

# GIA Operations Limited (GOL)

## Terms of Trade

September

2019

These terms apply to every contract or arrangement GOL enters into for every service GOL provides. These terms may only be varied in writing by GOL. The GIA Secretariat may act as GOL's agent.

GOL is a co-operative company, providing services primarily to GIA members, and owned by industry members of GIA. Participating members have not provisioned GOL with substantial reserves, so GOL is unable to assume risks associated with default, late payment, project over-runs and the like.

Consequently, members using GOL's services recognise that these risks remain with members, not with GOL, and members need to address these risks by other mechanisms.

Using GOL's services is deemed to be acceptance of these terms.

## 1 Definitions

1.1 In these terms, unless the context otherwise requires:

“**Contributions**” includes voluntary contributions.

“**GOL**” means GIA Operations Limited.

“**GIA Deed**” means the latest version of the Government Industry Agreement for Biosecurity Readiness and Response made pursuant to the Biosecurity Act 1993.

“**MPI**” means the Ministry of Primary Industries.

“**OA**” means an Operational Agreement for the purposes of the GIA Deed.

“**OA Council**” means the governance group in respect of an OA.

“**Signatory**” means a party to the GIA Deed and “**participating Signatory**” means a Signatory that uses the services of GOL.

The singular includes the plural, and reference to persons includes all entities.

References to **service providers** includes MPI. Service providers may deal with GOL through the GIA Secretariat.

## 2 General terms for holding funds

2.1 GOL provides the service of receiving, holding and dispensing funds on behalf of participating Signatories to pay for:

- agreed OA administration;
- project services;
- other agreed amounts payable by participating Signatories to MPI and other parties;
- GOL administrative costs; and
- other purposes as agreed with the participating Signatory.

2.2 Unless otherwise agreed in a particular instance, all funds received by GOL from a Signatory are held by GOL on behalf of that Signatory, at that Signatory's sole risk

(including as to tax), until disbursed by GOL in accordance with that Signatory's instructions or by prior agreement (for example, to pay for services as below).

- 2.3 Payment by GOL to MPI or the relevant service provider shall act as a full discharge of GOL's responsibility to the participating Signatory in respect of those funds.
- 2.4 GOL shall not be liable to pay interest in respect of funds held.

### **3 Contracts for Projects and Services**

- 3.1 GOL's services may include entering into contracts for projects and services with service providers as instructed by one or more participating Signatory. These Terms of Trade apply to those contracts to the extent they are not overruled by a competing term of the project or service contract.
- 3.2 The GIA Secretariat or service providers will invoice GOL for work done on these projects and services, and GOL will pay these invoices. GOL will log the amounts attributable to each Signatory in accordance with the relevant agreement to pay, where applicable. Each Signatory will be liable to pay GOL for those logged amounts.
- 3.3 Where GOL agrees to undertake a large project at the request of a Signatory or OA Council, arrangements will be agreed to ensure GOL is not exposed to cost overruns or payment default.
- 3.4 Any dispute relating to projects or services entered into by GOL under clause 3 shall be resolved between GOL, the relevant Signator(ies), OA Council and the service provider as appropriate in the circumstances.
- 3.5 Where it is consistent with GOL's purpose, GOL may provide services to non-Signatory customers. Where this happens, the same terms of trade will apply as if that customer was a participating Signatory.

### **4 Payment in advance**

- 4.1 Signatories may choose to make payments to GOL in advance (i.e. when the service is agreed by the Signator(ies), and before the expense has been incurred). GOL will hold those funds on the terms set out in clause 2.
- 4.2 GOL may invoice Signatories regularly (in most cases, quarterly) to collect Contributions as advance payment (plus GST where applicable) for projects and services. Where GOL holds funds on behalf of a Signatory, GOL may apply those funds to payment of an invoice.
- 4.3 Periodically (at least annually), GOL will compare Contributions collected versus amounts dispensed on behalf of each Signatory, and:
  - Where there is a surplus, GOL may either return the 'overpayment' or discount it against the next quarter;
  - Where there is a deficit, the Signatory concerned must make that up to GOL on demand.

## **5 Pay as you go**

- 5.1 Where a Signatory nominates a 'pay as you go' arrangement in respect of a particular contract or service:
- GOL may opt not to receive and hold funds on that Signatory's behalf;
  - GOL will only commission work for which the Signatory has made a clear commitment to pay;
  - Where the work is done or paid for by the GIA Secretariat, GOL may invoice Signatories on its behalf for the work; and
  - Where work is commissioned from other service providers, those providers may invoice the relevant Signatories directly.

## **6 Invoicing**

- 6.1 Unless stated otherwise invoices are payable by the 20th of the month following the date of the invoice. Where GOL does not receive payment by the due date, GOL may charge interest at the rate of 1% per month plus all related costs (or at the rate specified in the relevant OA, if this applies, plus all related costs). Where necessary and appropriate, debt recovery services will be employed for debts beyond three months at the invoiced party's cost.
- 6.2 GOL reserves the right to correct any error in any invoice, payment instruction or payment at any time, both before and after payment, including by issuing a replacement and/or requiring a reimbursement.
- 6.3 Where GOL provides services to a Signatory but agrees to address the invoice to another person, the Signatory will pay that invoice if that other person does not do so.
- 6.4 Invoices will meet normal requirements for GST. Signatories shall be liable for any GST attributable to the services they receive.

## **7 Compliance and Remedies**

- 7.1 All persons using GOL services agree to comply with all applicable laws and regulations and all reasonable requirements of the GIA Deed Governance Group.
- 7.2 Signatories agree they are acquiring services from GOL in trade, and not as a consumer, and that no consumer protection laws apply.
- 7.3 To the extent permitted by law, GOL excludes all representations and warranties, and GOL's liability to any OA Council or participating Signatory shall not exceed returning funds actually then held by GOL on their behalf. GOL shall not be liable to any person for any consequential loss or damage.
- 7.4 GOL will not be responsible for any delay, damage, or loss due to any cause beyond its reasonable control.
- 7.5 All OA Councils and Signatories dealing with GOL indemnify and hold harmless GOL in respect of all damages, costs and/or expenses of any person arising from anything GOL

does at the request of that OA Council or Signatory, including for any tax liability or breach of any law.

## **8 Termination**

8.1 Subject to the terms of any specific contract or arrangement, contracts or arrangements formed under these terms may be terminated on two week's written notice. Provided that on termination:

- GOL's liability shall be limited to returning funds actually then held by GOL on behalf of participating Signatories;
- Participating Signatories and OA Councils remain liable for performing any obligations incurred up to the date of termination.

## **9 General**

9.1 GOL retains all intellectual property in all services it provides.

9.2 GOL may assign its rights and duties under these terms.

9.3 GOL may offset any moneys it owes to a Signatory or OA Council against any liabilities of that Signatory or OA Council to GOL.

9.4 GOL may revise these terms at any time, and may agree to vary these terms in any particular instance. This will be in writing.

9.5 Written communication may be by e-mail. GOL's e-mail is [steve.rich@gia.org.nz](mailto:steve.rich@gia.org.nz). Each Signatory agrees to receive communication by e-mail to an officer, employee or other customary e-mail contact of that Signatory.

9.6 These Terms of Trade will apply subject to any particular agreement to which GOL is a party, for example:

- Procurement contract
- Consultant contract
- Agreement to pay