

1 APPLICATION

- (a) These terms and conditions apply to the supply of Goods, Works and Services, as applicable, and as described in the Contract Particulars. The Supplier is deemed to have accepted these terms and conditions on acceptance of this Purchase Order from the Purchaser.
- (b) By this Purchase Order, the Purchaser orders the Goods, the Works and the Services, as applicable, and the Supplier will supply and deliver the Goods, undertake and complete the Works and perform the Services, as applicable, in accordance with the terms of this Purchase Order. In consideration of the Supplier fulfilling its obligations, the Purchaser will pay the Supplier the Contract Sum.

2 SUPPLIER WARRANTIES

The Supplier warrants to the Purchaser that:

- (a) the Goods, the Works and the Services will, as applicable, be new and unused, fit for their intended purpose, of a merchantable quality, in accordance with all applicable laws, other legal requirements and recognised industry standards (including Australian Standards) and will comply with all the requirements of this Purchase Order, including any tests required by the Purchaser and any description of the Goods;
- (b) without prejudice to clause 2(a), the Supplier is suitably qualified and experienced and will at all times exercise the degree of skill, care, diligence and expertise expected of a competent supplier of, as applicable: (i) goods such as the Goods; (ii) works such as the Works; and (iii) services such as the Services;
- (c) the Supplier will comply with all directions of the Purchaser and the Purchaser's timetable for the supply of the Goods, Works and Services, as applicable;
- (d) the Supplier has full unencumbered title in any Goods and in any materials incorporated in the Works or the Services, and all such Goods and materials are supplied free of all liens, charges and other encumbrances;
- (e) the Supplier will supply and do all things which are reasonably necessary or appropriate for the supply of the Goods, the completion of the Works and the provision of the Services (as applicable), whether or not such things are expressly specified in this Purchase Order;
- (f) the performance of the Supplier's obligations and the use and enjoyment by the Purchaser of the Goods, Works and Services will not give rise to the infringement of any intellectual property rights, including patents and copyright; and
- (g) where and to the extent that the supply constitutes the performance of Works, the Supplier is responsible for and assumes the risk of any cost, expense, loss, liability, damage or delay it suffers or incurs arising out of or connected with the physical conditions of the property (and its surroundings) where the Works are to be performed.

3 SUPPLIER'S OBLIGATIONS

- (a) The Supplier must, as applicable:
 - (i) supply the Goods to the Delivery Place by the Delivery Date and the Delivery Time; and

- (ii) bring the Works to Practical Completion by the Completion Date.

- (b) The Supplier must give the Purchaser reasonable advance written notice of the delivery of the Goods and of the completion of the Works or Services, as applicable.
- (c) The Purchaser may direct the Supplier to deliver the Goods on a different Delivery Date, at a different Delivery Time or to a different Delivery Place and, if the Supplier can reasonably comply, it will do so. If the Supplier cannot reasonably comply, it will immediately notify the Purchaser in writing with reasons.

4 WARRANTIES UNAFFECTED

The Supplier's warranties remain unaffected notwithstanding any information provided to the Supplier by or on behalf of the Purchaser and any review or comment (or failure to review or comment) by the Purchaser in connection with the supply of the Goods, the Works or the Services. Signed delivery dockets are not evidence that the quality or quantity of any Goods has been accepted by the Purchaser.

5 INDEMNITY

The Supplier indemnifies the Purchaser against:

- (a) loss of or damage to any property (including the Purchaser's property) and claims in respect of any personal injury, death, disease or illness arising out of or as a consequence of the Supplier's performance or non-performance of the Supplier's obligations under this Purchase Order; and
- (b) any cost, expense, loss, damage or other liability suffered or incurred by the Purchaser arising out of or as a consequence of a breach by the Supplier of this Purchase Order.

The indemnity is reduced proportionally to the extent that any negligent act or negligent omission of the Purchaser or its consultants, agents or other contractors (excluding the Supplier) has contributed to the injury, death, loss, damage or liability.

