

# Purchase Order Terms and Conditions

## General

These Purchase Order Terms and Conditions apply to this Order, unless the Order is made under an AACo Contract. If the purchase is made under an AACo Contract, then these Purchase Order Terms and Conditions will apply only so far as they are consistent with the AACo Contract. In the case of any inconsistency between these Purchase Order Terms and Conditions, and the AACo Contract (when the purchase is made under an AACo Contract), the AACo Contract terms and conditions will take precedence.

## 1. Definitions and Interpretation

### 1.1 Definitions

In this purchase order, unless the context otherwise requires, the following definitions will apply:

AACo Contract means a contract executed between the Customer and the Provider, which this Order has been issued under.

ADC Guidelines means the Australian Disputes Centre (ADC) Guidelines for Commercial Mediation (or if the ADC ceases to exist, the guidelines for mediation of any similar organisation nominated by the party referring the dispute to mediation) as in effect at the time of the mediation.

Approved Expenses means the Provider's expenses (if any) which have been approved by the Customer in writing prior to any expenditure being incurred;

Business Day means Monday to Friday inclusive excluding days which are public holidays in Brisbane;

Confidential Information means information of, or supplied by, the Customer, that:

- a) is by its nature confidential;
- b) is designated by the Customer as confidential; or
- c) the Provider knows or ought to know is confidential;

and includes information:

- d) comprised in or relating to any Intellectual Property Rights of the Customer;
- e) concerning the internal management and structure, personnel, processes and policies, commercial operations, financial arrangements or affairs of the Customer;
- f) that is of actual or potential commercial value to the Customer; and
- g) relating to the clients or suppliers of the Customer;

but does not include information that:

- h) was already in the possession of the Provider and not subject to an obligation of confidentiality, is lawfully received from a third party or independently developed by the Provider or is public knowledge other than through a breach of an obligation of confidentiality;

Contract means the legally binding contract between the Customer and the Provider constituted by the Documents specified in clause 2.1;



Contract Material means any material that is created, written or otherwise brought into existence by or on behalf of the Provider in the course of performing or carrying out the Contract;

Correctly Rendered Invoice means an invoice:

- a) in which the amount claimed is due for payment in accordance with the Contract;
- b) which the amount claimed is correctly calculated in accordance with the Contract;
- c) which correctly identifies the Goods and/or Services supplied; and
- d) which, if GST is applicable is a valid tax invoice under the GST Legislation.

Customer means A.A. Company Pty Ltd (ABN 86 010 317 067) or other entity specified in the Contract, who is procuring the Goods and/or Services;

Document includes:

- a) any paper or other material on which there is writing;
- b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- c) any articles or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other articles or device; or
- d) a document in electronic form;

Goods means the material, plant, item or equipment specified in the Order (if applicable);

GST means a goods and services tax imposed by or through the GST Legislation;

GST Amount means the amount of GST payable in respect of any taxable supply under the Contract, calculated at the rate of GST applicable at the time,

GST Legislation means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any related tax imposition law (whether imposing tax as a duty of customs excise or otherwise) and includes any legislation which is enacted to validate, recapture or recoup the tax imposed by any of such laws;

Intellectual Property Rights includes all copyright, trade mark, design, patents or other proprietary rights, or any rights to registration of such rights existing in Australia, or elsewhere or as protected by legislation from time to time, whether created before, on or after the commencement date of the Contract, but excludes Moral Rights;

Moral Rights means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the Copyright Act 1968 (Cth), and rights of a similar nature anywhere in the world whether existing before, on or after the commencement date of the Contract;

Notice means a notice in writing given by personal delivery, pre-paid post, or email to a Party's business address, registered office, or nominated email address. A notice is taken to be received when delivered, or if sent by email, when the email leaves the sender's system.

