benefits granted to it under clauses 13, 35, 36, 37, 39 and 40. NZDF shall have the right to enforce the obligations and remedies provided in those clauses directly against the Supplier.

*A copy of these Purchase Order Terms and Conditions can also be downloaded at [www.babcock.com.au/suppliers](http://www.babcock.com.au/suppliers).*