ordinarily expected from a skilled, reasonable and experienced operator in the same or similar circumstances;
(c) at the time of Delivery the Products will be new and unused (unless otherwise agreed by the Ministry) and of merchantable quality, fit for the usual purposes for which they are intended and fit for any particular purpose made known by you, in accordance with the Specifications;
(d) the Products and/or Services will comply with the Specifications and applicable statutory requirements;
(e) products will be free of any security interest, lien or other encumbrance;
(f) the Products or deliverables will not infringe nor violate any intellectual property rights;
(g) the Products will be Delivered on the Delivery date specified in the Order or where no such date is specified within a reasonable time of the Ministry placing the Order;
(h) you have the right to supply the Products and/or Services.

9. DEFAULT AND CANCELLATION

9.1 If you breach any of the representations contained in clause 8.1 or in any Contract then at the sole option of the Ministry and without prejudice to any other remedy or right, the Ministry shall be entitled to:
(a) reject the Products and/or Services in whole or in part and return the Products to you at your risk and expense and you must immediately reimburse the Ministry for all losses and damage sustained by the Ministry as a result of the Products;
(b) cancel the Order and, if the Products have been Delivered to you, you will return to the Ministry at your expense such Products and/or Services which are in good order and condition;
(c) require you to replace, repair, restate or resupply the Products at your expense so they conform to the Contract; or may have the Products replaced, repaired, or resupplied by another person and recover the cost of such replacement, repair or resupply from you;
(d) suspend or terminate the Contract and/or Order and suspend payment for the Products until the breach has been remedied.

9.2 The Ministry may cancel any Order at any time on 30 days written notice, or immediately on written notice if you have materially breached the Contract and failed to remedy the material breach within 7 days after written notice has been given specifying the material breach and requiring it to be remedied.  Breach of any representation by you can be treated by the Ministry as a material breach of the Contract whether or not the Ministry elects to accept any of the Products and/or Services.

9.3 Either party may cancel any Order immediately if the other party becomes bankrupt, or enters into a formal proposal for a compromise with creditors, or engages in conduct of a wilful default or makes a receiver of the other.

9.4 No failure or delay on the part of the Ministry in exercising any of its rights in relation to any default or breach of the Contract shall operate as a waiver of any rights or remedies available to the Ministry.

9.5 An Order may be cancelled by the Ministry on 30 days written notice if any representation made by you in the Order is not complied with on the date of delivery.

9.6 Cancellation of an Order does not affect any obligations or responsibilities which are intended to continue or come into effect under the Contract.

9.7 You may cancel any Order upon written notice to the Ministry and any right given to the Ministry shall be effective immediately after the notice is given.

10. INDEMNITY AND LIABILITY

10.1 You will indemnify and hold the Ministry harmless against all actions, proceedings, losses, (including reasonable legal expenses) suffered or incurred by the Ministry in relation to any actual or threatened claim or by or on behalf of any person for a breach of any of the representations in clause 8.1.

10.2 Neither party will be liable to the other (under the law of contract, tort (including negligence), equity or otherwise) for any damages of any kind arising out of or in connection with this Agreement that are indirect or consequential.

11. THE RELATIONSHIP BETWEEN YOU AND THE MINISTRY

11.1 Nothing in a Contract will be construed to constitute either party as agent, partner or joint venturer of the other. A Contract does not authorise either of the parties to bind or commit the other in any way, including any other similar arrangement.

11.2 The Ministry’s relationship with you is not exclusive, you are free to supply goods to other persons and the Ministry is free to purchase goods (including goods equivalent to yours) from other suppliers.

11.3 You acknowledge that for the purposes of each Contract the Ministry are to be treated as a “consumer” in terms of the Consumer Guarantees Act 1993.

12. CONFIDENTIALITY

12.1 Each party undertakes to the other that neither it nor its officers, employees, agents and/or subcontractors will divulge the other party’s Confidential Information to others, without the prior written consent of the other party, other than as required in the ordinary course of performing its obligations under the Contract or as may be necessary for the Ministry to promote, sell or service the Products or provide the Services under the Contract.  All Confidential Information provided by the Ministry will be and will remain the property of the Ministry and you must use the Confidential Information only for the purpose of a Contract and/or Order, and return the Confidential Information to the Ministry upon the Ministry’s request at any time or if no request is made, upon completion or termination of a Contract.

13. GENERAL

13.1 You may not assign or otherwise transfer any of the rights, benefits or obligations under the Contract, without the prior written consent of the other party.

13.2 You must not sublet or otherwise arrange for a receiver or enter into a formal proposal for a compromise with creditors, or engage in conduct of a wilful default or make a receiver of the other.

13.3 The Contract is governed by New Zealand law.

13.4 These terms of purchase will prevail to the extent of any inconsistency with them and will override any of them.

14. NOTICES

14.1 Any notice to be given under the Contract must be in writing and must be sent by email, or delivered or sent by post to the Ministry or to the appropriate registered office, or to the registered office of a partner or joint venturer of the other.  A notice is received when it has been sent by email, or has arrived at the appropriate registered office, or is embodied in a written document sent by post.

14.2 The party who receives a notice will be deemed to have received the notice:
(a) if sent by post, 2 Business Days after it has been posted; or
(b) if sent by email, at the time when the recipient’s email server acknowledges receipt.

