

## 1. When these Terms apply

- 1.1. These Terms apply when ASB purchases Goods or Services from a Supplier. If ASB and the Supplier have agreed a separate written agreement for the provision of Goods and Services, then that written agreement will take precedence over these Terms.
- 1.2. Any terms or conditions that the Supplier may purport to apply (for example in a quote) are excluded, unless ASB expressly agrees to any of those terms in writing or via an electronic acceptance method.
- 1.3. The Supplier agrees to these Terms when the Supplier completes Registration.

## 2. Purchase Order

- 2.1. The Purchase Order is an offer by ASB to purchase the Goods and Services on these Terms.
- 2.2. The Supplier will be deemed to accept the Purchase Order on the earlier of the performance of the Services, the shipment of the Goods or on acknowledgement of a Purchase Order. Within 48 hours of receipt of a Purchase Order the Supplier must:
  - (a) acknowledge receipt of the Purchase Order to ASB; or
  - (b) notify ASB in writing if the Supplier rejects the Purchase Order.

## 3. Performance and Delivery

- 3.1. The Supplier must:
  - (a) perform the Services and/or deliver the Goods:
    - (i) in accordance with the Purchase Order and these Terms; and
    - (ii) on or before the day that is 5 Business Days from the date that the Purchase Order was issued (except as otherwise agreed between the parties or specified on the Purchase Order);
  - (a) perform its obligations under these Terms and the Purchase Order in a diligent and professional manner with the degree of skill and care that is normally exercised by professionals that supply services or goods of a similar nature;
  - (b) comply with the ASB Supplier Code of Conduct (available at <https://www.asb.co.nz/about-us>); and
  - (c) properly package Goods to protect them from any damage and deliver the Goods to the correct Delivery Location.

- 3.2. Time is of the essence with respect to the performance of the Services and delivery of the Goods.

## 4. Supplier warranties

- 4.1. The Supplier warrants that:
  - (a) the Supplier representative that completes Registration is properly authorised to act for the Supplier;
  - (b) it is authorised to accept the Purchase Order and be bound by these Terms;
  - (c) it holds all licences, approvals, permits, consents, rights (including Intellectual Property Rights) necessary to perform the Services and/or deliver the Goods;
  - (d) the Goods and/or Services will comply with all applicable laws, standards and codes and the use of the Services and/or Goods by ASB will not breach any law;
  - (e) it will only use appropriately skilled and trained personnel to perform its obligations under the Purchase Order and these Terms;
  - (f) the Goods and/or Services will meet any specifications described in the Purchase Order; and
  - (g) the Goods will:
    - (i) be new and unused;
    - (ii) correspond with any description or sample provided by the Supplier to ASB;
    - (iii) be fit for their intended purpose, and free from any defects in materials, workmanship and manufacture; and
    - (iv) be free from any security interest, encumbrance, charge, lien or liability.

## 5. Third party warranties

- 5.1. The Supplier will transfer or assign to ASB any third party warranties relating to the Goods and/or Services, or if it is unable to do so, will hold those third party warranties for the benefit of ASB.

## 6. Payment and invoices

- 6.1. ASB will pay the Supplier all undisputed Fees on the 20th day of the month following the date of receipt of a valid tax invoice.
- 6.2. Unless otherwise agreed in writing, the Fees exclude GST, but are inclusive of all other taxes and amounts including freight, insurance or other expenses that the Supplier may incur in the delivery of the Goods and performance of the Services.

6.3. The Supplier must issue a tax invoice to ASB that:

- (a) is in accordance with the Goods and Services Tax Act 1985;
- (b) identifies the Goods and/or Services that the invoice relates to;
- (c) displays the Purchase Order reference; and
- (d) shows the amount of correctly calculated Fees and any other amounts payable by ASB in accordance with the Purchase Order.

6.4. ASB may withhold tax from payments due to the Supplier under the Purchase Order to the extent that such withholding is required by law. If any withholding tax is required by law, the Fees will not be increased and ASB will not be required to pay any additional amount to the Supplier on account of that withholding. In the event that no tax is withheld and ASB is liable to withhold tax from the payments made under the Purchase Order, the Supplier will pay within 30 days of receiving notice from ASB, the amount of withholding tax and any related interest or penalties.

6.5. If ASB disputes any invoice:

- (a) the Supplier must continue to provide any Goods or Services and perform its obligations in accordance with the relevant Purchase Order and these Terms; and
- (b) ASB is not obliged to pay the amount(s) in dispute, until the dispute is resolved in accordance with clause 19.

