

**PURCHASE ORDER –  
TERMS AND CONDITIONS**

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## 1. DEFINITIONS

In this Purchase Order:

Business Day	means a day on which banks are open for business in the State excluding a Saturday, Sunday or public holiday in the capital city of the State.
Confidential Information	means: <ol style="list-style-type: none"> <li>(a) in the case of the Purchaser, any information (in any form) disclosed or made available by or on behalf of the Purchaser and any information directly or indirectly derived from that information, relating to the operations, systems, affairs, clients, business, plans, policies and practices of the Purchaser; or</li> <li>(b) in the case of the Supplier, any information provided by the Supplier during the course of supplying the Deliverables agreed between the parties to be provided on a confidential basis and marked as 'confidential information', but excluding information:             <ol style="list-style-type: none"> <li>(c) in the public domain other than through a breach by the Supplier;</li> <li>(d) rightfully obtained at any time by the Supplier without restrictions in respect of its disclosure or use; or</li> <li>(e) independently developed by the Supplier or a third party.</li> </ol> </li> </ol>
Date of Completion	means the date in which the Goods must be delivered (or made available for collection where delivery is not required) and/or the Services must be completed as nominated by the Purchaser.
Default	means a circumstance where: <ol style="list-style-type: none"> <li>(a) in the case of the Purchaser, the Purchaser wrongfully failing to make a payment due under this Purchase Order; and</li> <li>(b) in the case of the Supplier, the Supplier:             <ol style="list-style-type: none"> <li>(1) committing a breach of the Purchase Order; or</li> <li>(2) failing to supply the Deliverables with reasonable diligence or in a competent manner.</li> </ol> </li> </ol>
Defective Deliverables	means Deliverables which are not in conformity with this Purchase Order.
Deliverables	means the Goods and Services ordered by the Purchaser pursuant to this Purchase Order.
Goods	means any goods provided or to be provided by the Supplier as part of the Deliverables.
Intellectual Property Rights	means: <ol style="list-style-type: none"> <li>(a) any copyright (including future copyrights), patent, trade mark (whether registered or not), registered design or other design right, and any right to apply for the grant or registration of the same; and</li> <li>(b) any rights in respect of an invention, discovery, novel design, trade secret, confidential information, know-how, concept, idea, information, data or formula.</li> </ol>
Indemnified Persons	means the Purchaser, its directors, officers, employees, agents, and Related Bodies Corporate (as that term is defined in in section 50 of the <i>Corporations Act 2001</i> (Cth)).
Loss	means any loss, cost, damage, expense (including lawyer's fees), claim, demand or liability.
Price	means the price for the Deliverables stipulated in this Purchase Order.
Proportionate Liability Law	means, where the State is: <ol style="list-style-type: none"> <li>(a) Australian Capital Territory, the <i>Civil Liability Act 2002</i> (ACT);</li> <li>(b) New South Wales, the <i>Civil Liability Act 2002</i> (NSW);</li> <li>(c) Northern Territory, the <i>Proportionate Liability Act 2001</i> (NT); and</li> </ol>

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- (d) Queensland, the *Civil Liability Act 2003* (Qld);
- (e) South Australia, the *Civil Liability Act 1936* (SA) and the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA);
- (f) Tasmania, the *Civil Liability Act 2002* (Tas);
- (g) Victoria, the *Wrongs Act 1958* (Vic); or
- (h) Western Australia, the *Civil Liability Act 2002* (WA).

Purchaser	means the entity procuring the supply of the Deliverables from the Supplier under this Purchase Order.
Purchase Order	means the purchase order form, these terms and conditions and any documents incorporated into or attached to the purchase order form but excluding any other terms or conditions provided by the Supplier with its quotation or otherwise.
Representative	means, in respect of a party, an officer, director, employee, agent, representative, contractor or subcontractor of that party (other than the other party).
Services	means any services provided or to be provided by the Supplier which are ancillary to the provision of the Goods, as part of the Deliverables.
State	means the state or territory of Australia in which the Deliverables are supplied.
Supplier	means the person, corporation or entity providing the Goods or Services pursuant to the Purchase Order.

