



Order

STANDARD TERMS AND CONDITIONS

1. Order

1.1 Application of Standard Terms and Conditions

These Standard Terms and Conditions govern the Supplier's provision of Goods and/or Services to Westpac in cases where the Supplier is not party to a current contract with Westpac in respect of such Goods and/or Services. Where a written contract is already in existence between Westpac and the Supplier covering the purchase of the Goods and/or Services, the terms and conditions of that contract shall apply instead of these Standard Terms and Conditions.

1.2 Acceptance and Conflict of Terms

This Order is an offer by Westpac to purchase the Goods and/or Services from the Supplier. The Supplier's commencement of work, shipment of the Goods, performance of the Services, or issuance of a sales acknowledgement shall be deemed an acceptance of this Order. No terms stated by the Supplier in accepting this Order shall be binding upon Westpac unless accepted in writing by Westpac. If this Order is deemed to be an acceptance of an offer by the Supplier, such acceptance is limited to the express terms of this Order and is made conditional on the Supplier's assent to any additional or different terms in this Order.

2. Purchase Orders

2.1 Purchase Orders

Westpac may order Goods and/or Services by issuing a Purchase Order to the Supplier specifying:

- (a) the type and quantity of Goods and/or Services required;
- (b) the Delivery Site and date for delivery of the Goods and/or Services; and
- (c) any other information reasonably required by the Supplier to fulfil the Purchase Order.
- (d) the Purchase Order will be emailed to the email address specified by the supplier to Westpac.
- (e) The order must be acknowledged by the Supplier within 48 hours.

3. Title and risk

The Parties agree that:

- (a) risk in the Goods passes to Westpac on the date and at the time of delivery of the Goods to Westpac;
- (b) responsibility and risk in any of the Supplier's equipment or materials at Westpac's premises remains with the Supplier at all times; and
- (c) title to the Goods passes to Westpac on the earlier of the date and time of:

- (i) payment for those Goods; and
- (ii) delivery of those Goods to Westpac.

4. The Supplier's Obligations

4.1 Timing

The Supplier will provide the Goods and/or Services to Westpac, on or before the dates set out in the Purchase Order or, if no delivery date is specified in the Purchase Order, then within 5 Business Days of the Purchase Order being issued.

4.2 Delivery/performance location

The Supplier will ensure that:

- (a) the Goods delivered to the correct Delivery Site as set out in the Purchase Order packaged such that they arrive in an undamaged condition; and
- (b) the Services are performed in accordance with the Purchase Order.

5. Intellectual Property rights

5.1 IPR in Goods and Pre-existing IPR

Nothing in this Order transfers ownership in, or otherwise grants any rights in, any Intellectual Property Rights to Goods or Pre-existing IPR.

5.2 IPR in Services

- (a) Except for any Pre-existing IPR of the Supplier, the Supplier will ensure that any existing and future Intellectual Property Rights in a Deliverable vest in Westpac absolutely. The Supplier agrees to assign, and procure the assignment of, such Intellectual Property Rights to Westpac immediately on their creation. The Supplier will promptly disclose to Westpac any such Intellectual Property Rights.
- (b) To the extent that any Pre-existing IPR of the Supplier or a third party is incorporated into or forms part of a Service, the Supplier grants, or will procure from any third party the right to grant, to Westpac an irrevocable, perpetual, worldwide, non-exclusive, royalty-free licence to do the following things in respect of such Pre-existing IPR as part of the Service:
 - (i) use, reproduce, adapt, distribute and communicate; and
 - (ii) all such other things as contemplated or consistent with the possession, operation and use of such Service or required by the Westpac Group to use the Service for the purpose for which it was intended, to obtain the full benefit of the Service and to exercise Westpac's rights under this Order.
- (c) To the full extent permitted by Law, the Supplier must obtain all necessary waivers or consents



from authors of any moral rights which may subsist in any Service to permit the Westpac Group to exercise its full rights of use and quiet enjoyment of that Service.

