

# TERMS AND CONDITIONS OF PURCHASE ORDER

## 1. GENERAL

1.1 These are the terms and conditions referred to in the Purchase Order. These terms and conditions do not apply where Supplier and Purchaser have entered into a written supply, services or consulting agreement or other agreement specifying the terms and conditions applying to the provision of Goods and/or Services. Any special conditions contained in the Purchase Order shall also apply and shall take precedence over these terms and conditions.

## 2. DEFINITIONS AND INTERPRETATION

2.1 In these terms and conditions, unless the context otherwise requires:

**Affiliate** with respect to a party means any legal entity that the party Controls, which Controls the party, or which is under common Control with the party.

**Agreement** means the agreement between Supplier and Purchaser consisting of this Purchase Order, the Specifications and/or the Requirements and these terms and conditions.

**Confidential Information** means all information of Purchaser or its Affiliate (regardless of the form of disclosure or storage medium) which Supplier first becomes aware of through disclosure by Purchaser or its Affiliate, or otherwise through Supplier's involvement with Purchaser or its Affiliate, and which Purchaser or its Affiliate treats as confidential, or based on the circumstances relating to the disclosure, a reasonable person would believe to be confidential.

**Control** of an entity includes the direct or indirect power to:

- (a) direct the management or policies of the entity; or
- (b) control the membership of the board of directors,

whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights, and whether or not it arises by means of trust, agreements, arrangements, understandings, practices, the ownerships of any interest in shares or stock of that corporation or otherwise.

**Delivery** in the case of Goods, means delivery to the site(s) specified in the Purchase Order within 30 days of the date of the Purchase Order, in the case of Services means the latest date specified in the Purchase Order as the delivery or completion date, or in either case such other date as the parties may agree.

**Documentation** means Supplier provided documentation under clause 6.

**Goods** means the goods specified in the Purchase Order.

**GST** has the meaning given in the *New Tax System (Goods and Services Tax) Act 1999*.

**Incidental Costs** means taxes (other than GST) and duties in Australian dollars incurred by Supplier in supplying Goods and/or Services.

**Loss or Claim** means, in relation to any person, any damage, loss (including consequential loss and loss of profit), cost, expense or liability incurred by the person or a claim, action, proceeding or demand made against the person, however arising and whether present or future, fixed or unascertained, actual or contingent.

**Notifiable Data Incident** means an incident where Supplier or Principal become aware of any grounds to believe or suspect that there has been unauthorised access to, or disclosure or loss of, Personal Information in connection with the Agreement, including any Personal Information provided by, or on behalf of, Principal to Supplier.

**Officer** means any officer (as defined in *Corporations Act 2001 (Cth)*), employee, agent of a party and any independent contractor employed by or anybody else acting (directly or indirectly) under the supervision, control or direction of a party.

**Personal Information** has the meaning given to that term in the Privacy Act.

**Price** for Goods and Services means the amount in the relevant currency specified as the price in the Purchase Order and shall include the Incidental Costs but does not include any amount on account of GST.

**Principal** means Purchaser and/or its Affiliates.

**Privacy Act** means the Privacy Act 1988 (Cth).

**Purchase Order** means the purchase order issued to Supplier by Purchaser.

**Purchaser** means the party specified as such on the Purchase Order.

**Requirements** means Purchaser's requirements for the provision of Services as notified by Purchaser and in the absence of such notice, the Services are to be provided within a timeframe and to a standard that could reasonably be expected of a market leader in the industry in which the Services are being provided.

**Services** means any services specified in the Purchase Order or any necessary services to install or ensure the Goods (if any) perform in accordance with the Warranties at or after Delivery, including any deliverables resulting from a service.

**Specifications** for Goods means Supplier's published technical specification for those Goods and any other requirements agreed in writing by the parties in relation to the quality, functionality, performance, interpretability, testing or any other criteria with respect to those Goods.

**Supplier** means the party specified as such on the Purchase Order.

**Tax** includes any tax, withholding tax, charge, rate, levy, bank account debit tax, duty or impost or other tax of any nature payable, imposed, levied, collected, withheld or assessed by any revenue authority at any time, but does not include any GST or taxes on income or profits of the Supplier.