## 7. Title and risk

- 7.1. Unless otherwise agreed, title and risk to the Goods passes to ASB on full payment for the Goods.
- 7.2. ASB does not accept any risk or responsibility for any Supplier equipment or materials used at ASB's premises.

## 8. Term and Termination

- 8.1. Subject to earlier termination in accordance with these Terms, the Purchase Order commences on the Commencement Date and continues for the Term.
- 8.2. ASB may terminate or cancel the Purchase Order in whole or part without cause by giving the Supplier 14 days notice in writing.
- 8.3. ASB may terminate the Purchase Order immediately by notice to the Supplier if:

- (a) the Supplier commits a breach of these Terms or the Purchase Order which is capable of remedy, and fails to remedy that breach within 30 days from the date ASB notifies the Supplier of the breach;
- (b) the Supplier commits a breach of these Terms or the Purchase Order, which is not capable of remedy;
- (c) the Supplier's conduct, in ASB's reasonable opinion, may bring ASB into disrepute or adversely affect ASB's image or reputation;
- (d) an insolvency event occurs in relation to the Supplier. The Supplier must notify ASB as soon as it becomes aware that an insolvency event has occurred, or is likely to occur, in relation to the Supplier; or
- (e) if a change in control of the Supplier occurs. The Supplier must promptly notify ASB if a change in control of the Supplier occurs.

8.4. The Supplier may terminate the Purchase Order with immediate effect if ASB commits a material breach of its obligations under these Terms and ASB has not remedied that breach within 30 days of receiving a notice detailing that breach and requiring it to be rectified.

8.5. Any termination of the Purchase Order will be without prejudice to any other rights or remedies either party may have under these Terms, the Purchase Order or at law and will not affect any accrued rights or liabilities of either party.

8.6. Clauses 4, 5, 6.4, 8.5, this clause 8.6, 9.1, 9.2, 9.3, 10, 11, 12, 13, 14.1(b), 15 and any other provisions of these Terms and/or the Purchase Order which are expressly or by implication intended to come into or continue in force on or after such termination will survive the termination, cancellation or expiry of the Purchase Order.

## 9. Intellectual Property Rights

- 9.1. To the extent that ASB is required to use any Supplier IP to receive the Services, the Supplier grants to ASB a perpetual, transferable, royalty free, worldwide, irrevocable, non-exclusive licence to use, copy, distribute, adapt, and communicate the Supplier IP in a manner that is contemplated and consistent with the operation and use of the Services so that ASB may obtain the full benefit of the Services.
- 9.2. Any New IP vests in ASB on creation, free of all rights and interest of the Supplier. To the extent the Supplier has any rights in and to any New IP, the Supplier assigns to ASB any rights, title and interest (including all

Intellectual Property Rights) that the Supplier has in and to any New IP. The Supplier agrees to do all further acts, including signing any documents in order to give effect to this clause.

9.3. The Supplier warrants that:

- (a) the Goods and Services do not, and ASB's use of the Goods and Services will not, infringe on the rights (including Intellectual Property Rights) of any person; and
- (b) it has all necessary rights to assign any Intellectual Property Rights in and to any New IP to ASB in accordance with clause 9.2.

9.4. For the Term, ASB grants the Supplier a non-exclusive, non-transferable, royalty-free licence for the Supplier to use the ASB IP solely for the purpose of, and only to the extent necessary for the Supplier to provide the Services in accordance with these Terms and the Purchase Order.

## 10. Indemnity

10.1. The Supplier indemnifies ASB for any claim, action, proceeding, damage, loss, liability, cost, charge, expense (including reasonable legal costs and expenses on a solicitor and client basis), outgoing or payment paid, suffered or incurred by ASB that arises out of or is in connection with:

- (a) any claim, action or proceeding that the use, modification, adaptation or any other exploitation of the Services or Goods infringes the Intellectual Property Rights of any person;
- (b) any damage to property of ASB or a third party, or any death or injury of persons that is caused by any act or omission of the Supplier (or its personnel or subcontractors) in connection with the performance of the Services or Goods; and/or
- (c) the Supplier's breach of these Terms and/or the Purchase Order.