## 2. OBLIGATIONS AND DELIVERY

- (a) The Purchaser engages the Supplier to supply the Deliverables, and the Supplier agrees to supply the Deliverables, in accordance with and subject to the terms and conditions of this Purchase Order.
- (b) The Supplier must deliver the Goods and perform the Services:
  - (1) by the Date for Completion;
  - (2) in the manner required by this Purchase Order;
  - (3) at its own risk and in an efficient, timely and diligent manner;
  - (4) using the standard of skill and care and diligence normally exercised by a prudent and experienced provider of goods and services which are similar to the Deliverables in Australia;
  - (5) in accordance with all applicable laws, including all relevant safety and environmental laws, the Purchaser's policies and procedures, anti-bribery and anti-corruption laws, anti-slavery and human trafficking and applicable building codes of practice, and shall promptly furnish evidence of satisfaction of such compliance and provide assistance to the Purchaser, if requested by the Purchaser; and
  - (6) in accordance with the reasonable directions of the Purchaser or the controller of any site where the Supplier's Representatives attend (including without limitation attending site inductions).
- (c) The Supplier must ensure that it and the Supplier's Representatives are trained and hold all qualifications, licences, accreditations, and approvals needed to supply the Deliverables. The Supplier's Representative must be fluent in the English language, available at all times during the supply of Deliverables under a Purchase Order to supervise the work under that Purchase Order and duly authorised to receive and comply with (or cause to be complied with) the Purchaser's directions.
- (d) Unless otherwise stated in the Purchase Order, the Supplier must deliver the Goods to the site stated in the Purchase Order by the Date for Completion or as otherwise directed by the Purchaser.
- (e) In the event the Goods are made available for the Purchaser's collection, the Supplier shall give the Purchaser access to the Supplier's site to collect those Goods.
- (f) Whilst on the Purchaser's or the Supplier's site (including to deliver or collect the Goods respectively), the Purchaser and Supplier must at all times comply with site rules and the Purchaser's and Supplier's directions, including regarding site access and security.
- (g) The Supplier must notify the Purchaser as soon as it becomes aware of any anticipated delay or failure in the supply of the Goods and/or to perform the Services. The Supplier must ensure that its supply line is able to meet its commitments for the purpose of any supply under this Purchase Order.

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- (h) Ownership and title to the Goods transfers to the Purchaser upon the earlier of payment of those Goods and when those Goods are incorporated into the Works, provided that nothing in this subclause 1.1(h) constitutes acceptance of the Goods as a whole nor does it in any way preclude or restrict the Purchaser from refusing acceptance of the Goods or drawing on any of the security.

### 3. DEFECTS AND WARRANTIES

- (a) The Supplier must ensure, and expressly warrants, that the Goods and, where applicable, the Services:
- (1) comply with all requirements of the Purchase Order;
  - (2) are supplied or performed in accordance with recognised industry standards and relevant Australian Standards;
  - (3) are of merchantable quality and fit for the purpose for which they have been ordered;
  - (4) are and will be free of any liens, charges or encumbrances including all security interests under the *Personal Property Securities Act 2009* (Cth);
  - (5) are new (including being made of new components), free from deficiencies in design, manufacture and workmanship;
  - (6) where software is used in connection with the Goods and/or Services, the Supplier owns all source code and/or holds all licences pertaining to any such software; and
  - (7) match the description and performance criteria required by any drawings or any other descriptions supplied, or agreed to in writing, by the Purchaser and where the Supplier has given the Purchaser a sample or demonstration model of the Goods, corresponds with that sample or demonstration model in terms of quality, state and condition.
- (b) Provided that the parties have not entered into a written contract covering the subject matter of this Purchase Order (in which case the terms of that agreement shall apply to the relationship between the parties and the terms of this Purchase Order shall not have any legal effect), to the extent permitted by law, this Purchase Order constitutes the entire agreement between the Purchaser and the Supplier in respect of the subject matter referred to herein and, provided are the only terms which shall apply to the Subcontract Works.
- (c) If the Purchaser becomes aware of any Defective Deliverables, the Purchaser may direct the Supplier to, at its cost (including delivery and incidental costs), replace, resupply or make good any Defective Deliverables to the Purchaser's satisfaction within a reasonable time specified by the Purchaser, being not less than 7 days. If the Supplier fails to comply with such a direction, the Purchaser may have the Defective Deliverables rectified or re-performed by persons other than the Supplier and the cost of such rectification or re-performance will be a debt due to the Purchaser by the Supplier.