**Warranties** for Goods or Services means the warranties specified in clause 10.

**Warranty Period** for Goods means 24 months after the actual delivery of those Goods.

2.2 In the Agreement, unless the context otherwise requires:

- (a) a reference to legislation is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (b) a reference to a document, or a provision of a, is to that document or provision as amended, supplemented, replaced or novated;
- (c) a reference to a party to the Agreement or to any other document includes a permitted substitute or a permitted assign of that party;
- (d) a reference to a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
- (e) a singular word includes the plural, and vice versa;
- (f) a word which suggests one gender includes the other genders;

(g) if a word is defined, another part of speech has a corresponding meaning; and

(h) unless otherwise specified, a reference to "\$" or "dollars" is a reference to Australian dollar.

## 3. SUPPLY

3.1 Supplier must supply the Goods and/or Services in accordance with the Agreement by the date for Delivery.

3.2 Supplier must ship the Goods to the site(s) specified in the Purchase Order in accordance with Purchaser's packaging, shipping and delivery procedures notified to Supplier, or as specified in the Purchase Order or if none are notified or specified, in a manner that ensures safe delivery.

## 4. PAYMENT

4.1 Supplier will after actual Delivery to Purchaser, issue an itemised valid Tax Invoice (as defined in *A New Tax System (Goods and Services Tax) Act 1999*) for the Price of the Goods and/or the Services, which, without limitation, shall specify the Incidental Costs, be correctly addressed, identify Purchaser's order number and any requested substantiating documentation (**Invoice**).

4.2 Purchaser will (except to the extent that the Invoice is in dispute) pay the Invoice 30 days from the end of month of valid Invoice receipt.

4.3 If GST is payable to the Supplier, in addition to the Price, Purchaser will pay an amount equal to the GST on the supply of the Goods and/or Services, as itemised in the Invoice (unless the price is expressly stated as being inclusive of GST). If an adjustment event arises in respect of the supply, the GST amount must be adjusted to reflect the adjustment event and the Supplier and the Purchaser (as the case may be) must make any payments necessary to reflect the adjustment.

4.4 If a law requires the Purchaser to deduct or withhold on account of Tax in connection with a payment under the Purchase Order, it will withhold the relevant amount from the gross amount due to Supplier and will promptly pay that amount to the relevant authority. Purchaser will have no obligation to pay any additional amount to Supplier for or on account of the withheld or deducted amount.

4.5 If Purchaser disputes an Invoice, payment is suspended until the dispute is resolved and Supplier must give Purchaser any information or document Purchaser requests in relation to the Invoice or the dispute.

4.6 In addition to Purchaser's other rights, Purchaser may deduct from the Invoice any amount Supplier owes Principal (including under any indemnity).

## 5. TITLE AND RISK IN GOODS

5.1 Title and risk in Goods passes to Purchaser on actual delivery to Purchaser.

## 6. DOCUMENTATION

6.1 On Delivery of Goods and/or Services Supplier must supply Purchaser with:

- (a) all user documentation containing sufficient information in a form usable by Purchaser to enable it to operate, make full use of and maintain Goods; and
- (b) any other documentation specified in Purchaser Order or usually supplied with the Goods and/or Services.

6.2 Purchaser may make an unlimited number of copies of the Documentation for use in its business operations.

## 7. SUBCONTRACTORS

7.1 If Supplier subcontracts any part of its obligations under the Agreement, Supplier will remain principally liable for the performance of the Agreement and the acts and omissions of any subcontractor.

## 8. DELAY AND LIABILITY FOR DELAY

8.1 Supplier acknowledges that time is of the essence in effecting Delivery of Goods and/or Services. Supplier must keep Purchaser informed of any delays or other matter which may affect the Delivery of Goods and/or Services.

8.2 If Delivery of Goods and/or Services is delayed for more than 7 days, Purchaser may, with immediate effect by notifying Supplier:

- (a) terminate the Agreement; and
- (b) reject any Goods that have already been delivered to Purchaser.