6 INSURANCES

The Supplier must prior to undertaking its obligations under this Purchase Order take out and maintain, as applicable, the following insurances and, if requested by the Purchaser, provide the Purchaser with certificates of currency for those insurances:

- (a) insurance covering the Goods for their full replacement value against loss or damage including loss or damage in transit to the Delivery Place, and unloading the Goods, to be maintained until the Goods are accepted by the Purchaser;
- (b) contract works insurance for any loss or damage to the Works, for their full replacement value, to be maintained until the Works are completed and have been accepted by the Purchaser;
- (c) public liability insurance for an amount of not less than \$10,000,000 in the annual aggregate;
- (d) if the undertaking of the Works, the supply of the Goods or the performance of the Services involves design by the Supplier or professional advice being given by the Supplier, professional indemnity insurance for an amount not less than \$5,000,000 in the annual aggregate, which is to be maintained for so long as the Supplier retains liability under this Purchase Order; and
- (e) workers compensation insurance as required by law.

7 VARIATIONS

The Purchaser may by written notice to the Supplier increase, decrease or omit any of the Goods, the Works or the Services or change the character or quality of the Goods, the Works or the Services and the Supplier will comply with that direction. If such direction causes the Supplier to incur more or less cost than it would have otherwise incurred, the Purchaser will assess the difference and the Contract Sum will be adjusted by a reasonable amount.

8 EXTENSIONS OF TIME

- (a) If the Supplier is or will be delayed in supplying the Goods, completing the Works or providing the Services, as applicable, by the Delivery Date, the Supplier will immediately notify the Purchaser in writing, giving details.
- (b) If the Supplier's delay is caused by an event outside its reasonable control the Purchaser shall provide a reasonable extension of time for supplying the Goods, completing the Works or providing the Services.
- (c) The Supplier shall be liable to the Purchaser for any loss, damage, cost, expense or other liability suffered or incurred by the Purchaser resulting from the Supplier's failure to supply the Goods, complete the Works or provide the Services within the timeframe required by this Purchase Order (as adjusted in accordance with clause 8(b)).

9 ACCEPTANCE OF GOODS, WORKS AND SERVICES

- (a) Unless stated otherwise, the Purchaser will accept delivery of Goods on business days between 8.30am and 4.30pm.
- (b) Risk in the Goods will only pass from the Supplier to the Purchaser when the Goods have been delivered to the Purchaser and unloaded, property secured, signed for and inspected at the Delivery Point by an authorised representative of the Purchaser.
- (c) The Supplier will be responsible for any Works until the Works have achieved Practical Completion.
- (d) The Supplier agrees that title in all materials and goods supplied by the Supplier passes to the Purchaser on the earlier of delivery by the Supplier and the Supplier becoming entitled to payment for such materials and goods.
- (e) The Purchaser is entitled to reject any Goods, Works or Services which contain defects or omissions or which do not comply with the requirements of this Purchase Order.
- (f) Neither the acceptance of the Goods, the Works or the Services, their incorporation or use by the Purchaser, nor payment by the Purchaser under clause 10 will amount to an acknowledgement by the Purchaser that the Supplier has complied with its warranties or other obligations under this Purchase Order, nor relieve the Supplier from any other obligation or liability.
- (g) During the Defects Period, and without affecting any other obligations and/or liability of the Supplier, the Supplier must at its cost make good all defects or omissions in the Goods, the Works or the Services promptly and in accordance with any direction of the Purchaser including, without limitation, any direction to repair or replace the Goods or the Works or to repeat or rectify the Services.

(h) If the Supplier is required to make good any defect or omission in the Goods, the Works or the Services then the Defects Period will extend for a further 6 months in relation to the affected Goods, Works or Services.