### 4. PAYMENT

- (a) The Price is fixed and is not subject to rise or fall in costs or exchange rates. The Price is an all-inclusive price, including, without limitation, for all customs duty, packaging, marking, handling, delivery, insurance, amounts payable for intellectual property rights and all incidental costs and expenses.
- (b) Subject to the satisfactory performance and the timely delivery of the Deliverables, the Purchaser shall pay the Supplier the Price.
- (c) The Supplier shall submit tax invoices to the Purchaser no more frequently than at monthly intervals, detailing the Goods provided and the Services performed prior to the date of each tax invoice.
- (d) Subject to clause 1.1(f), the Purchaser must pay the invoiced amount due to the Supplier within, to the extent that the relevant part of the Subcontract Work is carried out in:
- (1) Queensland, South Australia or Western Australia: no longer than 25 Business Days from the date on which the invoice is received;
  - (2) Northern Territory: no longer than 30 Business Days from the date on which the invoice is received;
  - (3) New South Wales: no longer than 20 Business Days from the date on which the invoice is received;
  - (4) ACT: no longer than 15 Business Days on which the invoice is received; or
  - (5) any other State or Territory: 30 days after the end of the month in which the invoice is received.
- (e) The Supplier must provide the Purchaser with bank account details into which payments by the Purchaser are to be deposited.
- (f) If any invoiced amount is disputed by the Purchaser or if the Purchaser is entitled to withhold payment, the Purchaser may, to the extent that the Subcontract Work is carried out in:

- (1) in Queensland, South Australia or Western Australia, within 15 Business Days from the date of the payment claim; and
  - (2) otherwise, within 10 Business Days from the date of the payment claim, issue a payment schedule indicating the amount of the payment (if any) that the Purchaser propose to make and reasons why the amount is less or why the Purchaser is withholding payment and the Purchaser shall pay the undisputed amount to the Supplier in accordance with the Payment Schedule.
- (g) The Purchaser may set off or deduct from any payments due to the Supplier any debt or other moneys due from the Supplier to the Purchaser, whether for damages or otherwise.
- (h) Payment is on account only and payment of monies is not evidence that the Deliverables have been supplied satisfactorily or an admission of liability on the part of the Purchaser.

#### **5. GST**

- (a) Terms used in this clause will, where the context requires, have the meaning ascribed to those terms in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (b) Except where expressly stated otherwise, all sums stated in this Purchase Order are exclusive of GST.
- (c) For each supply made by a party under or in connection with this Purchase Order on which GST is imposed the amount payable or to be provided for that supply (except where stated to be inclusive of GST) will be increased by, and the recipient of the supply must also pay, an amount equal to the GST (calculated at the prevailing rate of GST), subject to receipt of a valid tax invoice.

#### **6. CONFIDENTIALITY**

- (a) The parties acknowledges and agrees that the other party's Confidential Information always remains the property of the other party.
- (b) The parties must:
- (1) protect and keep the Confidential Information in strict confidence and keep it secure from unauthorised access;
  - (2) not disclose the Confidential Information to any person, other than:
    - (A) to those who have a need to know to supply the Goods or perform the Services; or
    - (B) to the extent required by law;
  - (3) not use the Confidential Information for any purpose other than in relation to the supply of the Deliverables; and
  - (4) return to the other party or destroy the Confidential Information and any copies of the Confidential Information at expiry or earlier termination of this Purchase Order or at the other party's earlier request.