## 9. TERMINATION AND REJECTION OF GOODS

9.1 In addition to any other rights Purchaser may have, Purchaser may terminate the Agreement with immediate effect if:

- (a) Supplier fails to supply the Goods and/or Services in accordance with the requirements set out in the Purchase Order;
- (b) Supplier breaches the Agreement; or
- (c) Supplier becomes or threatens to become insolvent or bankrupt, or enters into a compromise or arrangement with creditors or any form of external administration; or
- (d) Purchaser provides 14 days' written termination notice to Supplier.

9.2 Purchaser may reject Goods which do not comply with the Agreement.

9.3 If Purchaser rejects Goods in accordance with the Agreement or terminates the Agreement, Supplier must:

- (a) in the case of Goods, immediately credit or refund to Purchaser the total of all amounts paid by Purchaser for the affected or undelivered goods, and accept return of any of those delivered Goods; and
- (b) in the case of Services, immediately refund to Purchaser that part of the Price prepaid (if any) for affected Services.

## 10. WARRANTIES

10.1 Supplier warrants that:

- (a) all Goods will:
  - (i) strictly comply with all applicable laws, regulations, codes and Australian standards;
  - (ii) meet the functional and performance criteria set out in and otherwise conform with the Specifications;
  - (iii) be free from defects in design, materials, workmanship and installation;
  - (iv) be of good and merchantable quality and fit for use; and
  - (v) when supplied to Purchaser, be new and not used by any person (unless agreed in writing by Purchaser);