6. Charges and invoices

6.1 Charges

The Supplier will invoice Westpac for the Charges in accordance with the prices set out in the Purchase Order (as may be amended by the Parties by mutual agreement from time to time).

6.2 Westpac to pay the Supplier

Westpac will pay to the Supplier all undisputed Charges in each correctly rendered invoice by the 20th day of the month following the month of receipt of the Suppliers approved and correct tax invoice. A remittance advice will be sent to the specified email address supplied by the Supplier. Westpac reserves the right to change the payment terms at any time without consent.

6.3 Invoices

For the purposes of this Order, an invoice is not correctly rendered unless:

- (a) the invoice is a "tax invoice" as defined in the GST Law and otherwise complies with the requirements of the GST Law;
- (b) under no circumstances will Westpac accept any invoice for payment unless Westpac's official Purchase Order number is displayed on the invoice.
- (c) the invoice amount is correctly calculated and due for payment in accordance with this Order;
- (d) the invoice identifies the Goods and /or Services which the invoice covers;

6.4 the invoice must be in the format and submitted in accordance with Westpac's electronic invoicing requirements made known to the Supplier from time to time.

6.5 Disputed invoices

- (a) If Westpac disputes the amount of the invoice submitted by the Supplier, then Westpac is not obliged to pay the invoice until the dispute is resolved.
- (b) The Supplier may not suspend, cancel or withdraw the provision of the Goods and/or Services in whole or in part as a result of a disputed invoice.

6.6 Charges inclusive of Taxes

All Charges include Taxes (other than GST), whether increased, new or additional amounts and all freight, insurance, delivery and other expenses which may be incurred. If Westpac is required by law to pay any Tax relating to this Order, excluding any withholding taxes paid under clause 6.8 (*Withholding tax*), the Supplier

must reimburse Westpac for that amount promptly upon request.

6.7 GST

- (a) Unless the context requires otherwise, capitalised terms used in this clause 6.7 that are defined in the GST Law have the same meaning in this clause.
- (b) Unless expressly stated otherwise, all Consideration provided under, by reference to or in connection with this Order is exclusive of GST.
- (c) If GST is payable on any Taxable Supply made under this Order by a Party ("**Provider**") to another Party ("**Recipient**"), the Recipient must pay to the Provider in addition to and at the same time as the Consideration is payable the GST Amount as an additional amount.
- (d) No payment of any amount pursuant to clause 6.2 (*Westpac to pay the Supplier*), and no payment of the GST Amount is required until the Provider of the Taxable Supply has provided a valid Tax Invoice to the Recipient.
- (e) Any reference to a cost or expense in this Order excludes any amount in respect of GST forming part of the relevant cost or expense when incurred by the relevant Party for which that Party is entitled to a credit for Input Tax.

6.8 Withholding tax

If any Taxes are required by Law or regulation to be withheld from any payment for any Goods and/or Services provided by the Supplier under this Order, Westpac will deduct those Taxes from the amount payable and remit them to the relevant taxing authority. Westpac will provide to the Supplier details of any Taxes so remitted in accordance with the taxation Law.

7. Confidentiality and privacy

7.1 Treatment of Confidential Information

Each Party acknowledges that the Confidential Information of the other Party is valuable to the other Party. Each Party undertakes to keep the Confidential Information of the other Party secret and to protect and preserve the confidential nature and secrecy of the Confidential Information and to only use the Confidential Information for the purposes of exercising its rights and performing its obligations under this Order or as otherwise required by Law.

7.2 Privacy

If, as a result of this Order, the Supplier is able to access Regulated Information held by or on behalf of Westpac, then the Supplier will comply with the Privacy Act 1993 and all other applicable privacy laws and such other data protection laws as may be in force from time to time which regulate the collection, storage, use and disclosure of information, as if it were regulated by these laws.



