

# PURCHASE ORDER – GOODS AND/OR SERVICES

## GENERAL TERMS AND CONDITIONS

### 1. DEFINITIONS

"**Agreement**" comprises in the following order: (a) the Purchase Order (including anything attached to or incorporated into it); and (b) these General Terms and Conditions (as may be amended);

"**Defect**" means a failure of a Product or Service to comply with its specifications or this Agreement (including the Warranties);

"**Delivery**" or "**Delivered**" means delivery or delivered to the Delivery Point by the Delivery Means;

"**Law**" means any legislation, regulation, ordinance or common law or equitable obligation that applies in any relevant jurisdiction;

"**Products**" means the Products in the Purchase Order;

"**Purchase Price**" means the amount specified in the Purchase Order as the price of the Products and Services;

"**Services**" means the Services in the Purchase Order;

"**Termination Event**" means: (a) the Supplier breaches this Agreement and the breach cannot be remedied or, if it can be remedied, it is not remedied to the Company's reasonable satisfaction within 10 business days; or (b) the Supplier becomes or is reasonably suspected to be insolvent; and

"**Warranties**" means the warranties provided by the Supplier to the Company under clause 11.1 or implied by Law.

### 2. AGREEMENT TO SUPPLY PRODUCTS AND/OR SERVICES

The Supplier agrees to provide the Products and/or Services to the Company and the Company agrees to pay the Purchase Price for those Products and/or Services on the terms of this Agreement.

### 3. PERFORMANCE OF SERVICES

The Supplier must perform all Services in accordance with this Agreement, by the relevant Completion Date and:

- 3.1. in a competent, proper and workmanlike manner in accordance with good industry practice and any specifications and using suitably qualified and experienced personnel; and
- 3.2. exercising a standard of skill, diligence, knowledge, judgment and care expected of an experienced supplier providing goods and services of a similar nature.

### 4. DELIVERY OF PRODUCTS

- 4.1. The Supplier must deliver the Products to the Delivery Point by the Delivery Means on the Delivery Date (or earlier with the Company's prior written consent). The Supplier must pack and protect the Products to prevent damage during transit.
- 4.2. Each Delivery must be accompanied by: (a) delivery dockets marked with Purchase Order number, Product description and quantity, Supplier's details, Delivery Point, and dispatch date and number, and (b) a copy of the packing list and any document that is required to be provided under Law or pursuant to a reasonable direction by the Company.

### 5. DELAYS

The Supplier must notify the Company, as soon as practicable if the Supplier cannot Deliver the Products by the Delivery Date or complete the Services by the Completion Date. The Company may elect to (a) agree to a later Delivery Date or Completion Date, (b) accept Delivery of alternative functionally equivalent products to the Products or services to the Services, or (c) cancel this Agreement and receive a full refund of any amounts paid to the Supplier.

### 6. TITLE AND RISK

- 6.1. Risk in the Products will pass from the Supplier to the Company on acceptance of the Products by the Company in accordance with clause 7.1. Title to the Products will pass from the Supplier to the Company on payment of the Purchase Price for those Products.
- 6.2. If the Supplier collects the Products under clause 11.2.1 then risk in and (where applicable) title to those Products will pass back to the Supplier at the time the Supplier collects those Products.

### 7. ACCEPTANCE OR REJECTION OF PRODUCTS

- 7.1. The Company may reject any Products if the Company (acting reasonably) considers any of the Warranties are untrue or have been breached or the Products do not otherwise comply with this Agreement.
- 7.2. The Company accepts the Products if the Company advises the Supplier in writing that the Products have been accepted (provided that signing for Delivery does not constitute acceptance), or the Company has not rejected the Products under clause 7.1 within 10 business days of Delivery of the Products.
- 7.3. The Company's acceptance of Products, or failure to notify of any Defect in the Products, will not waive, limit or prejudice any rights, powers or remedies the Company may have as a result of breach of any provision of this Agreement (including any Warranty) or any Law.

### 8. PURCHASE PRICE AND INVOICING

- 8.1. The Company will pay the Purchase Price for the Products and Services. The Purchase Price includes all costs and expenses associated with providing the Products and Services, including all freight costs, transit insurance and taxes (except GST), duties or charges.
- 8.2. The Supplier may only issue a tax invoice after the applicable Products have been Delivered and the applicable Services have been completed.

### 9. GST

Unless otherwise stated in this Agreement, amounts payable under this Agreement are expressed as exclusive of GST. If GST is or becomes payable by either party in relation to a supply under this Agreement, the recipient of that supply must (following receipt of a valid tax invoice or adjustment note) pay to the party making that supply an amount equal to the GST. For the purposes of this clause, terms which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the meaning given to them in that Act.

### 10. SUPPLIER OBLIGATIONS

The Supplier must:

- 10.1. comply with and must ensure that its personnel comply with all relevant Laws, industry or product codes (including those relating to safe transit, modern slavery, anti-bribery and anti-money laundering) and product standards (including any relevant Australian Standards) relating to the supply of the Products and the Services, including the Company's standards, policies, procedures and directions;
- 10.2. promptly advise the Company of any facts or circumstances in connection with the Products or the Services which may give rise to breach of any Laws, including any corrupt, illegal or improper behaviour or actual or suspected modern slavery; and

- 10.3. maintain internal controls to ensure compliance with this clause 10 (including records to trace supply chain) and, on request, permit the Company access to those records to audit compliance with this clause 10.