- (b) Supplier has complete ownership of the Goods and Purchaser will receive clear and complete title to the Goods free from any encumbrances;
- (c) no claim of infringement of moral rights will be brought against Purchaser;
- (d) Documentation will be in English, complete and accurate, and suitable and sufficient for use by Purchaser and its personnel to operate, to make full use of and to maintain the Goods or Services as the case may be;
- (e) all Services will be supplied in a good, workmanlike and timely manner and be carried out by competent, trained and qualified personnel and, without limitation, in accordance with the Requirements;
- (f) in providing the Services, it will not be in breach of any obligation owed to any person and that it holds all licences, approvals and authorisations necessary for or incidental to providing the Services;
- (g) it will comply with all laws, ordinances, rules, regulations, codes and the requirements and direction of any relevant Commonwealth, State, Territory and local government departments or bodies in force from time to time; and
- (h) it will comply with Purchaser's conduct, personnel, privacy and other policies as current from time to time and notified to Supplier.
- 10.2 If at any time during the Warranty Period Supplier becomes aware or Purchaser notifies Supplier of any failure of the relevant Goods to comply with any of the Warranties, Supplier, at its cost, will promptly correct that failure.
- 10.3 Without limiting clauses 10.1 and 10.2, Supplier must assign to Purchaser the benefit of any manufacturer warranty or guarantee in respect of Goods.
- 11. INSURANCE**
- 11.1 Supplier must effect and maintain appropriate insurance policies, taking into account the Goods and/or Services. Supplier must provide Purchaser with proof of Supplier's insurance upon request.
- 12. INTELLECTUAL PROPERTY RIGHTS**
- 12.1 Purchaser will own all material created by Supplier in performing Services or supplying the Goods. To facilitate this Supplier:
- (a) assigns to Purchaser all future intellectual property rights in all such material (whether that material is created alone or jointly with Purchaser); and
- (b) acknowledges that no additional documentation is necessary to complete the assignment and by virtue of this clause 12 all such future intellectual property rights will vest in Purchaser.
- 12.2 To the extent that Goods or Services contain existing intellectual property rights, Supplier hereby grants to Purchaser an irrevocable, perpetual, world-wide and royalty free licence (including the right to sublicense) to use, reproduce, adapt, modify, publish and communicate the same.
- 13. INDEMNITY AND LIABILITY**
- 13.1 Supplier releases, indemnifies and defends Purchaser and any of its Officers from and against any Loss or Claim suffered by or made against Purchaser or any of its Officers arising out of or in connection with:
- (a) the performance or a breach by Supplier or its Officers of any of its (or their) obligations under the Agreement;
- (b) fraud, misconduct, dishonesty, negligence or breach of trust, duty or law by Supplier or any of its Officers;
- (c) a breach by Supplier or its Officers of any occupational health and safety, anti-discrimination, equal employment opportunity, industrial or employment legislation or any regulations, rules or orders, made under that legislation resulting in any Loss or Claim; or
- (d) any Loss or Claim from a breach or purported breach of a third party's intellectual property rights resulting from Purchaser's use of the Goods and/or Services.
- 13.2 Supplier indemnifies Purchaser against any Loss or Claim that arises from or is connected with any negligent acts or omissions or wilful misconduct by Supplier's subcontractors, or from any failure on the part of Supplier's subcontractors to comply with any applicable Laws.
- 13.3 Subject to clause 13.4, the maximum aggregate liability of Principal to Supplier under the Agreement, whether in contract, tort (including negligence), statute or any other cause of action is limited to an amount equal to the Price.
- 13.4 Nothing in the Agreement operates to limit or exclude the liability:
- (a) that cannot by law be limited or excluded;
- (b) in respect of personal injury (including sickness and death); or
- (c) for unlawful or illegal acts or conduct.
- 14. CONFIDENTIAL INFORMATION**
- 14.1 Supplier will take all reasonable precautions to ensure that all Confidential Information is treated as confidential and not disclosed to any person(s) or used other than for the purposes of the Agreement and will return all Confidential Information immediately upon request by Purchaser.
- 14.2 Supplier may only make press or other announcements or releases about Purchaser, the Agreement or the transaction(s) related to it with the prior written consent of Purchaser.
- 15. PRIVACY**
- 15.1 Supplier must:
- (a) comply with Purchaser's privacy policy (and each specific privacy policy of Purchaser in relation to the collection and/or handling of personal or private information relating to third parties including the obtaining of any necessary consents to its use by Purchaser or by third parties) as notified in writing to Supplier from time to time as if it were bound by that policy;
- (b) comply with the Privacy Act 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 those laws;
- (c) comply with all directions by Purchaser relating to the means by which Purchaser complies with the Privacy Act, Purchaser's privacy policy, and all other applicable laws, codes and privacy policies;
- (d) comply with all directions and co-operate with Purchaser in resolving any complaint alleging a breach of such laws, codes or privacy policy; and
- (e) inform Purchaser of any situation that does or is likely to arise in Supplier's performance of the Agreement, which does or may place Principal in breach of its obligations under the Privacy Act and all other applicable laws, codes and privacy policies.
- 15.2 Supplier must, as soon as it becomes aware of any grounds to believe or suspect that a Notifiable Data Incident has occurred:
- (a) immediately notify Purchaser of the occurrence and details of the Notifiable Data Incident by telephone and email or by using other contact methods or details, in each case as Purchaser may notify from time to time; and