Order means a Customer issued purchase order, used to authorise the purchase of the Goods and/or Services by the Customer;

Purchase Order Terms and Conditions means these Purchase Order terms and conditions;

Party means each of the Customer and the Provider;

Personal Information is information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

Price and Pricing means the itemised prices and/or the price calculated by reference to a schedule of rates payable by the Customer for the Goods and/or Services and is inclusive of packaging, handling, freight, and all other charges;

Provider means the entity specified in the Contract from whom the Goods and/or Services are being procured;

Records means all material including but not limited to books, Documents, information, computer software, equipment, and data stored by any means disclosed, or made available, by the Customer to the Provider in connection with the performance of the Contract and includes a copy of such material, and

Services means any services specified in the Order (if applicable).

## 1.2 Interpretation

The following rules apply in interpreting these Purchase Order Terms and Conditions, unless the context otherwise requires:

- a) words importing a gender include the other gender;
- b) words in the singular include the plural and vice versa;
- c) all dollar amounts refer to Australian currency;
- d) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- e) a reference to an entity, person includes an individual, corporation, partnership or other legal entity;
- f) a party includes its executors, administrators, successors and permitted assigns;
- g) "consent" means prior written consent;
- h) "in writing" means either by letter or email;
- i) a reference to a clause, attachment or annexure is a reference to a clause, attachment or annexure to these Purchase Order Terms and Conditions;
- j) if a day on which an act is to be done is a Saturday, Sunday or public holiday in the place where the act is to be done, the act may be done on the next Business Day in that place, unless the Parties agree otherwise;
- k) if any expression is defined, other grammatical forms of that expression will have the corresponding meaning;
- l) a reference to a clause is a reference to all of its sub-clauses; and
- m) a document or agreement or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated.

## 2. Formation of Contract

2.1 The following Documents will constitute the entire Contract between the Customer and the Provider:

- a) the AACo Contract (if applicable);
- b) the Order;
- c) these Purchase Order Terms and Conditions;
- d) the Provider's quote or offer, if any, to the extent that it was accepted under the Order; and

e) any other Document, in whole or part, forming part of the Contract, as agreed in writing between the Customer and Provider.

2.2 In the event of any conflict between the Documents specified in clause 2.1, the order of precedence to resolve the conflict will be in the above order.

2.3 The Contract supersedes all prior representations, agreements, statements and understandings between the Customer and Provider, whether oral or in writing relating to the subject matter of the Contract. The Provider's sale terms and conditions do not apply, unless explicitly stated in the AACo Contract and/or in the Purchase Order.

### 3. Provision of Goods and/or Services

3.1 The Provider agrees to supply the Goods and/or perform the Services at or by the time specified in the Order or the Provider's quote or offer, if any, to the extent that it was accepted under the Order. If no time was specified the Provider agrees to supply the Goods and/or perform the Services within a reasonable time having regard to normal commercial practice.

3.2 All Goods and/or Services provided by the Provider to the Customer in accordance with the Contract, unless otherwise specified by the Customer, must comply in all aspects with:

- a) the terms of the Contract;
- b) applicable legislative requirements;
- c) any applicable code, policy or guideline; and any current Australian/New Zealand Standard and where an Australian/New Zealand Standard does not exist, the relevant current International Standard (ISO),

including any that may be introduced or varied during the Contract, which govern the provision of the Goods and/or Services.

3.3 All Goods supplied by the Provider to the Customer must be in a new and unused condition, of recent origin, unless otherwise specified in the Order.

3.4 Risk and title in the Goods (free of all encumbrances and interests) will pass to the Customer upon delivery.

3.5 The Provider must ensure that all Goods and/or Services are of a high quality, professional standard and are fit for purpose.

3.6 Without limiting the Provider's obligations under the Contract or otherwise, the Provider must:

- a) ensure that any manufacturer's or supplier's warranty that applies to the Goods will be transferred to the Customer, at no cost to the Customer;
- b) comply with obligations applying after the expiry of the warranty period specified in the
- c) Provider's quote or offer; and
- d) without limiting any other rights of the Customer,
- e) comply with obligations set out in the express warranty specified in the Provider's quote or offer, if any.

3.7 The Provider will be responsible for the supply and/or performance of all personnel and/or equipment, necessary for the proper supply of the Goods and/or performance of the Services.

3.8 When supplying the Goods and/or performing the Services, the Provider must take all measures to protect people and property; avoid unnecessary interference with the passage of people and vehicles; and prevent nuisance and unreasonable noise and disturbance.