8. Data security

8.1 Westpac Data

Westpac Data is and will remain the property of Westpac at all times. Except as required by Law, the Supplier must not:

- (a) use Westpac Data for any purpose other than directly in relation to the performance of its obligations under this Order;
- (b) and must ensure that its Representatives will not, sell, commercially exploit, let for hire, assign rights in or otherwise dispose of any Westpac Data;
- (c) make any Westpac Data available to a third party other than an approved subcontractor and then only to the extent necessary to enable the approved subcontractor to perform its part of the Supplier's obligations under this Order; or
- (d) remove or transfer Westpac Data to any non-Westpac premises or systems without obtaining the prior approval of Westpac.

9. Term and Termination

9.1 Term

Subject to the rights of earlier termination set out in this clause 9, the Order commences on the Commencement Date and continues for the Term.

9.2 Termination for convenience

Westpac may terminate this Order in whole or in part and without cause, by giving the Supplier at least 30 days' written notice.

9.3 Termination for breach

Either Party may terminate this Order, in whole or in part, by written notice to the other Party with immediate effect if the other Party commits a material breach of its obligations in this Order and does not remedy that breach within 30 days of receiving a notice detailing the breach and requiring that it be rectified.

9.4 Termination for insolvency

Either Party may terminate this Order by written notice to the other Party with immediate effect if the other Party is Insolvent.

9.5 Consequences of termination

If this Order is terminated for any reason, then:

- (a) both Parties will return all property in its possession belonging to the other Party, including all Confidential Information and in the case of the Supplier, all Westpac Data;
- (b) the Supplier must reimburse Westpac for any amounts paid by Westpac for Goods and/or Services which have not been supplied in accordance with this Order; and
- (c) Westpac must pay to the Supplier any undisputed amounts owing to the Supplier within 30 days of the date of termination.

9.6 Survival

The following clauses will remain in full force and effect following the termination or expiry of this Order: 5 (*Intellectual Property Rights*), 7 (*Confidentiality and privacy*), 8 (*Data security*), 9.5 (*Consequences of termination*), 9.6 (*Survival*), 10 (*Warranties, indemnities and limitation of liability*), 10.8 (*Insurance*), 11 (*Regulatory compliance and Sustainable supply chain management*), 12 (*Dispute resolution*), 13 (*Notices*), 14.1 (*Benefit*), 14.1(d) (*Governing law*), 16 (*General*), 17 (*Interpretation and definitions*).

10. Warranties, indemnities, limitation of liability and insurance

10.1 Authorisation

Each Party warrants that it is authorised to enter into and be bound by this Order, and that it holds all licences, approvals and permits required by Law to perform its obligations under this Order.

10.2 Reasonable care and appropriate qualifications

The Supplier warrants that it will use the reasonable care and skill that can be expected from a competent service provider in providing the Goods and/or Services and that it will retain sufficient and appropriately qualified personnel to ensure timely performance of its obligations under this Order.

10.3 Benefit of third party warranties

The Supplier will pass to Westpac, or if it is unable to do so, will hold for the benefit of Westpac, all warranties provided by third parties in respect of the supply of any Goods and/or Services under this Order.

10.4 Warranties

The Supplier warrants that:

- (a) the Goods:
 - (i) will meet the Specifications;
 - (ii) will be new and unused;
 - (iii) will correspond with any description or sample provided by the Supplier;
 - (iv) will be free from defects in materials, workmanship and manufacture;
 - (v) will be suitable for their intended purpose;
 - (vi) will be free from any charge, lien, encumbrance or liability when supplied to Westpac; and
 - (vii) will comply with all Laws that are related in any way to the Goods;
- (b) each Service:
 - (i) and its receipt by Westpac, does not and its use will not infringe or make unauthorised use of the rights (including Intellectual Property Rights) of any person;
 - (ii) will be provided with all due care and skill that would be expected of a skilled professional experienced in providing the same or similar services; and



- (iii) complies with its Specifications and all applicable Laws.
- (c) use of the Goods and/or receipt of the Services by Westpac will not:
 - (i) result in a breach of any Law or mandatory code of conduct;
 - (ii) infringe any person's rights (including Intellectual Property Rights and Moral Rights);
 - (iii) constitute a misuse of any person's confidential information; or
 - (iv) result in the Supplier or any Related Company of the Supplier breaching any obligation that it owes to any person;
 - (v) it is able to lawfully provide the Goods and/or Services and grant the licences and assignments in this Order; and
 - (vi) its representations to Westpac are complete and accurate, not misleading or deceptive and may be relied on by Westpac in entering into this Order.