(i) The Supplier must ensure that all manufacturers' and suppliers' warranties and installation certificates relating to the Goods, the Works or the Services which are available on reasonable commercial terms are given either in favour of the Purchaser or severally in favour of the Supplier and the Purchaser. The warranties and certificates must be provided to the Purchaser at the time of delivery or completion, as applicable.

10 PAYMENT

- (a) The Contract Sum includes all delivery charges and shall not be subject to any variation by the Supplier including, but not limited to, variations in the cost of labour and materials or exchange rates unless a variation is instructed in writing under clause 7.
- (b) The Supplier will, with each delivery of Goods, and the completion of the Works or the Services (or as otherwise agreed by the parties), give to the Purchaser a written claim for payment setting out the Purchase Order Number, the amount claimed by the Supplier on account of the Contract Sum and such other details as may be reasonably be requested or advised by the Purchaser, from time to time, including (where applicable) evidence of payment of any subcontractors and workers, workers compensation insurance premiums and payroll tax relating to such persons.
- (c) The Purchaser will assess the claim and give the Supplier the Purchaser's assessment within the later of 14 days of the Purchaser's receipt of the claim and the receipt by the Purchaser from the Supplier of any further information reasonably requested by the Purchaser. The Purchaser will pay the Supplier the amount assessed within 28 days of receipt by the Purchaser of a valid tax invoice from the Supplier for the amount assessed.
- (d) Despite any other provision of this Purchase Order, the Purchaser may deduct from any monies due to the Supplier, any money due and payable (or which may become due and payable) from the Supplier to the Purchaser whether under this Purchase Order or otherwise.

11 GST

- (a) Words used in this Purchase Order that are defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* have the meaning given in that legislation. Unless otherwise specified, all amounts payable under this Purchase Order are exclusive of GST and must be calculated without regard to GST.
- (b) If a supply made under this Purchase Order is a taxable supply, the recipient of that taxable supply (**Recipient**) must, in addition to any other consideration, pay to the party making the taxable supply (**Taxable Supplier**) the amount of GST in respect of the supply. The Recipient will only be required to pay an amount of GST to the Taxable Supplier if and when the Taxable Supplier provides a valid tax invoice to the Recipient in respect of the taxable supply. If there is an adjustment to a taxable supply made under this Purchase Order then the Taxable Supplier must provide an adjustment note to the Recipient.

12 TERMINATION

- (a) The Purchaser may, at its option, at any time and in its absolute and sole discretion, terminate this Purchase Order by giving the Supplier 5 days' written notice. For the avoidance of doubt the Purchaser is not required or obliged to act in good faith in exercising this right.
- (b) Upon termination:
 - (i) the Purchaser will pay the Supplier that part of the Contract Sum, as applicable, for any Goods delivered, Works completed or Services provided up to the date of termination; and
 - (ii) where termination has not resulted from the Supplier's breach of this Purchase Order, the Purchaser will pay the Supplier the cost of any materials or items reasonably ordered by the Supplier prior to the date of termination and which are to be incorporated into the Works, used in performing the Services or are Goods which were reasonably expected by the Supplier to be required to be delivered and supplied, as applicable, and which on payment by the Purchaser will become the property of the Purchaser.
- (c) If the Purchaser terminates this Purchase Order then the Purchaser may employ and pay others to supply the Goods, perform the Works or provide the Services and the Purchaser or those persons may purchase all materials and goods and do anything else necessary to supply the Goods, perform the Works or provide the Services.
- (d) The Purchaser will not be liable to the Supplier for and the Supplier will not be entitled to claim from the Purchaser any losses, expenses, costs, damages or liabilities suffered or incurred by the Supplier arising out of or as a consequence of the termination of this Purchase Order, other than the amounts to be paid by the Purchaser under clause 12(b).