## 11. WARRANTIES AND REMEDIES

- 11.1. The Supplier warrants that:
- 11.1.1 the Supplier is the legal and beneficial owner of the Products and has the right to sell the Products free from all encumbrances and third party rights;
  - 11.1.2 the Products and Services are free from Defects, of merchantable quality, fit for purpose and conform with the specifications;
  - 11.1.3 if the Supplier is not the manufacturer, the Products conform with the manufacturer's specifications and have not been altered;
  - 11.1.4 the supply and use of the Products and the Services will not infringe any Law or the rights of any third party; and
  - 11.1.5 all information about the Products and Services given to the Company by the Supplier is true and correct and not misleading in all material respects.
- 11.2. Without limiting clause 13, if the Supplier breaches any Warranties (including any implied by Law) or the Company rejects any Products under clause 7.1 then at the Company's discretion:
- 11.2.1 in respect of the Products, the Supplier must at the Supplier's cost and expense (including for retrieving Products) and within reasonable time: (a) repair or replace those Products; or (b) refund any of the Purchase Price and any other amount paid by the Company to the Supplier in relation to those Products; or
  - 11.2.2 in respect of the Services, the Supplier must: (a) at the Supplier's cost and expense and within reasonable time resupply the Services, or (b) pay for the cost of the Company to procure the resupply of equivalent Services by a third party.
- 11.3. If the Supplier fails to comply with clause 11.2.1, the Company may repair, modify, replace and/or dispose of the Products in whatever manner the Company thinks fit and recover the Company's costs of doing so as a debt due from the Supplier.

## 12. INSURANCE

The Supplier must obtain and maintain, from reputable insurers, insurances prudent for a supplier of the Products and/or Services (as applicable) or as otherwise reasonably required by the Company. The Supplier must give the Company a copy of certificates of currency for those insurance policies on request.

## 13. INDEMNITY

The Supplier indemnifies the Company against all claims, liabilities, losses and expenses the Company suffers or is liable for arising out of or in connection with: (a) the Supplier's performance of this Agreement or any Product or Service causing damage to any property or injury or death to any person, or (b) any breach of this Agreement (including any Warranty) or any wilful or negligent act or omission of the Supplier, except to the extent arising from the wilful or negligent acts or omissions of the Company (or any officer, employee or agent of the Company).

## 14. INTELLECTUAL PROPERTY

If the Services are required to be performed, or the Products are required to be manufactured or procured, to the Company's specifications or special requirements, the Company will be entitled to own all intellectual property rights of any kind arising as a result of, or in the course of, the performance of the Services or design or manufacture of the Products.

## 15. TERMINATION

The Company may immediately terminate this Agreement by giving written notice to the Supplier if a Termination Event occurs.

## 16. ETHICAL PROCUREMENT

The Supplier cannot offer any incentive, reward, promotion or gift to the Company or its officers, employees, agents or contractors, without the prior written consent of the Company (which consent cannot be given by any intended recipient) and any such gift must not have a market value in excess of \$200.00.

## 17. CONFIDENTIALITY

Each party must keep confidential the terms of this Agreement, and any other information passing between the Company and the Supplier (together, "**Information**"). A party may disclose Information to its officers, employees, advisers, financiers and insurers on a confidential 'need to know' basis, and as may be required by law (including stock exchange rules) or by regulatory authority.

## 18. PRIVACY

The Supplier acknowledges and agrees that it will, in respect of any Personal Information it receives or has access to under this Agreement, comply with the Privacy Law. **Personal Information** has the meaning given in the Privacy Law and "**Privacy Law**" means the *Privacy Act 1988* (Cth), the Australian Privacy Principles in that Act and any other Australian legislation affecting the collection, use and handling of information such as Personal Information.

## 19. SUBCONTRACTING

The Supplier must not subcontract any of its rights or obligations under this Agreement without the Company's prior written consent.

## 20. ENTIRE AGREEMENT

This Agreement comprises the whole agreement between the parties about its subject matter and prevails over any terms or conditions put forward by the Supplier.

## 21. GOVERNING LAW

This Agreement is governed by the laws of the state in which Products will be Delivered or Services will be undertaken.

## 22. PPSA

The Supplier acknowledges that this Agreement does not give rise to a 'security interest' (as defined in the *Personal Property Securities Act 2009* (Cth) ("**PPSA**")) and that it will not lodge any financing statement in respect of the Company (as grantor) without the Company's prior written consent.

## 23. MISCELLANEOUS

- 23.1. This Agreement can be amended only by written agreement of the parties.
- 23.2. The Supplier must not assign this Agreement without the Company's prior written consent.
- 23.3. The Company has the right to set-off monies owing by the Supplier on any account against monies owing by the Company to the Supplier on any account.
- 23.4. Nothing in this Agreement creates a partnership or trust. The Supplier is not the agent of the Company and has no authority to bind the Company.
- 23.5. If a provision of this Agreement is unenforceable, the provision must be read down to avoid that result or, if it cannot be read down, must be severed without affecting the remainder of this Agreement.
- 23.6. The rights and obligations under clauses 9, 11, 12, 13, 14, 17, 18 and 23.6 survive the termination or expiry of this Agreement.
- 23.7. This Agreement may be executed in counterparts.