10.5 Consumer Guarantees Act 1993

The Parties acknowledge that the Goods and/or Services being provided by the Supplier are being acquired for the purposes of Westpac's business, and, accordingly the provisions of the Consumer Guarantees Act 1993 shall not apply in relation to the supply of the Goods and/or Services.

10.6 Indemnity

To the extent allowed by law, the Supplier indemnifies the Westpac Group and its Representatives against all losses, damages, liabilities, claims and expenses (including legal costs) incurred by the Westpac Group and its Representatives, arising out of or in connection with:

- (a) any death or injury to persons, and any loss or damage to the real or personal property of Westpac or a third party, caused by any act or omission of the Supplier;
- (b) any breach of clause 7 (*Confidentiality and privacy*) by the Supplier or its Representatives; or
- (c) any Claim which would, if true, constitute a breach of the warranty in sub-clause 10.4(c)(ii) by the Supplier or its Representatives.

10.7 Liability

Westpac's liability under this Order (excluding any liability under an indemnity) whether in contract, tort (including negligence), under statute or otherwise in respect of any one occurrence will be excluded to the maximum extent permitted by Law, and will exclude any indirect, consequential, special or incidental loss or damages.

10.8 Insurance

When performing Services at any of Westpac's locations, the Supplier is to carry adequate insurance, and will promptly furnish Westpac with a certificate

thereof, covering public liability, workers or accident compensation liability and professional indemnity.

11. Regulatory Compliance and Sustainable supply chain management

11.1 Regulatory Compliance

The Supplier will, at its own cost unless otherwise expressly agreed with Westpac:

- (a) ensure that the Goods are provided and/or Services are performed in accordance with any Law, Regulatory Requirements and guidelines of a Regulatory Authority issued from time to time;
- (b) as directed by Westpac, allow the Regulatory Authority or its authorised representatives access to any the Supplier premises, or Westpac premises it controls where the Services are being performed;
- (c) not disclose or advertise to a third party that the Regulatory Authority has conducted an audit under sub-clause 11.1(b);
- (d) subject to prior approval of Westpac, answer any questions or queries raised directly with the Supplier by the Regulatory Authority or its authorised representatives;
- (e) answer any questions or queries raised by Westpac, and provide any information or documents, in response to any question or query or request for information or documents Westpac has received from the Regulatory Authority, and allow such answers, information or documents to be provided by Westpac to the Regulatory Authority;
- (f) at the Regulatory Authority's request, but subject to prior approval of Westpac, provide any information or documents relating to the Goods and/or Services or this Order to the Regulatory Authority or its authorised representatives;
- (g) co-operate with Westpac in good faith and assist Westpac to meet any obligations owed by Westpac to any Regulatory Authority;
- (h) provide Westpac with all reasonable assistance in any dealings between Westpac and the Regulatory Authority in connection with this Order; and
- (i) assist Westpac in the preparation of any policy documents or risk assessments required by the Regulatory Authority relating to this Order.

Unless the Supplier is directly approached by the Regulatory Authority or its authorised representatives, Westpac will be responsible for all communications and correspondence with the Regulatory Authority about this Order. If the Supplier is directly approached by the Regulatory Authority or its authorised representatives about this Order, the Supplier must direct all inquiries to Westpac and inform Westpac immediately.