#### **7. INSURANCE AND INDEMNITY**

- (a) The Supplier shall effect and maintain with reputable insurers:
- (1) public and products liability insurance for an amount not less than \$20,000,000 for any one occurrence and unlimited in the aggregate in respect of public liability to cover the Supplier's liability for loss of or damage to property and the death of or bodily injury (including disease or illness) to any person happening anywhere in Australia;
  - (2) insurance in respect of all claims and liabilities arising, whether at common law or under statute, relating to workers' compensation or employer's liability, from any accident or injury to any person employed by the Supplier in connection with the Deliverables, which insurance must be in compliance with the laws of the State and be extended to indemnify the Purchaser and contain a waiver of subrogation in favour of the Purchaser for act benefits and common law where the jurisdiction allows;
  - (3) comprehensive motor vehicle insurance covering all mechanically propelled vehicles owned or used by the Supplier in connection with this Purchase Order, for at least \$20,000,000 in respect of any one accident or series of accidents arising out of one event; and
  - (4) any other insurances required by law or which a reasonable and prudent person would consider to be appropriate in supplying the Deliverables, including, without limitation, professional indemnity insurance if the Deliverables require the Supplier to design the Goods or any part of the Goods.
- (b) The Supplier must provide certificates of currency confirming that it has the required insurances in place on or before the earlier of when the Supplier commences performing the Services and the Date of Completion, and also upon request from the Purchaser from time to time.

- (c) The Supplier is solely responsible for payment of all deductibles or self-insured retentions that are applicable to the Supplier's insurance.
- (d) The Supplier is responsible for and indemnifies Indemnified Persons against any Loss suffered or incurred by the Indemnified Persons arising out of or in connection with:
  - (1) personal injury to, or illness or death of, any person (including the Supplier's Representatives, the Purchaser's Representatives or a third party) in connection with the Deliverables; or
  - (2) damage to any property (including to any property of the Supplier, the Purchaser or a third party) caused or contributed to by an act or omission of the Supplier or in connection with the Deliverables, except and to the extent that such Loss is caused by the negligent act or omission or breach of this Purchase Order, by the Indemnified Persons. This indemnity is a continuing obligation, independent from the other obligations of the parties and survives the termination of this Purchase Order.

#### **8. ASSIGNMENT AND SUB-CONTRACTING**

- (a) Neither party may assign its interest in this Purchase Order or any rights or benefits under or arising out of or in connection with this Purchase Order without the prior written consent of the other party.
- (b) The Supplier must not subcontract any of the Services without the prior written approval of the Purchaser, which shall not be unreasonably withheld.

#### **9. SUSPENSION AND TERMINATION**

- (a) The Purchaser may at any time suspend a Purchase Order by written notice to the Supplier. If the Purchaser suspends a Purchase Order, the Supplier must suspend the supply of Goods and/or Services and comply with the directions of the Purchaser. The Supplier shall have no Claim by reason of a suspension under this clause, unless the suspension is as a result of an act, omission or default of the Purchaser (which is not permitted under this Purchase Order) in which case the Supplier shall be entitled to its reasonable costs incurred as a direct result of the suspension.
- (b) If the head contract is terminated, the Purchaser may:
  - (1) require the Supplier to novate the Purchase Order to the Principal or the Principal's nominee; or
  - (2) terminate the Subcontract by written notice to the Supplier.
- (c) Either party may terminate this Purchase Order by written notice to the other party in the event:
  - (1) of a Default by the other party of any of its obligations under the Purchase Order which the other party has failed to remedy within 5 Business Days after receiving notice specifying the breach and requiring its remedy or is not capable of remedy; or
  - (2) either party ceases to trade or enters into liquidation whether voluntarily or compulsorily (other than for the purposes of amalgamation or reconstruction) or compounds with its creditors or has a receiver, administrative receiver, administrator, nominee, supervisor or similar officer appointed over all or any of its assets or its undertaking or any part thereof or if any action, petition, application or proceeding is initiated or resolution passed relating to any of the aforementioned matters (subject to the *Corporations Act 2001* (Cth)).
- (d) Any termination of the Purchase Order under clause 9(c) shall not prejudice or affect any rights or remedies accrued by either party prior to the termination.