13 WORK HEALTH AND SAFETY

- (a) At all times during the supply of the Goods, the performance of the Works or the provision of the Services, the Supplier must identify and exercise all necessary precautions and take all reasonably practicable steps to ensure the health and safety of all persons who may be affected by the Goods, the Works or the Services.
- (b) The Supplier will comply with all work health and safety legislation, regulations, codes of practice, procedures, regulations, codes of practice and procedures applicable or relevant to the nature of the Supplier's work, including any advised to it by the Purchaser.
- (c) The Purchaser and the Supplier acknowledge and agree that the Supplier has control of:
 - (i) the manner in which the Goods are supplied, the Works performed or the Services provided; and
 - (ii) all matters arising out of or as a consequence of the supply of the Goods, the performance of the Works or the provision of the Services that give rise or may give rise to risks to the health or safety of any person.
- (d) Without limiting the Supplier's obligations under any other provision of this Purchase Order:

- (i) if the Works or the Services constitute a Construction Project, the Purchaser engages the Supplier as the WHS Principal Contractor for the Construction Project and authorises the Supplier to have management and control of the Workplace and to discharge the duties of a WHS Principal Contractor; and
- (ii) the Supplier accepts the engagement as WHS Principal Contractor and agrees to discharge the duties of a WHS Principal Contractor.
- (e) Prior to the Supplier commencing the Works or Services the Supplier must complete the Purchaser's general induction and site specific induction requirements.
- (f) The Supplier will comply with all site security procedures advised to it by the Purchaser and will promptly notify the Purchaser of any accident, injury, near miss or property damage which occurs on the Purchaser's site whilst undertaking its obligations under this Purchase Order.
- (g) Any review or inspection by the Purchaser of any information provided by the Supplier under this clause 13 will not constitute the verification or acceptance by the Purchaser of the adequacy of the information, which remains the sole responsibility of the Supplier.

14 CONFIDENTIAL INFORMATION

The Supplier acknowledges that all information and material provided to it by the Purchaser or a party on behalf of the Purchaser or to which it is exposed during performance of its obligations under this Purchase Order or at any other time is confidential and must not be disclosed to a third party except when such disclosure is required by law or where the Purchaser has given prior agreement in writing to such disclosure.

15 LIABILITY

The operation of Part 4 of the *Civil Liability Act 2002 (NSW)* is excluded in relation to all and any rights, obligations and liabilities of the parties with respect to any matter to which Part 4 of that Act would apply but for this clause 15.

16 GENERAL

- (a) Capitalised terms have the meaning given to them in the Contract Particulars of this Purchase Order.
- (b) "Practical Completion" means the Works are complete to the satisfaction of the Purchaser and the Purchaser has received from the Supplier all documentation relating to the Works necessary for the use and occupation of the Works including documents for the operation and maintenance of the Works.
- (c) The term "Contract Sum" where used in this Purchase Order means in relation to the Goods, the Net Cost, in relation to the Works, the Contract Sum and in relation to the Services, the Fee.
- (d) This Purchase Order is governed by the laws of New South Wales, and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.
- (e) The Supplier must not assign, subcontract or otherwise deal with the whole or any part of this Purchase Order without the prior written consent of the Purchaser. Subcontracting will not relieve the Supplier from liability or any obligation under this Purchase Order. The Purchaser may at any time transfer, assign,

novate or otherwise deal with the whole or any part of this Purchase Order.

- (f) The Supplier must not grant any security interest in any Goods, Works or materials supplied or to be supplied under this Purchase Order, nor purport to register any such interest on the Personal Property Securities Register, as established under *Personal Property Securities Act 2009* (Cth).
- (g) The parties agree that:
 - (i) any work performed by the Supplier prior to the date of this Purchase Order is deemed to have been performed by the Supplier under this Purchase Order; and
 - (ii) any payment made by the Purchaser to the Supplier in relation to such work prior to the date of this Purchase Order is deemed to have been made on account of the Contract Sum.
- (h) The Purchaser is not liable for, and is released from, any claims of any nature by the Supplier (or those claiming through it) which have not been notified to the Purchaser in writing within 21 days of the occurrence of the event or circumstance giving rise to the claim, together with full particulars of the claim.