## 11. Liability

11.1. To the maximum extent permitted by law, ASB's aggregate liability under each Purchase Order and these Terms whether under contract, tort (including negligence) or statute will not exceed an amount equal to the total amount of Fees under the applicable Purchase Order, and ASB will not be liable for consequential, indirect, special or incidental losses.

## 12. Confidentiality

12.1. The Supplier acknowledges and agrees that:

- (a) ASB Confidential Information is secret and confidential to ASB and its Related Companies;
- (b) the Supplier does not acquire any rights or interests of any kind in or to any ASB Confidential Information;
- (c) ASB and its Related Companies has legal obligations of confidentiality and privacy to their customers; and
- (d) any unauthorised use or disclosure of ASB Confidential Information could cause ASB or its Related Companies substantial loss or damage.

12.2. The Supplier must:

- (a) keep confidential all ASB Confidential Information and must not communicate, reveal, supply or make known or available any ASB Confidential Information to any person except with the prior written consent of ASB;
- (b) not use ASB Confidential Information for a purpose other than the performance of its obligations to provide the Goods and Services; and
- (c) store ASB Confidential Information in accordance with these Terms and any other security requirements or directions given by ASB and take all steps and do all things necessary, prudent or desirable in order to safeguard the confidentiality of the ASB Confidential Information.

12.3. To the extent necessary for the purposes of carrying out its obligations under the Purchase Order and these Terms, and on a "need to know" basis, the Supplier may disclose ASB Confidential Information to its employees and professional advisors provided that the Supplier is responsible for ensuring that such employees and professional advisors observe all of the obligations of confidentiality under these Terms.

12.4. The obligations of confidentiality under these Terms do not extend to information which is required to be disclosed by any law, authority, judicial body, regulator or stock exchange, provided that the Supplier discloses only the minimum amount of ASB Confidential Information required to satisfy any the relevant law or rule, and before disclosing any ASB Confidential Information, the Supplier gives reasonable notice to ASB and takes all reasonable steps (whether required by ASB or not ) to maintain that ASB Confidential Information in confidence.

12.5. On the termination, cancellation or expiry of the Term, or otherwise on the request of ASB at any time,

the Supplier agrees to return or securely destroy any ASB Confidential Information in the possession or control of the Supplier.

- 12.6. This clause will continue to apply following any termination, cancellation or expiry of the Term.

### 13.No public announcements

- 13.1. The Supplier must not, without obtaining ASB's prior written consent (which may be withheld at ASB's sole discretion):

- (a) communicate, make any public announcements or publicise the existence of the Purchase Order or the Supplier's relationship with ASB in any way;
- (b) use ASB as a reference; or
- (c) refer to, publish on any media, communicate or use ASB's name or any trade mark of ASB in any manner.

### 14.Record keeping

- 14.1. The Supplier must:

- (a) generate such documentation and records which are reasonably required to demonstrate the Supplier's compliance with these Terms, the Purchase Order and any applicable law; and
- (b) maintain such records in an accessible and secure form for any period required by law, or such other period as specified by ASB in writing or as is reasonably necessary in order for the Supplier to demonstrate its compliance with these Terms, the Purchase Order and any applicable law.

### 15.Audits

- 15.1. On ASB giving the Supplier reasonable notice the Supplier must provide the ASB or its agents with access (during normal business hours) to the personnel, premises, documentation and operational records relating to the Services and Goods for audit and inspection purposes. ASB will use all reasonable endeavours to avoid disruption to the Supplier's business and comply with all reasonable security and confidentiality requirements of the Supplier.
- 15.2. The Supplier must co-operate in any audit, including providing copies of any documents, records and data, making appropriate personnel available and providing appropriate access to premises.
- 15.3. Without limiting any rights or remedies of ASB, if any audit reveals that the Supplier is not complying with these Terms and/or the Purchase Order, the Supplier must take such action as is necessary to promptly

remedy the non-compliance and provide such evidence, reports or other information as is reasonably required by ASB to confirm that any non-compliance has been remedied.

- 15.4. Each party will bear its own costs associated with an audit, except if an audit reveals that the Supplier has breached the Terms and/or the Purchase Order in a material way, then the Supplier will reimburse ASB for ASB's reasonable costs for carrying out the audit.