- 3.9 The Provider must comply with any reporting requirements reasonably requested by the Customer during the Contract.
- 3.10 Any Goods which, in the opinion of the Customer do not comply with clauses 3.1, 3.3 and 3.5 shall be removed at the Provider's expense within such time as may be fixed by the Customer. Notwithstanding clause 3.4, the Customer shall not be responsible for the care or custody of such Goods not removed within the said time. Should the Provider fail to remove the Goods within the said time, the Customer may at the Provider's risk and expense either:
- a) redeliver the supplies to the Provider's premises where the Provider shall afford every facility to accept such delivery; or
  - b) dispose of such Goods in any manner the Customer sees fit.
- 3.11 Where any Goods fail to be provided by the nominated time for delivery, the Customer shall have the right to cancel the relevant part of the Order pertaining to those Goods at no cost to the Customer.

#### 4. Price and Payment

- 4.1 If the Goods and/or Services are provided in accordance with the Contract, the Customer will:
- a) upon receipt of a Correctly Rendered Invoice, pay the Provider the Price, within 30 days after receiving the Correctly Rendered Invoice; and
  - b) reimburse the Provider for the Approved Expenses, after the Approved Expenses have been incurred by the Provider.
- 4.2 The Customer will not be liable to reimburse the Provider for expenses other than the Approved Expenses, unless the Provider has obtained the Customers consent.
- 4.3 Despite clause 4.1, the Customer is not obliged to pay the Provider for any part of the Goods and/or Services until the:
- a) Provider has delivered to the Customer any Goods and/or Services that are due to be delivered; and
  - b) Customer has certified that the Goods and/or Services specified in the Correctly Rendered Invoice have been supplied and/or performed in accordance with the Contract.
- 4.4 Despite any previous certification in accordance with clause 4.3(b), the Provider must promptly supply or supply again, any part of the Goods and/or promptly perform or perform again, any part of the Services, certified by the Customer as not having been supplied and/or performed in accordance with the Contract at the Providers cost. The Customer may, without limiting any other rights it may have, defer payment for that part of the Goods and/or Services until the Customer is satisfied that the Goods and/or Services have been supplied or supplied again and/or performed or performed again, in accordance with the Contract.
- 4.5 Upon receipt of a Correctly Rendered Invoice, the Customer may require the Provider to provide additional information or documentary evidence to enable the Customer to determine whether or not an amount is payable.
- 4.6 If additional information or evidence, required by the Customer in accordance with clause 4.5, is accepted by the Customer, payment will be made, as per clause 4.1.

4.7 The Provider must not charge, or pass on to, the Customer any fees, costs or charges associated with the use of the corporate credit card or electronic facility that may be used to make payment of the Price.

## 5. GST

5.1 The Price is exclusive of GST and, if the Price is consideration for a taxable supply:

- a) the Customer must pay the GST Amount to the Provider in addition to the Price; and
- b) the Provider must remit the GST Amount to the Commissioner of Taxation in accordance with the GST Legislation.

5.2 Where the amount of GST collected by the Provider under the Contract differs, for any reason, from the amount of GST paid or payable by the Provider to the Commissioner of Taxation, including but not limited to:

- a) an amendment to the GST Legislation;
- b) the issue of a ruling or advice by the Commissioner of Taxation;
- c) a refund of GST to the Provider in respect of any supply made under the Contract; or
- d) a decision of any tribunal or court;

then the Provider must issue an appropriate GST adjustment note and the difference must be paid by or to the Customer as the case may be.

## 6. Set Off

6.1 The Customer may deduct from monies otherwise due to the Provider any debt or other monies due from the Provider or claim to money which the Customer may have against the Provider, whether for damages otherwise relating to the Services.

## 7. Intellectual Property Rights and Moral Rights

7.1 Title to, and Intellectual Property Rights in, all Contract Material will, upon its creation, vest in the Customer, unless otherwise specified in the Order.

7.2 If the Provider is an individual, the individual consents to any act or omission done by the Customer in the exercise of the Intellectual Property Rights in the Contract Material granted under the Contract that might otherwise constitute an infringement of the individual's Moral Rights.