11.2 Compliance

The Supplier will:

- (a) ensure that Goods and/or Services are provided in accordance with the Westpac Group Code of Conduct; and



- (b) comply with all applicable Laws and regulations relating to:
 - (i) employment practices, the provision of employment benefits (financial or otherwise, including any health related benefits), anti-discrimination and occupational health and safety;
 - (ii) land and water management, waste and recycling, the handling and disposal of toxic substances, environmental discharges and emissions, noise and transportation of products; and
 - (iii) bribery, corruption and prohibited business practices; and
- (c) not use any child, forced or involuntary labour of any form.

- (c) both Parties may be represented by a duly qualified legal practitioner.

12.6 Obligation to continue to perform

Notwithstanding the existence of a Dispute, each Party will continue to perform its obligations under this Order.

13. Notices

13.1 Form

Subject to clause 13.2 (*Service of legal proceedings on Westpac*) and 13.4 (*Email Notices*) and unless expressly stated otherwise in this Order, all notices, requests, demands, consents, approvals, or other communications in connection with this Order ("**Notice**") must be in writing, signed by the sender (if an individual) or an authorised representative of the sender and:

- (a) addressed to and marked for the attention of the person identified in the Purchase Order or, if the recipient has notified otherwise, then marked for attention in the way last notified; and
- (b) copied to Westpac's Head of Treasury, Payments and Contracts – Legal (Facsimile: 09 367 3622).

13.2 Service of legal proceedings on Westpac

Any Notice that is given by the Supplier in relation to any legal proceedings in connection with this Order ("**Legal Notice**") must be given in writing and may be delivered by hand, sent by ordinary mail, or faxed to the address as follows:

Westpac New Zealand Limited
Westpac on Takutai Square
53 Galway Street
PO Box 934
Auckland
New Zealand
Attention: General Counsel
Facsimile: 09 367 3622

13.3 Delivery

Subject to clause 13.4 (*Email notices*), all other Notices must be:

- (a) left at or hand-delivered to the address specified in the Purchase Order;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the addresses specified in the Purchase Order; or
- (c) sent by facsimile to the numbers specified in the Purchase Order.

However, if the intended recipient has notified a changed postal address, then the communication must be to that address.

13.4 Email Notices

Any Notice other than a Legal Notice may be sent by electronic mail to the email address specified in the Purchase Order (or other address notified by the Parties from time to time).

12. Dispute resolution

12.1 Dispute Notice

Either Party may give written notice of a dispute to the other Party ("**Dispute Notice**"). A Party giving a Dispute Notice must provide details of the history and circumstances of the dispute and give reasons for why the Party is disputing the issue.

12.2 Escalation

At the expiration of five Business Days from the date of the Dispute Notice, unless the dispute has otherwise settled, the dispute may be submitted to the dispute resolution process described in clause 12.3 (*Process*).

12.3 Process

Any dispute submitted to the dispute resolution process ("**Dispute**") will be referred to the Parties' respective senior management at a level deemed appropriate by each Party given the nature of the Dispute ("**Manager's Meeting**").

12.4 Mediation

If a Dispute remains unresolved after five Business Days (or such other period agreed between the Parties) of the date of the Manager's Meeting, the Parties will, within ten Business Days (or such other period agreed between the Parties), refer the dispute to mediation. The mediation will be conducted in accordance with the then-current mediation rules and guidelines for resolution of the Resolution Institute, with the mediator to be agreed by the Parties or, if no agreement can be reached within five Business Days of the Parties referring the dispute to mediation, then the mediator will be appointed by the Resolution Institute.

12.5 Rules for mediation

If a dispute is referred to mediation:

- (a) any meetings organised will be held in Auckland, New Zealand or such other place as may be agreed by the Parties;
- (b) the Parties agree to share the costs of any mediation equally; and



13.5 When Notices considered given and received

A Notice takes effect when received (or such later time as specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, two Business Days after the date of posting (or five Business Days after the date of posting if posted to or from outside New Zealand);
- (c) in the case of delivery by electronic mail, upon receipt of a successful send report from the sender's email server; or
- (d) if sent by facsimile, on transmission of the notice to the receiving Party in complete form as evidenced by a hardcopy transmission report by the machine which sent the notice.