### 16.Data Security

- 16.1. The Supplier must establish, maintain and enforce appropriate technical and organisational security measures to protect ASB Confidential Information, ASB data, information systems or facilities, and the Services against unauthorised or unlawful access or use or accidental loss or destruction or damage, and any anticipated threats or hazards to the security or integrity or availability.
- 16.2. The Supplier must implement monitoring control in accordance with Best Practice to enable identification and detection of an actual, alleged or suspected security breach of its systems.
- 16.3. If the Supplier becomes aware of a Security Incident, then the Supplier must:
- (a) notify ASB of the Security Incident;
  - (b) remedy the Security Incident and its consequences;
  - (c) ensure that any potential Security Incident does not become an actual Security Incident; and
  - (d) provide ASB with a report detailing the cause of, and procedure for correcting the Security Incident, and co-operate and comply with any reasonable instructions from ASB in respect of the management and prevention of escalation of the Security Breach until it is rectified.
- 16.4. All data repositories in the Supplier's systems that contain ASB Confidential Information or other ASB data must ensure that the information is appropriately secured by Best Practice encryption. All electronic communications between ASB and the Supplier containing ASB data are to be appropriately secured by Best Practice encryption.
- 16.5. The Supplier will securely destroy all ASB data and ASB Confidential Information when it is no longer required by the Supplier to perform its obligations under these Terms or the Purchase Order, or otherwise on ASB's request.



16.6. The Supplier must carry out appropriate reference and background checks (including such checks requested by ASB) on the Supplier's personnel having regard to the nature of the Services and Goods and the financial services industry. The Supplier will, on the request of ASB provide evidence of its compliance with this obligation.

### 17. Health and Safety

17.1. The Supplier must comply with, and ensure that all Supplier personnel and subcontractors engaged in the provision of the Services and Goods comply with, Health and Safety Law and any and all ASB directions, instructions, requests, policies or requirements relevant to, associated with or necessary for compliance by the Supplier or ASB with Health and Safety Law and including any such matters of which the Supplier has been informed by ASB orally or in writing, at the Supplier's cost.

17.2. The Supplier must cooperate with and do all things necessary to assist, and refrain from doing anything that may impede ASB or their personnel in discharging their obligations under the Health and Safety Law.

17.3. The Supplier must perform the Services in a manner that does not cause ASB to breach its obligations under the relevant Health and Safety Law.

17.4. The Supplier must, upon reasonable request by or on behalf of ASB, demonstrate compliance with such requirements including providing evidence of measures taken to achieve such compliance.

17.5. Any breach by the Supplier of this clause 17 which exposes personnel or other people at ASB's premises to risk to their health and safety will be considered a material breach by the Supplier of its obligations under these Terms which is not capable of remedy, and will entitle ASB to terminate the provision of the affected Services.

### 18. Assignment and subcontracting

18.1. ASB may at any time, by notice to the Supplier, novate, assign or transfer its rights and obligations under the Purchase Order and these Terms to a Related Company. Such novation, assignment or transfer will be at no additional cost to ASB or any of its Related Companies.

18.2. The Supplier may not subcontract, assign or transfer in whole or in part its rights and obligations under the Purchase Order or these Terms without

the prior written consent of ASB (such consent may be given or withheld at ASB's sole discretion).

18.3. If ASB does consent to the Supplier engaging a subcontractor, the Supplier will not be relieved of any of its liabilities or obligations under these Terms and/or the Purchase Order and will be liable for any acts or omission of any of its subcontractors as if they were the acts or omissions of the Supplier.

### 19. Dispute resolution

19.1. If a party considers that a dispute has arisen, it may give a notice to the other party. The notice must set out the particulars of the dispute. Promptly after the receipt of a notice of a dispute, a Supplier representative and an ASB representative must meet to discuss the dispute and negotiate in good faith to resolve the dispute. This clause does not prevent a party seeking urgent interlocutory relief.

### 20. Business Continuity

20.1. The Supplier represents and warrants that it has a business continuity plan for its business, to provide for the continuity of critical business functions relevant to the Services in the event of the loss, disablement, impairment or suspension of key facilities, resources, technologies or suppliers due to a Force Majeure Event.

### 21. Force Majeure Event

21.1. Neither party will be liable for a failure or delay in performing its obligations under these Terms and/or the Purchase Order provided that:

- (a) such failure or delay is directly attributable to a Force Majeure Event and could not have been prevented by reasonable precautions or circumvented or minimised by the non-performing party; and
- (b) the party unable to perform its obligations gives notice of the Force Majeure Event to the other party as soon as reasonably possible.

21.2. The Supplier acknowledges that ASB is not liable for any Fees for Services and/or Goods that the Supplier does not provide due to a Force Majeure Event.