- (b) comply with any reasonable direction given and provide all reasonable assistance requested by Purchaser relating to the Notifiable Data Incident.
- 15.3 In the event that Supplier has (or Purchaser reasonably suspects or has reason to believe Supplier may have) failed to comply with its obligations under clause 15, Purchaser may at any time suspend all or part of Supplier's rights under or in connection with, or require Supplier to cease performing any or all of its obligations under, the Agreement. Purchaser must act reasonably in deciding when to lift the suspension, having regard to the reasons giving rise to the suspension.
- 15.4 Purchaser may undertake periodic reviews to test and validate Supplier's compliance with the Privacy Act. Supplier agrees to assist Purchaser and comply with any reasonable request for information in connection with this review.
- 16. DISPUTE RESOLUTION**
- 16.1 Except where a party seeks urgent interlocutory relief, if a dispute arises in relation to the parties' rights and obligations under the Agreement (**Dispute**), the parties must follow the procedures set out in this clause 16 before escalating the Dispute to litigation or arbitration.
- 16.2 The dispute resolution procedures in this clause 16 will arise upon a party notifying the other parties in writing (providing reasonable details) as to the existence and nature of the Dispute and setting out the reasons for its dissatisfaction or claim of breach of the Agreement (**Dispute Notice**).
- 16.3 The parties must use their best endeavours to settle the Dispute within 14 days after service and receipt of a Dispute Notice. If the Dispute remains unresolved after this time, the respective parties must authorise a person or persons holding the required level of authority to meet as soon as practicable to attempt to resolve the Dispute.
- 16.4 If the Dispute remains unresolved after the procedures in clauses 16.1, 16.2 and 16.3 have been completed, the parties agree to use their best endeavours to settle the Dispute by mediation administered by a mediator accredited by LEADR (unless each party agrees otherwise) on the following basis the:
- (a) parties must use their best endeavours to agree on the appointment of a mediator within 7 days, failing which the parties agree to the President of the Law Society of New South Wales appointing the mediator;
- (b) costs of the mediation and the mediator will be split equally between the parties to the Dispute;
- (c) parties must conduct the mediation as expeditiously as possible; and
- (d) mediation will be held in Sydney in accordance with the Laws governing the Agreement.
- 17. THIRD PARTY RIGHTS**
- 17.1 Supplier acknowledges that the Goods and/or Services may be used by both Purchaser and its Affiliates. For the avoidance of doubt Supplier also acknowledges and agrees that the Goods and/or Services are for the benefit of both Purchaser and its Affiliates.
- 17.2 Supplier agrees that any loss, damage, cost or liability incurred by any Affiliate of Purchaser to the extent arising from any breach of this Agreement by Supplier (in this clause 17 collectively referred to as **Group Loss**) will be:
- (a) deemed to have been incurred by Purchaser; and
- (b) recoverable by Purchaser from Supplier as if they were losses, damage, costs or liability suffered directly by Purchaser.
- 17.3 For the purposes of this Agreement Supplier hereby irrevocably agrees that any Group Loss will not be deemed to be consequential or indirect merely as a consequence of it having been suffered by an Affiliate rather than Purchaser.
- 17.4 If and to the extent that Purchaser is not able to recover Group Loss under the provisions of clause 17.2 then each Affiliate is entitled to enforce this Agreement against Supplier in its own right. Notwithstanding the creation of third party rights Purchaser and Supplier may rescind, vary or amend this Agreement or terminate it in accordance with its terms without the consent of any Affiliate.
- 17.5 Other than as expressly set out in this clause 17 nothing in this Agreement creates legal rights for, or enforceable by, any party other than Purchaser or Supplier.
- 17.6 Purchaser may provide Confidential Information, intellectual property, and the results of or materials resulting from or arising out of or in connection with the Services, to its Affiliates for their internal use subject to the terms of this Agreement, including without limitation obligations as to Confidential Information.
- 18. GENERAL**
- 18.1 Clauses 10, 11, 12, 13 and 14 continue after termination or completion of the Agreement.
- 18.2 The Agreement may only be amended by written agreement between the parties.
- 18.3 Supplier must not assign, novate or otherwise transfer any of its rights or obligations under the Agreement without Purchaser's prior written consent.
- 18.4 Purchaser may novate or assign any of its rights or obligations under the Agreement and Supplier hereby irrevocably consents to such novation or assignment.
- 18.5 No relationship of employment, agency, partnership or joint venture is created by the Agreement.
- 18.6 The whole or any part of any clause of the Agreement that is illegal or unenforceable will be severed and will not affect the continued operation of the remaining provisions of the Agreement.
- 18.7 A party's right to enforce the Agreement will not be prejudiced or restricted by any forbearance, delay or indulgence on its part in enforcing the Agreement. If a party waives a right under the Agreement, this does not operate as a waiver of a subsequent breach of this right or any other right under the Agreement.
- 18.8 The Agreement is governed by the laws applicable in New South Wales and each party submits to the jurisdiction of the courts of New South Wales.
- 18.9 This Agreement constitutes the entire agreement between the parties and, in relation to its subject matter, supersedes all previous agreements, arrangements and representations between the parties.
- 18.10 No quote, offer document, confirmation, shipment or delivery docket, invoice or any other document issued or supplied by or on behalf of Supplier in relation to the Goods and/or Services will vary or prevail over the terms of the Agreement.