7.3 If the Provider engages an individual, whether an employee, sub-contractor or volunteer, to perform work under the Contract, the Provider must, prior to allowing that individual to commence work in respect of the Goods and/or Services, obtain from that individual who is to create Contract Material:

- a) all consents, permissions and assignments necessary to enable the Customer to exercise the Intellectual Property Rights granted under the Contract in full, without impediment or cost to the Customer; and
- b) without limiting clause 7.3(a), a consent from the individual to any act or omission by the Customer in the exercise of the Intellectual Property Rights in the Contract Material granted under the Contract that might otherwise constitute an infringement of the person's Moral Rights.

7.4 The Provider warrants that the provision or supply of the Goods and/or Services to the Customer (including the creation, preparation or delivery of the Deliverables or any

Documentation), it is not infringing the Intellectual Property Rights or Moral Rights of any third party.

- 7.5 The Provider grants the Customer a permanent, irrevocable, royalty free, non-exclusive licence (including the right to sub-licence) to use, produce, adapt or exploit the Intellectual Property Rights owned by the Provider or any third party and which are associated with the Services (together with any Documentation or Deliverable) provided that the Customer does not on-sell or on-licence (whether for monetary consideration or not) such Intellectual Property Rights to third parties (excluding Related Corporations of the Customer). Notwithstanding Part VII of the Copyright Act 1968 of the Commonwealth, publication of any Documentation or Deliverable in accordance with this licence shall not affect such ownership.
- 7.6 The Provider shall notify the Customer in writing as soon as practicable of any claim threatened or brought against the Provider arising from an infringement or alleged infringement by the Provider of the Intellectual Property Rights of any third party.

## 8. Confidentiality and Personal Information

- 8.1 The Provider must not, and must ensure that its officers, employees, agents and sub-contractors do not, use or disclose Confidential Information to any person for any purpose other than to provide the Goods and/or Services, in accordance with the Contract.
- 8.2 The Provider must return all Records to the Customer upon completion or termination of the Contract.

## 9. Security and Access

- 9.1 The Provider must, and must ensure that its officers, employees, agents and/or sub-contractors, when entering upon the Customer's premises, dealing with the Customer's employees or members of the public, or using the Customer's facilities, equipment or resources, comply with all applicable rules, policies, standards, codes of conduct, directions and procedures of the Customer, including those relating to security, workplace health and safety and appropriate use of information and communication technology in a like manner as if they were employees of the Customer.

## 10. Liability

- 10.1 The liability of a Party under the Contract to the other Party for loss or damage sustained, will be reduced proportionately to the extent that the loss or damage was caused or contributed to by the other Party's negligence, unlawful act or omission and/or failure to comply with its obligations and responsibilities under and/or in connection with the Contract or otherwise at law.
- 10.2 Each Party must use all reasonable endeavours to mitigate its loss, damage and any expenses arising under and/or in connection with a breach of the Contract, or in tort, or for any other common law or legislative cause of action arising under and/or in connection with the Contract.

## 11. Indemnity

- 11.1 In this clause 11:

"claim" includes any claim, action, proceeding, demand, liability, obligation, costs (including legal costs), losses, damages and expenses, including those arising out of the terms of any settlement.

- 11.2 The Provider releases, discharges and indemnifies the Customer and each of its officers and employees ("the Indemnified Persons") from and against any claim which may be brought against or made upon or incurred by any of them in connection with any:
- a) negligent or unlawful act or omission of the Provider, its officers, employees, agents or subcontractors;
  - b) breach of the Contract by the Provider;
  - c) contravention of any legislative requirements by the Provider, its officers, employees, agents or sub-contractors; or
  - d) infringement by the Provider, its officers, employees, agents or sub-contractors of the Intellectual Property Rights or Moral Rights of any third party, except to the extent the claim is due to the negligent or unlawful act or omission of the Indemnified Persons.