14. Benefit

14.1 Benefit

- (a) The Supplier agrees that any member of the Westpac Group may order and make use of the Goods and/or Services under and in accordance with this Order.
- (b) The Supplier acknowledges and agrees that a breach of this Order or negligence by the Supplier in relation to performance or failure to perform this Order may result in a loss being suffered by a member of the Westpac Group ("**Westpac Group Member Loss**").
- (c) Subject to the limitations and exclusions of liability set out in this Order, and to any claim, defence, counter-claim or right of set-off which at law, in equity or under statute would be available to the Supplier if the Westpac Group member were Westpac and the loss were suffered by it, the Supplier agrees that any Westpac Group Member Loss will be treated as a loss suffered by Westpac and Westpac may enforce any rights in relation to that loss.
- (d) In addition to entering into this Order in its own right, Westpac also enters into this Order as agent for each member of the Westpac Group for the sole purpose of:
 - (i) each member of the Westpac Group obtaining (and being able to enforce through Westpac) any rights granted to the member (which, to avoid doubt, includes the payment obligation in sub-clause 14.1(c)); and
 - (ii) each member of the Westpac Group obtaining (and being able to enforce) the benefit of the caps and exclusion on Westpac liability in this Order.

15. Governing law

This Order is governed by and construed in accordance with the Laws of New Zealand and the Parties submit to the non-exclusive jurisdiction of the New Zealand courts and any courts of appeal from them.

16. General

16.1 Assignment and novation

The Supplier must not assign or novate this Order, in whole or part, without obtaining the prior written consent of Westpac.

16.2 Westpac assignment

Westpac may assign or novate this Order to:

- (a) any Related Company of the Westpac Group at any time without consent;
- (b) any third party, if required by Westpac due to any corporate restructure or re-organisation of its business at any time without consent; or
- (c) to any other third party approved by the Supplier which approval must not be unreasonably withheld or delayed.

16.3 Subcontracting

The Supplier may not subcontract any of its obligations under this Order without obtaining Westpac's prior written consent. If Westpac consents to the use of a subcontractor, the Supplier:

- (a) is not relieved of any of its liabilities or obligations under this Order and remains liable to Westpac for the acts, defaults and neglect of any subcontractor or any employee or agent of the subcontractor as if they were the acts, defaults or neglect of the Supplier;
- (b) must enter into a written agreement with the subcontractor; and
- (c) must include in any subcontract entered into by the Supplier in connection with this Order, the contractual right of the Supplier to terminate that subcontract on the same grounds as Westpac's right to terminate this Order under clause 9 (*Termination*).

16.4 Force Majeure

- (a) To the extent that a Party's delay or inability to perform under this Order is due to the existence of Force Majeure, the affected obligations of that Party under this Order will, upon notification of Force Majeure to the other Party, be suspended until the passing of that Force Majeure event. A Party must take all reasonable steps to minimise any disruption to and resume the performance of its affected obligations as soon as possible.
- (b) If all or substantially all of a Party's obligations under this Order are suspended by a Force Majeure event under sub-clause 16.4(a) by more than 21 days, the other Party may elect to terminate this Order without penalty, or initiate discussions to modify the affected obligations by variation of this Order.

16.5 Publicity

Subject to clause 7.1 (*Treatment of Confidential Information*), the Supplier must not disclose, distribute or otherwise communicate any media release, promotional material or publicity in connection with this Order, its relationship with the Westpac Group, or



otherwise refer to the Westpac Group or any service mark or trade mark of the Westpac Group without the prior written approval of Westpac, including for the avoidance of doubt referring to the name or logo of any member of the Westpac Group on the Supplier's website or in any marketing material. Westpac may grant or withhold approval in its sole discretion.

16.6 No waiver

A waiver by either Party in respect of a breach of a provision of this Order by the other Party will not be taken to be a waiver in respect of any other breach. The failure to enforce any provision of this Order will not be interpreted as a waiver of that provision.