### 22. Amendments to these Terms

22.1. ASB may amend these Terms from time to time by posting the revised version of these Terms on [www.asb.co.nz](http://www.asb.co.nz) and/or notifying the Supplier by email or via the electronic messaging service

available through the procurement portal provided by Unimarket Limited.

- 22.2. If the Supplier continues to perform its obligations under a Purchase Order following the effective date of any amendment, the Supplier will be deemed to have accepted the amendment to these Terms.

### 23. ASB Related Companies

- 23.1. All references to ASB refer equally to ASB or any of its Related Companies, and these Terms and any Purchase Order are entered into for the benefit of ASB and any of its Related Companies and will be enforceable by any Related Company of ASB under the Contracts (Privity) Act 1982.

### 24. Governing law and jurisdiction

- 24.1. These Terms are governed by New Zealand law and each party irrevocably submits to the non-exclusive jurisdiction of the courts of New Zealand.

### 25. Definitions

**ASB** means ASB Bank Limited and its Related Companies.

**ASB Confidential Information** means any information:

- (a) regarding the business or affairs of ASB;
- (b) regarding the customers, clients, employees or contractors of, or other persons doing business with ASB;
- (c) relating to the Purchase Order;
- (d) which is by its nature confidential or which is designated as confidential by ASB; and/or
- (e) which the Supplier knows, or ought to know, is confidential.

**ASB IP** means all Intellectual Property Rights which are owned or licensed by ASB, including any New IP.

**Best Practice** means:

- (a) the exercise of that degree of professional skill, diligence, prudence, foresight and operating practice that reasonably would be expected from an experienced professional providing services similar to the Services; and
- (b) in accordance with the law.

**Business Days** means any day other than a Saturday, Sunday, public holiday or bank holiday in Auckland, New Zealand.

**Commencement Date** means the commencement date set out in the applicable Purchase Order, or if no

commencement date is specified, the date of the applicable Purchase Order.

**Delivery Location** means the delivery location specified in the Purchase Order.

**Fees** means the fees for the Goods and/or Services and set out or calculated in accordance with the Purchase Order.

**Force Majeure Event** means an event or circumstance that is beyond the reasonable control of a party.

**Goods** means the goods described in the Purchase Order;

**Health and Safety Law** means the Health and Safety at Work Act 2015, and includes any regulations, orders, safe work instruments, codes of practice and notices made, issued or approved under that Act, and any other relevant work or occupational health and safety legislation, including any regulations or codes of practice, and any consolidations, amendments, re-enactments or replacements of the legislation.

**Intellectual Property Rights** means all intellectual property rights throughout the world and includes rights in respect of copyright, patents, trademarks, designs, trade secrets, know-how, confidential information and circuit layouts and includes any application or right to apply for registration of any of the rights referred to in this definition.

**New IP** means any new Intellectual Property Right created or arising out of the provision of the Services or Goods.

**Purchase Order** means an order for Goods and/or Services on these Terms that is submitted to the Supplier by ASB.

**Registration** means the online registration process that the Supplier must complete on ASB's procurement portal provided by Unimarket Limited.

**Related Company** means a related company as defined in section 2(3) of the Companies Act 1993 save that references to "company" in that section will be deemed to include companies whether incorporated or constituted in New Zealand or elsewhere.

**Security Incident** means any act or omission which impacts or is likely to impact the confidentiality or integrity of ASB Confidential Information, ASB data, information systems or facilities, or the availability or security of the Services.

**Services** means the services described in the Purchase Order.

**Supplier** means the supplier identified on the Purchase Order.

**Supplier IP** means all pre-existing Intellectual Property Rights which are owned or licensed by the Supplier prior to the Commencement Date or created by the Supplier other than pursuant to providing the Services.

**Term** means the term specified in the Purchase Order, or if no term is specified means the period commencing from the Commencement Date until the date the Purchase Order is terminated in accordance with these Terms.

**Terms** means these terms and conditions.

### 26. Interpretation

26.1. In these Terms, unless a contrary intention appears:

- (a) if there is any inconsistency between any information contained in a Purchase Order and these Terms, the Purchase Order will take precedence;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a party to a document includes that party's successors and permitted assigns;
- (d) a "person" includes any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, estate, agency of state, municipal authority, government or statutory body, whether or not having separate legal identity; and
- (e) the terms "including", "for example", "such as" and similar terms do not imply any limitations.