## 12. Dispute Resolution

- 12.1 Neither party may commence any court or arbitration proceedings relating to a dispute between the parties under or in connection with this Purchase Order unless it has complied with the provisions of this clause, except to seek urgent interlocutory relief.
- 12.2 A party claiming that a dispute has arisen must promptly notify the other party in writing by giving details of the dispute. The parties must use reasonable endeavours to resolve any dispute by escalating it to a senior representative and ensuring that its senior representative uses reasonable efforts to resolve the dispute.
- 12.3 If the parties are unable to resolve the dispute in accordance with clause 12.2 within 20 Business Days from the date of notification, either party may immediately refer the dispute to mediation, and the parties will use reasonable endeavours to resolve the dispute following the ADC Guidelines. Each party must bear its own costs in relation to complying with this clause, except for the costs and expenses of the mediation, which will be borne by the parties equally.

## 13. Insurance

- 13.1 The Provider warrants that it will hold and maintain for the duration of the Contract the following insurances to cover its obligations under the Contract:
- a) Workers' Compensation insurance in accordance with the Workers' Compensation and Rehabilitation Act 2003 (QId);
  - b) Public Liability insurance for a minimum amount of \$20 million in respect of each claim unless otherwise specified in the Order; and
  - c) any other insurances as specified in the Order.
- 13.2 The insurances must be effected with an insurer that is authorised and licensed to operate in Australia.
- 13.3 The Provider must, if requested by the Customer, promptly provide a certificate of currency for each insurance policy.
- 13.4 If the Provider is a member of a scheme approved under the Professional Standards Act 2004 (QId), the Provider must provide a copy of the applicable scheme to the Customer, prior to the commencement of the Contract.

## 14. Licensing Requirements

- 14.1 The Provider warrants that it will hold and maintain all requisite licenses, permits, permissions and/or authorities necessary for the provision of the Goods and/or Services.
- 14.2 The Provider must, if requested by the Customer, provide evidence of compliance with its obligations under this clause, to the satisfaction of the Customer.

## 15. Variation

- 15.1 The Contract may only be varied by written agreement between the Customer and Provider. The Customer and Provider must act reasonably in deciding whether to agree to a variation, as requested by the other Party.

## 16. Breach and Termination

- 16.1 The Customer may terminate the Contract, in whole or in part, for convenience by giving 30 days prior Notice or such other reasonable period determined by Customer, to the Provider.
- 16.2 If the Contract is terminated in accordance with clause 16.1:
- a) the Provider must, following receipt of that Notice from the Customer, immediately take all steps necessary to minimise the loss suffered by the Provider as a result of the termination, including taking all reasonable steps to prevent or minimise its liabilities to its contractors and/or sub- contractors;
  - b) subject to clause 16.2(c), the Customer must pay to the Provider the fees and expenses reasonably incurred by the Provider in carrying out the Contract to the date of termination together with any costs and expenses reasonably incurred by the Provider by reason of termination; and
  - c) the Customer will not be liable for payment to the Provider for any compensation relating to loss of profit, revenue, goodwill or business opportunities, damage to reputation or indirect or consequential loss or any other reason in relation to termination nor will the Customer be liable for payment to the Provider for any amount greater than the amount that the Customer would have paid to the Provider had the Contract been completely performed.
- 16.3 Without limiting clause 16.5, where the Provider commits any breach of the Contract, the Customer may by Notice, require the Provider to show cause by the date specified in the Notice, why the Customer should not terminate the Contract.
- 16.4 If the Provider fails to show reasonable cause by the date specified in the Notice, then the Customer is entitled, upon Notice to the Provider, to terminate the Contract.
- 16.5 The Customer may immediately terminate the Contract by Notice to the Provider if:
- a) the Customer is satisfied that the Provider has breached any part of clause 8.1 or 8.2;
  - b) the Provider breaches any part of clause 13 or 14,
  - c) the Customer is satisfied that the Provider has breached any part of clause 17.1;
  - d) the Provider:
    - i. becomes insolvent or bankrupt or being a company goes into liquidation or has instituted against it any action or proceeding which has an object or may result in bankruptcy or liquidation;

- ii. has a receiver or a receiver and manager appointed or a mortgagee goes into possession of any of its assets or becomes subject to any form of external administration;
  - iii. enters into an arrangement with its creditors or otherwise takes advantage of any laws in force in connection with insolvent debtors; or
  - iv. is wound up, voluntarily or involuntarily; or
- e) the Provider indicates that it is unable or unwilling to complete the Contract.