16.7 Set off

Westpac may set off against any amount due for payment by Westpac to the Supplier under this Order any amount owed by the Supplier to Westpac under this Order.

16.8 No liability for loss

A Party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this Order.

16.9 Remedies cumulative

Except as otherwise provided in this Order, all rights and remedies available to a Party under this Order are cumulative and not exclusive of any other rights or remedies at Law.

16.10 Variation

This Order may only be varied by written amendment signed by both Westpac and the Supplier.

16.11 Severability

Any provision of this Order that is prohibited or unenforceable will be ineffective to the extent of the prohibition or enforceability. This will not, however, invalidate the remaining provisions of this Order.

16.12 Indemnities

The indemnities in this Order are continuing obligations, independent from the other obligations of the Parties under this Order and continue after this Order ends. It is not necessary for a Party to incur expense or make payment before enforcing a right of indemnity under this Order.

16.13 Further steps

Each Party will, at its own expense, do any thing the other Party asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

- (a) to bind the Party and any other person intended to be bound under this Order;
- (b) to enable the Party to exercise its rights; and
- (c) to show whether the Party is complying with this Order.

16.14 Prompt performance

If this Order specifies when the Party will perform an obligation, the Party will perform it by the time specified. Each Party agrees to perform all other obligations promptly.

16.15 The Supplier's invoice

The provisions of this Order will prevail over any terms and conditions contained in the Supplier's invoice or other trade documentation.

16.16 Entire Order

This Order constitutes the entire agreement of the Parties about its subject matter and supersedes all previous Orders, understandings and negotiations on that subject matter, subject to sub-clause 10.4(c)(vi).

16.17 No relationship

Nothing in this Order will be taken to constitute the Supplier as an employee, agent, partner or joint venturer of Westpac nor is the Supplier authorised to represent itself as acting, or to incur an obligation, on behalf of Westpac.

17. Interpretation and definitions

17.1 Reference to general terms

- (a) Headings and italicised, highlighted or bold type do not affect the interpretation of this Order.
- (b) A reference to a "person" includes any individual, firm, company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate and any Government Agency (whether or not having a separate legal personality).
- (c) A reference to a body, other than a Party to this Order (including an institute, association or authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions.
- (d) specifying anything in this Order after the words "include", "including", "for example", "such as" or similar expressions does not limit what else is included unless there is express wording to the contrary.
- (e) A reference to "\$", "NZ\$", "NZD", "dollars" or "Dollars" is a reference to the lawful currency of New Zealand.

17.2 Definitions

Business Day means a day on which banks are open for business in Auckland (other than a Saturday, Sunday or public holiday in Auckland).

Charges means the charges set out in the Purchase Order.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature whatsoever arising and whether present or future, fixed or unascertainable, actual or contingent whether at law, in equity, under statute or otherwise.



Commencement Date means the date set out in the Purchase Order. If there is no Commencement Date specified, then the Commencement Date is the Date of Purchase Order.

Confidential Information means all information of a confidential nature, in any form whether tangible or not and whether visible or not, disclosed or communicated by a Party to the other, or learnt or accessed by, or to which the other Party is exposed as a result of entering into this Order and includes, without limitation, any information (including Regulated Information) and material concerning the contractual or commercial dealings, financial details, products or services (current or proposed), customers, employees, internal policy, the Intellectual Property or other proprietary information or material of a Party or dealings under this Order.

Consideration has the meaning given in the GST Law.

Date of Order means the date specified the Purchase Order. If there is no Date of Order specified, then the Date of Order is the date on which the Purchase Order is issued by Westpac.

Deliverable means any work or material created or developed by or on behalf of the Supplier for Westpac as specified in or required by the Purchase Order.

Delivery Site means the site(s) set out in the Purchase Order.

Dispute Notice has the meaning given in clause 12.1 (*Dispute Notice*).

Force Majeure includes the following events beyond the reasonable control of a Party:

- (a) act of nature;
- (b) war or terrorism;
- (c) national emergency;
- (d) epidemic;
- (e) act or inaction of government or regulatory agency; and
- (f) industrial action outside that Party's own workforce.