Ministry of Education

Terms of Purchase

1. DEFINITIONS AND INTERPRETATION

1.1 When used in this Contract, the words defined in this clause shall have the meaning given to them in this clause unless the contrary intention appears from the contract.

“Business Day” means any day other than a Saturday or Sunday, or a public holiday observed in Wellington, New Zealand (as defined in the Holidays Act 2003) between the hours of 9:00am and 5:00pm.

“Confidential information” means information which is either by its nature confidential, is designated by a party as confidential or which the recipient ought in all reasonableness to know is confidential to a party, including any research materials, trade secrets, know-how (including drawings, patterns, samples, designs and specifications) and information that the party would not normally disclose to third parties.

“Contract” means the agreement for the purchase of Goods and/or Services, and includes these terms of purchase and the Order, and any other terms which are partly written and partly oral, and which the parties have agreed in writing.

“Delivery” means the delivery of the Products in good order and condition to a location nominated by the Ministry, and in time for the completion of the Services to the Ministry’s satisfaction, and “Deliver” has a corresponding meaning;

“Order” means a purchase order for Products and/or Services which may be placed by the Ministry from time to time containing a reference to these terms of purchase.

“Products” means the goods specified in the Order and all parts or components of those goods.

“Ministry” means the Ministry of Education.

“Price” means the price for the Products and/or Services specified in an Order.

“Services” means the services and deliverables to be carried out or provided by you as specified in the Order.

“Specification” means any plans, drawings, data or other information relating to the Products and/or Services.

“Your” means the person to whom the Order is made.

1.2 References to a statute, or a provision of a statute, include any amendment to, or replacement of that statute and any subordinate legislation made under it.

1.3 Headings appear as a matter of convenience only and will not affect the interpretation of the Contract.

2. EXISTENCE OF THE CONTRACT

2.1 An Order constitutes an offer by the Ministry to purchase Products and/or Services (subject to its acceptance), and only upon delivery of the Products and/or Services in good order and condition to the Ministry, the Order will be deemed accepted by the Ministry.

2.2 These terms of purchase are incorporated into, and shall govern the exclusion of all other terms relating to the same subject matter (including any terms and conditions of sale or supply or other paperwork) relating to the supply of Products and/or Services by you to the Ministry. Any additional terms proposed by you must be accepted in writing by the Ministry to be binding.

2.3 An Order may be terminated by the Ministry unless accepted by you within 15 Business Days of the date of the Order.

3. SPECIFICATIONS

3.1 The quantity and description of the Products and/or Services shall be as specified in the Order and/or any applicable Specification supplied to you by the Ministry, or agreed in writing by you and the Ministry.

4. TERMS OF PAYMENT

4.1 Following Delivery the Ministry will pay the 20th day of the month following the month of receipt of your valid invoice.

4.2 You must, within three months of being entitled to invoice for payment, send a valid tax invoice for GST purposes to the Ministry at accountspayable@education.govt.nz or the Ministry’s registered office, or if you have no registered office, your usual address.  Sent by email, or

4.3 You may not assign or otherwise transfer any of the rights, benefits or obligations under the Contract, without the prior written consent of the other party.

4.4 Either party may cancel any Order immediately if the other party becomes bankrupt, or enters into a formal proposal for a compromise with creditors, or engages in conduct of a wilful default or makes a receiver of the other.

4.5 An Order may be cancelled by the Ministry on 30 days written notice if any representation made by you in the Order is not complied with on the date of delivery.

5. HEALTH AND SAFETY

5.1 You will comply with all your legal obligations (including under statute, regulations, rules professional codes of conduct and practice and any other obligations) to exercise due diligence in meeting your duties and obligations under the Health and Safety Act 2015.

5.2 You must clearly indicate any substances in the Products which may be released during the handling, installation, use or disposal of the Products which are or may be hazardous to the health and safety of any person or the environment by clearly marking these Products and their packaging and by including appropriate and prominent precautions in documentation accompanying the Products.

6. MARKING, PACKAGING AND DELIVERY

6.1 You will pack and protect the Products against damage and deterioration and you must Deliver the Products and/or Services no later than the time/s specified in the Order and mark barcodes and other identifying information on the Products and packages packaging for the Products, as required by the Ministry.

6.2 You must advise the Ministry of likely delays to Delivery and the Ministry reserves the right to cancel an Order pursuant to clause 8 in the event of any material delay as determined by the Ministry.

6.3 The Ministry accepts no responsibility for the Delivery of the Products (unless otherwise agreed) nor for packing materials or cases (which is your responsibility).

6.4 The Ministry shall be entitled to reject any Products delivered which are not in accordance with the Specifications.

7. PASSING OF TITLE AND RISK, AND LICENSING

7.1 Risk in the Products will pass to the Ministry immediately upon Delivery.  You will not withdraw the Products from sale or use them with any person with whom you have trade secrets, know-how (including drawings, patterns, samples, designs and specifications) and information that the Ministry would not normally disclose to third parties.

7.2 Where any Products include software, such Products will be licensed to the Ministry perpetually and you must comply with the licence.

8. REPRESENTATIONS

8.1 In addition to all other representations, conditions or other terms express or implied by law or otherwise, you represent to the Ministry that:
(a) all information supplied by you under an Order is true, complete and accurate;
(b) the Products and/or Services will be provided in a timely manner and to the standard of care and diligence which would reasonably and