16.6 If the Customer terminates the Contract in accordance with clause 16.4 or 16.5, the termination is without prejudice to any rights of the Customer under the Contract or at common law, including the right to claim damages for breach of the Contract.

## 17. General Provisions

### 17.1 Collusion

- a) The Provider warrants to the Customer that its offer was not prepared (and any variations to the Contract will not be prepared) with any consultation, communication, contract, arrangement or understanding with any competitor (including a contractor under a similar contract). The Provider acknowledges that the Customer has entered into the Contract in reliance of the warranties in this clause.
- b) If the Provider breaches clause 17.1(a), without limiting its rights under the Contract, the Customer may:
  - i. deduct from any moneys due to the Provider under the Contract, an equivalent sum as an amount due from the Provider to the Customer; and
  - ii. at its discretion terminate the Contract and claim damages for breach of the Contract.

### 17.2 Relationship of the Parties

The relationship of the Parties under the Contract is one of principal and contractor and the Provider is not by virtue of the Contract in partnership or joint venture with the Customer and must not represent itself or allow itself to be represented as a partner or joint venture, officer or employee of the Customer.

### 17.3 No advertising

The Provider must not, and must ensure that its officers, employees, agents and sub-contractors do not make any public announcement, advertisement, or other correspondence in any medium in relation to the Contract or awarding of any contract by the Customer without the consent of the Customer, as relevant.

### 17.4 Waiver

- a) Any failure by a Party at anytime to enforce a clause of the Contract, or any forbearance, delay or indulgence granted by a Party to the other will not constitute a waiver of the Party's rights.
- b) No provision of the Contract will be deemed to be waived unless that waiver is in writing and signed by the waiving Party.
- c) A waiver by a Party of a breach of any part of the Contract will not be a waiver of any subsequent breach of the same part nor a waiver of a breach of any other part.

17.5 Assignment or sub-contracting

- a) The Provider must not assign, in whole or in part, its obligations or interest in the Contract or sub-contract the provision of any Goods and/or Services pursuant to the Contract, without the consent of the Customer.
- b) The Customer may assign or transfer all or any part of its rights or obligations pursuant to these Purchase Order Terms and Conditions.

17.6 Governing law

- a) This Contract is governed by and construed in accordance with the laws of Queensland and the Parties submit to the non-exclusive jurisdiction of the courts of Queensland.
- b) Notwithstanding clause 17.6(a), the Parties agree to exclude the application of the Sale of Goods (Vienna Convention) Act 1986 to the Contract to the fullest extent permitted by law.

17.7 Severability

If any part of the Contract is determined to be invalid, unlawful or unenforceable for any reason then that part, to the extent of the invalidity, unlawfulness or unenforceability, will be severed from the rest of the Contract and the remaining terms and conditions will continue to be valid and enforceable to the fullest extent permitted by law.

17.8 Further assistance

The Provider must do all things reasonably required by the Customer to give effect to the Contract.

17.9 Disclosure by Customer

The Provider acknowledges that the Customer, its officers, employees, agents and sub-contractors may use and disclose any of the information provided by the Provider about the Provider, the Contract or the Goods and/or Services to government departments or agencies as required by legislation.

## 18. Clauses to Survive Termination

18.1 The following clauses will survive termination or expiration of the Contract:

- a) clause 1 -Definitions and Interpretation;
- b) clause 4 - Payment
- c) clause 7 -Intellectual Property Rights and Moral Rights;
- d) clause 8 -Confidentiality and Personal Information;
- e) clause 10 - Liability;
- f) clause 11 – Indemnity;
- g) clause 12 – Dispute Resolution
- h) clause 13 - Insurance;
- i) clause 17.3 - No Advertising;
- j) clause 17.4 - Waiver;
- k) clause 17.6 - Governing Law;
- l) clause 17.9 - Disclosure by Customer.