Goods means those items set out in the Purchase Order.

Government Agency means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world and includes any self-regulatory organisation established under statute or any stock exchange.

GST has the meaning given in the GST Law

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law means the Goods and Services Tax Act 1985, as amended from time to time.

Indemnifying Party has the meaning given in clause 10.5 (*Indemnity*).

Input Tax has the meaning given in the GST Law.

Insolvent means having an administrator appointed, being in receivership, in liquidation, in provisional liquidation, wound up, subject to any arrangement, assignment or composition, protected from creditors

under law, dissolved (other than to carry out a restructure while solvent) or being otherwise unable to pay debts when they fall due or having something with the same or a similar effect happen under the laws of any jurisdiction.

Intellectual Property Rights means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, Confidential Information, patents, invention and discoveries and all other intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation 1967. Intellectual Property has a corresponding meaning.

Law means any principle in common law or equity and any requirement under any legislation, rule or instrument, code of practice, ordinance or by law, present or future.

Moral Rights means any moral rights including the rights described in Article 6bis of the Berne Convention for Protection of Literary and Artistic Works 1886 (as amended and revised from time to time), being "droit moral" or other analogous rights arising under any statute (including the Copyright Act 1994 or any other law of New Zealand), that exist or that may come to exist, anywhere in the world.

Notice has the meaning given in clause 13.1 (*Form*).

Order means the Purchase Order together with these Standard Terms and Conditions.

Party means either Westpac or the Supplier, collectively referred to as the **Parties**.

Personal Information has the meaning in the Privacy Act 1993.

Purchase Order means the purchase order submitted by Westpac to the Supplier for the Goods and/or Services.

Recipient means the Party receiving Confidential Information. Regulated Information means all Personal Information and any other information or opinion, whether true or untrue, and whether or not recorded in material form, about any entity other than an individual which the Supplier received or has access to under, or for the purpose of or in the course of carrying out its obligations under this Order.

Regulated Information means all Personal information and any other information or opinion, about any entity whether individual or not, which the Supplier has access to for the purposes of this Order.

Regulatory Authority means any body having regulatory authority or supervisory authority over any part of the business or affairs of Westpac including the Reserve Bank of New Zealand (RBNZ) and the Financial Markets Authority (FMA).

Related Companies has the meaning of "related company" as that term is defined in the Companies Act 1993.

Representative of a Party includes an employee, agent, officer, director, auditor, advisor, partner, consultant, supplier, contractor or sub-contractor of that Party.

Services means the services specified in the Purchase Order.



Specifications means Westpac's requirements as communicated to the Supplier in the Purchase Order; and the Supplier's or relevant manufacturer's (as the case may be) published specifications, marketing material, technical or operating documentation.

Standard Terms and Conditions means the terms and conditions set out in this document.

Supplier means the provider of the Goods and/or Services to which the Order applies.

Supply has the meaning given in the GST Law.

Taxable Supply has the meaning given in the GST Law.

Taxes means all taxes, charges, duties, levies, fees and other government imposts levied, assessed or collected, including any related fine or penalty (excluding GST).

Tax Invoice has the meaning given in the GST Law.

Term means the term specified in the Purchase Order (if applicable).

Westpac means Westpac New Zealand Limited.

Westpac Data means all data and information relating to the Westpac Group and its operations, facilities, customers, clients, personnel, assets and programs in whatever form that information may exist and whether entered into, stored in, generated by or processed as part of the use of or provision of Goods and/or Services and any other data relating to the Goods and/or Services.

Westpac Group means Westpac and its Related Companies.

Westpac Group Code of Conduct means the Westpac Group Code of Conduct as amended from time to time and is set out at the following weblink: http://www.westpac.com.au/docs/pdf/aw/Westpac_Group_Code_of_Conduct_August_2011.pdf

Westpac Group Member Loss has the meaning given in sub-clause 14.1(b).