

Terms and Conditions of Purchase Order

1. General

- (a) Where a purchase is made under an agreement between the Agency named on the Purchase Order and a supplier ('Contract'), or under a NSW whole of government contract, these Terms and Conditions of Purchase Order ('Terms and Conditions') are in addition to the terms and conditions of the relevant Contract or NSW whole of government contract.
- (b) In the event of any inconsistency with these Terms and Conditions, the terms of the Contract or NSW whole of government contract will prevail to the extent of the inconsistency.
- (c) These Terms and Conditions apply to the exclusion of the supplier's terms and conditions of trade, unless otherwise agreed by the parties in writing.

2. Price

All prices in the Purchase Order are fixed and exclusive of GST. Unless specified otherwise in writing, all prices in the Purchase Order include insurance, packaging, freight, delivery and all costs associated with the supply.

3. Provision of the Supplies

- (a) Provision of the goods and/or services ('Supplies') must be made within the time, in the quantities, at the place and in the manner specified in Purchase Order, and time is of the essence.
- (b) Unless otherwise notified in writing, a supplier should not supply Supplies without first receiving a relevant Purchase Order.
- (c) *For such Supplies as are goods:*
 - (i) Title in the Supplies vests in the Agency upon acceptance, and the Supplier assumes all risk in the Supplies until such acceptance by the Agency.
 - (ii) Acceptance of the Supplies is subject to inspection upon delivery to the satisfaction of the Agency. The Agency will not unreasonably withhold or delay acceptance.
 - (iii) Supplies that do not conform in every respect with the description in the Purchase Order may not be accepted by the Agency and their costs of storage, handling and return will be borne by the supplier. Substitute Supplies will not be accepted without prior written agreement.
 - (iv) The supplier must ensure that the Supplies are suitably packed for safe delivery to the Agency and are accompanied by documentation setting out the Purchase Order number and a description of the Supplies, including their quantities.
- (d) *For such Supplies as are services:*
 - (i) The supplier must ensure that the Supplies conform in every respect to the description in the Purchase Order.
 - (ii) The Supplies are not accepted by the Agency until certified by an authorised representative of the Agency.

4. Wrongly supplied and defective Supplies

- (a) In respect of any Supplies that, within the warranty period, are found after acceptance to be defective or wrongly supplied, upon notification by the Agency, the supplier must:
 - (i) refund to the Agency any payments made;
 - (ii) make good the Supplies free of charge; and/or
 - (iii) reimburse the Agency for any expenses incurred in making good the Supplies, including re-performing services.
- (b) Any repaired, re-performed or replacement Supplies will be:
 - (i) granted a three (3) month warranty from their date of repair, re-performance, or replacement; or
 - (ii) will continue to be covered by the balance of warranty period, whichever is the greater of the two.
- (c) The rights and remedies under this clause are in addition to and do not limit any other rights of the Agency at law.

5. Service Orders

With respect to a Purchase Order line item expressed to be a Service, the supplier acknowledges that:

- (a) The price in the Purchase Order is an estimation of the total cost of the Supplies and the Agency is not obliged to order Supplies amounting to the total price;
- (b) Any payments made to the supplier for a line item expressed to be a Service will be subject to these Terms and Conditions, whether or not a separate Purchase Order is issued with respect to such payments; and
- (c) In relation to the provision of the Supplies, clause 3(a) does not apply and Supplies must be provided within the time, at the place, and in the manner agreed by the Parties in writing.

6. Payment

- (a) Payment will be made within thirty (30) days (except for small businesses please refer to: www.smallbusiness.nsw.gov.au/rego) of receipt by the Agency of a correctly rendered tax invoice, provided that:
 - (i) the Agency has accepted the Supplies; and
 - (ii) any further details reasonably requested by the Agency, including an itemised account, have been provided.

- (b) The supplier's invoice must:
 - (i) include the supplier's full trading name and ABN;
 - (ii) include the relevant Purchase Order number;
 - (iii) refer to one Purchase Order only;
 - (iv) be sent to the Agency in the manner and address set out in the Purchase Order; and
 - (v) be a valid tax invoice under GST law.
- (c) Payment is not an acknowledgment that the Supplies have been provided in accordance with this Agreement but will be taken to be on account only until acceptance of the Supplies by the Agency.

7. Warranties

- (a) The supplier warrants that the goods supplied are of merchantable quality, free from defect, fit for purpose, free of any encumbrance, have been manufactured in accordance with any applicable laws and mandatory industry requirements and do not infringe the rights of any third person.
- (b) The supplier warrants that the services supplied will be provided with due care and skill and do not infringe the rights of any third person.

8. Insurances

- (a) The supplier must hold and maintain adequate insurance (including, where appropriate, public indemnity, product liability, workers' compensation and professional indemnity insurance) to cover the risk for the Supplies.
- (b) The supplier must, upon request by the Agency, provide documentary evidence of its insurances.

9. Intellectual Property

Unless otherwise specified in the Contract or in a NSW whole of government contract:

- (a) Title to and intellectual property rights in materials that are:
 - (i) created for the Agency in the course of performing the obligations under this Agreement; and
 - (ii) developed and designed exclusively for the Agency as a term and object of this Agreement, will vest in the Government Agency. This does not affect intellectual property rights of either party in material which existed prior to the Agreement.
- (b) The supplier must notify the Agency in writing of any pre-existing intellectual property rights relating to the Supplies.
- (c) The supplier hereby grants to the Agency a free, non-exclusive licence in respect of any pre-existing intellectual property, authorising the Agency to use the Supplies in all or any of the ways contemplated by the parties.

10. Indemnity

- (a) The supplier will indemnify and hold harmless the Agency, its employees, and agents from and against any loss, damage, or liability arising from any suit, action, or proceeding where such loss, damage, or liability was caused by any wilful, unlawful, or negligent act or omission of the Supplier, its employees, agents, or subcontractors in the performance of the obligations under the Purchase Order.
- (b) The indemnity in this clause 10 will be reduced to the extent that the loss, damage or liability is caused by the wilful, unlawful or negligent act or omission of the Agency or any of its staff.

11. Termination

- (a) Where the supplier:
 - (i) is a corporation and goes into liquidation, has a receiver or manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors, or suffers any other form of external administration; or
 - (ii) is an individual and becomes bankrupt or enters into a scheme of arrangement with creditors, the Agency may, by notice to the supplier, terminate the Agreement either in whole or for part of the Supplies, and recover from the supplier any damages, losses, costs and expenses incurred.

12. Miscellaneous

- (a) Any notice or other communication under the Agreement must be in writing.
- (b) The supplier must comply with the requirements of all applicable legislation, including work health and safety.
- (c) The Agreement is governed by, and is to be construed in accordance with, the laws in force in New South Wales.
- (d) Waiver by either party of a breach of a term of the Agreement, including these General Conditions, will not be deemed to be a waiver in respect of any other breach, and the failure by either party to enforce a term of the Agreement will not be interpreted as a waiver of that term.