#### **10. INTELLECTUAL PROPERTY RIGHTS**

- (a) The Supplier represents and warrants to the Purchaser that the supply of the Goods and/or Services to the Purchaser, and the subsequent use and any on-sale of the Goods and/or Services by the Purchaser, will not infringe the Intellectual Property Rights of any third person.
- (b) The Supplier grants or must procure the granting to the Purchaser of a non-exclusive, royalty-free licence to use any Intellectual Property Rights owned or used by the Supplier prior to the date of this Purchase Order for the purposes of the Goods and/or Services, such that the Purchaser can enjoy the benefits of the Goods and/or Services.
- (c) The Supplier acknowledges that all Intellectual Property Rights created by the Supplier in the course of the supply of the Goods and/or Services automatically vests in the Purchaser.

#### **11. GENERAL**

- (a) Any notice given pursuant to this Purchase Order shall be in writing, in English and shall be deemed to be duly given if it is delivered by hand at or sent by post or email to the addresses of the parties either set out in the

Purchase Order or notified to the other party from time to time. In the case of notices sent by post the same shall be deemed to have been received 3 Business Days after being posted.

- (b) Any waiver must be in writing and signed by the party. No indulgence shown by either party to the other shall prevent that party subsequently insisting upon its rights and remedies under or in respect of this Purchase Order. If either party shall expressly waive its rights in respect of any breach of this Purchase Order such waiver shall not operate as a waiver of any similar subsequent breach or any breach of any other provision of this Purchase Order.
- (c) If any provision or part of this Purchase Order shall be or shall become unenforceable, void or invalid (as the case may be) such provision or part thereof shall not affect and shall be deemed to be severed from the remainder of this Purchase Order which shall be or shall continue to be fully enforceable and valid.
- (d) To the maximum extent permitted by law, the operation of the Proportionate Liability Law is excluded in relation to any and all rights, obligations and liabilities arising under or in relation to this Purchase Order, however such rights, obligations or liabilities are sought to be enforced.
- (e) Nothing in this Purchase Order shall be construed as establishing an agency or creating any trust, temporary or permanent partnership or continuing relationship or commitment between the parties or any relationship of employer and employee (including with respect to the Supplier's Representatives).
- (f) This Purchase Order is governed by and will be construed according to the laws of the State and the parties submit to the non-exclusive jurisdiction of the courts and appellate courts of the State with respect to any legal action or proceedings that may be brought at any time relating in any way to this Purchase Order.
- (g) The risk of any loss or damage to the Goods, or in relation to the Services, or any part thereof, shall remain with the Supplier until delivery to, collection of or acceptance by, the Purchaser, whichever is the later.
- (h) If a provision in this Purchase Order is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from this Purchase Order for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of this Purchase Order.
- (i) The Supplier acknowledges that time is of the essence in this Purchase Order and that a breach of any time obligation under this Purchase Order by the Supplier will be deemed to be a breach for the purposes of clause 1.1(c)(1).
- (j) A variation of any term of this Purchase Order will be of no force or effect unless it is in writing and signed by each of the parties.
- (k) Without limiting or impacting upon the continued operation of any clause which as a matter of construction is intended to survive the termination of the Subcontract, clauses 3, 1.1(g), 6, 7, 9 (Termination), 10, this clause 11 and all indemnities in favour of the Contractor survive the termination of this Subcontract.

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