

Purchase Order (PO) Terms & Conditions

1. Applicable terms and benefits

- a. If there is a Standing Arrangement in place, then the terms and conditions in that Standing Arrangement have precedence over and, apply to the extent of any inconsistency with, the terms and conditions in the PO (other than this clause 1 a.).
- b. If there is no Standing Arrangement, then the terms and conditions of the PO govern the entire agreement with respect to the Goods and/or Services supplied to the Buyer by the Supplier. No terms or conditions expressed on any confirmation, shipment or delivery docket, invoice or any other document whether in printed form or elsewhere by or for the Supplier will vary, replace, supersede or form part of the terms and conditions of the PO. To be clear, electronic commerce transactions will be governed by the terms and conditions of the PO, and any terms and conditions on the Supplier's internet site will be null and void and of no legal effect on the Buyer.
- c. If the Buyer suffers or incurs any Losses as a result of the acts or omissions of the Supplier related to the performance, non-performance or termination of the PO, or the supply of the Goods and/or Services, the Buyer will be able to recover those Losses from the Supplier as if those Losses were suffered or incurred by Buyer, subject to the limitations and exclusions set out in clause 6.

2. Supply of Goods and/or Services

- a. The Supplier must supply the Goods and/or Services in accordance with the requirements of the PO and in particular, to the delivery address, by the delivery date, in the stated quantity and description and in accordance with any special instructions. Time is of the essence in the performance of the Supplier's obligations under the PO.
- b. All Goods supplied must be new and unused, free from any form of security or encumbrance, fit for the purpose for which goods of that kind are commonly supplied or bought (and for any other purpose notified to the Supplier by the Buyer), be suitably packed to avoid damage in

transit or in storage, be of merchantable quality, be free from defects and comply with all applicable standards and laws. If the Goods are potentially dangerous or hazardous, they must be supplied together with the applicable material safety data sheets and all other information and materials specified by the Buyer.

- c. The Services must be supplied with due care and skill and in accordance with all reasonable directions of the Buyer.
- d. In supplying the Goods and/or Services, the Supplier must not interfere with the Buyer's activities or the activities of any other person at the delivery address and such supply must be in accordance with all applicable laws (including, in particular, all workplace health and safety law) and any relevant Buyer standards and procedures notified to the Supplier (including, in particular, all health, safety and environmental standards).
- e. The Supplier warrants that the Goods and/or Services will conform with all applicable laws, ordinances, codes, rules, standards and regulations and will be free from defects in materials, performance, operation and workmanship. If the Supplier is not the manufacturer of the Goods, it will obtain assignable warranties for the Goods from its vendors, which it will pass to the Buyer. If no pass through is made the Supplier will assume the responsibility of the warranty.

3. Price and payment

- a. The Buyer will pay the Price to the Supplier for the Goods and/or Services supplied in accordance with the PO.
- b. The Price is fixed and includes all costs incurred by the Supplier in supplying the Goods and/or Services to the Buyer (such as charges for packing, insurance, freight and delivery and the cost of any items used or supplied in performing the Services or making the Goods) and all taxes and duties (except GST).
- c. The Supplier can invoice the Buyer on completion of the Services or after the delivery of the Goods (whichever occurs last). Each invoice must be a valid tax invoice that references the Goods and/or Services supplied and the dates of such supply, the Price and any GST. All delivery slips

and correspondence must be marked with the correct PO number, Goods and/or Services descriptions, quantities, prices and such other information as the Buyer reasonably requires from the Supplier to identify the relevant Goods and/or Services.

- d. Unless alternate arrangements have been agreed by the parties, the Buyer agrees to pay each valid tax invoice less any amounts that the Buyer is by law required to deduct together with any applicable GST within thirty (30) days from the last day of the month of receipt of the tax invoice rendered in accordance with clause 3(c) above.

4. Inspection of Goods & Services

- a. The Buyer is only deemed to have accepted the Goods and/or Services after it has inspected the Goods within a reasonable time after delivery by the Supplier, and then confirming such acceptance with the Supplier. The signing of a delivery document or paying for the Goods and/or Services does not of itself mean the Buyer has accepted the Goods and/or Services.
- b. If any Goods and/or Services do not comply with the requirements of the PO, the Buyer may, in its sole and absolute discretion, reject the Goods and/or Services and, without prejudice to any of the Buyer's other rights, require the Supplier to either:
 - i at no additional cost to the Buyer, immediately rectify the defect or deficiency in the Goods and/or Services so as to make the Goods and/or Services comply with the requirements of the PO; or
 - ii at no additional cost to the Buyer, immediately supply new Goods and/or Services in replacement of the original Goods and/or Services supplied to the Buyer; or
 - iii immediately refund or credit any monies paid by the Buyer to the Supplier in relation to the Goods and/or Services that do not comply with the requirements of the PO.

5. Title and risk

- a. The risk of loss or damage to the Goods will pass to the Buyer only after the Buyer has accepted the Goods. Title in the Goods passes to the Buyer on the earlier of either the Buyer's acceptance of the Goods, or the Buyer paying for the Goods.

- b. All intellectual property rights created in connection with the Supplier supplying the Services to the Buyer vest in the Buyer, and the Supplier assigns all such intellectual property rights to the Buyer, on and from the date of their creation. In addition, the Supplier grants to the Buyer a perpetual, assignable, royalty-free licence to use those intellectual property rights to the extent required by the Buyer to use the Services.

6. Liability, indemnity and insurance

- a. Neither party is liable to the other for any Losses that arise from a breach of the PO that cannot reasonably be considered to arise naturally from that breach, except to the extent those Losses are covered by the party's insurance coverage. The parties exclude the operation of Part 4 of the *Civil Liability Act (NSW) 2002*.
- b. The Supplier indemnifies the Buyer against any and all Losses suffered by the Buyer related to the Supplier's failure to supply the Goods and/or Services in accordance with the PO, or a negligent act or omission of the Supplier, except to the extent the Losses are caused by the negligence or wilful misconduct of the Buyer.
- c. The Supplier must obtain and maintain insurance with a reputable insurer in Australia sufficient to cover any Losses for which the Supplier may be liable in connection with the PO and must provide evidence of that insurance to the Buyer upon request.
- d. If the Supplier is supplying the Goods and/or Services as trustee of a trust, it does so in its own right and as trustee of the trust and represents that it has the power under the trust deed to enter into the PO and does so for the benefit of all the beneficiaries of the trust.

7. Confidentiality and Privacy

- a. The Supplier must keep all confidential information of the Buyer that it acquires or accesses whilst supplying the Goods and/or Services to the Buyer, confidential, safe and secure, use it only for the purposes of the PO, not disclose it to any person (except as required by law and to personnel of the Supplier that have a need to know for the purposes of the PO and that are obliged to keep the information confidential), and then agrees to destroy it when the Supplier has performed all of its obligations under the PO or the PO terminates.

- b. The Supplier must comply with the Buyer's privacy policy, privacy collection statement and all applicable privacy laws, including the Australian Privacy Principles set out in the Privacy Act 1988 (Cth).

8. General

- a. The Buyer may terminate the PO without liability to the Supplier at any time prior to the supply of Goods and/or Services by the Supplier, or immediately if the Supplier breaches the PO (including these terms and conditions).
- b. The PO is governed by the law of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts in that State.
- c. Any delay by the Buyer in enforcing any of its rights under the PO is not a waiver of any of its rights.
- d. The Supplier may not assign any part, or all of, the PO, without the express written consent of the Buyer.
- e. The Supplier is an independent contractor with respect to the supply of the Goods and/or Services, and such supply does not create a relationship between the parties of employer and employee, principal and agent, partnership or joint venture.
- f. The provisions of these terms and conditions that relate to warranties, indemnity and confidentiality survive the termination of the PO.
- g. If the Buyer and Supplier agree to a Blanket Order, each individual order for Goods and/or Services will be made under these PO Terms and Conditions and there will be no obligation on either party to buy or supply certain total quantities throughout the specified period of time nor to exhaust the specified dollar amount of the Blanket Order.

Definitions

Blanket Order means the PO Terms and Conditions under which multiple orders are placed until the earliest of the following occurrences:

- the expiry of a specified period of time;
- the exhaustion of a specified dollar amount; and
- the termination of the PO by either party.

Buyer means the entity specified in the PO as the 'Buyer' and includes the officers, employees, contractors, agents, servants, assigns or related bodies corporate of the company.

Goods means the goods, if any, specified in the PO.

GST means the tax described in A New Tax System (Goods and Services Tax) Act 1999. **Losses** means all liabilities, losses, damages, injury, payments, costs and expenses (including legal costs, whether incurred or awarded) whether arising in contract, tort (including negligence) or otherwise.

PO means any purchase order for the Goods and/or Services agreed to between the Buyer and the Supplier, and to which these terms and conditions apply.

Price means the price specified in the PO.

Services means the services, if any, specified in the PO.

Standing Arrangement means a separate contract for the supply of goods and/or services entered into between the Supplier and the Buyer.

Supplier means the supplier entity specified in the PO as the 'Supplier' and includes the officers, employees, contractors, agents, servants, assigns or related bodies corporate of that entity.