

GENERAL PURCHASE ORDER TERMS AND CONDITIONS

1. Application

- 1.1 This Agreement constitutes the entire agreement between the Supplier and HWC in respect of the deliverables and these General Conditions apply to the exclusion of any terms and conditions appearing on or forming part of the Supplier's dockets, invoices or other documentation including any terms issued by the Contractor on the supply of the Deliverables.
- 1.2 The Supplier is bound by this Agreement whether or not the Supplier or HWC signs this Agreement.

2. Supply of Deliverables

- 2.1 You must supply the goods and/or services to us in accordance with quotation and Purchase Order (which includes these General Purchase Order Terms and Conditions).
- 2.2 All goods shall be new and unused and clearly identified with Hunter Water Corporation's Purchase Order Number.

3. Quality and description of the goods and/or services

- 3.1 The goods and/or services must match the description (including performance criteria) in the Purchase Order.
- 3.2 If a sample of the goods was provided before we issued the Purchase Order, the goods must correspond with the sample in addition to matching the description.
- 3.3 If a demonstration of the services was provided before we issued the Purchase Order, the services must correspond in nature and quality with the services demonstrated.
- 3.4 The services must be performed by appropriately qualified, competent, skilled, experienced and professional personnel and must be rendered with due care and skill.
- 3.5 The goods and/or services must comply with any applicable legislation and relevant standard of the Standards Association of Australia, and must be supplied with copies of all material safety data sheets for dangerous goods.
- 3.6 The goods and/or services must be fit for the purpose for which goods and/or services of the same kind are commonly supplied or bought and for any other purpose which we make known to you.

4. Delivery

- 4.1 Unless otherwise specified, you are responsible for ensuring that the goods are properly packed and delivered to the place (within the time period) specified in the Purchase Order.
- 4.2 You must include a packing list in each package of goods delivered.
- 4.3 Delivery of goods will be by the due date shown and for the quantities of each item listed on the Purchase Order. Delivery of separate component parts making up an item is not acceptable. Any variation to the due date must be approved verbally/in writing by Hunter Water Corporation. If notification of a change to a due date is not received by Hunter Water Corporation within 48 hours of the Purchase Order being sent to the Supplier, then it will be deemed that the Supplier has agreed to supply the items pursuant to this Purchase Order.

5. Inspection and acceptance

- 5.1 Payment for the goods or the signing of delivery receipts before inspection does not constitute acceptance of the goods.

5.2 At any time during the performance of the services we may inspect or witness tests on the services or their results.

5.3 If upon inspection we find any goods or services to be defective goods and/or any services or their results to be defective services, we may:

- a) Reject the defective goods by returning them to you;
- b) Reject the defective services by notifying you that we are rejecting them;
- c) Repair the defective goods; or
- d) Make good the defective services

5.4 We may reject and return to you (in the case of goods) any goods and/or services which are not in conformity with this Agreement even if we have accepted or paid for those goods and/or services.

5.5 You must reimburse us for any expenses we incur in returning or repairing defective goods and/or making good defective services.

5.6 You must refund to us, when requested, any payments made by us in respect of goods and/or services which we reject.

6. Work, Health and Safety

6.1 The Supplier is responsible for the health and safety of its employees.

6.2 Without limitation to its other obligations under this agreement, the Supplier must:

- (a) comply with all requirements under WHS legislation;
- (b) comply with any directions of HWC or its nominees in relation to health and safety at the Site;
- (c) comply with all HWC's occupational health, safety and environmental requirements relating to the Supplier's conduct at the Site (as notified by HWC to the Supplier from time to time);
- (d) take all necessary precautions to prevent harm, cause harm, damage or nuisance to the environment in the provision of the Services;
- (e) comply with any reasonable directions issued by HWC in relation to the environment;
- (f) cause all of its employees to complete such safety or other training or induction as HWC directs

7. Performance of the services

7.1 You must, in performing the services:

- a) Use your best endeavours not to interfere with any of our activities or the activities of any other person on our premises
- b) Comply with, and ensure that your employees, agents, contractors and subcontractors comply with:
 - a. All applicable laws, regulations and industrial awards and Agreements
 - b. All safety, health and environment guidelines, rules and procedures provided to you by us; and
 - c. All directions and orders given by our representatives.

8. Title and risk

8.1 Title to and risk in the goods does not pass to us until:

- a) We take delivery of the goods; and
- b) We inspect and accept the goods.

8.2 You warrant that:

- a) You have complete ownership of the goods free of any liens, charges and encumbrances and will provide the goods to us on that basis; and
- b) We will be entitled to clear, complete and quiet possession of the goods.

9. Price

9.1 We agree to pay you the price in accordance with this Agreement for the goods and/or services.

9.2 The price is inclusive of all costs incurred by you in supply of the goods and/or performance of the services including all charges for packaging, packing, insurance and delivery of the goods in accordance with this Agreement and the cost of any items used or supplied in conjunction with the services. The price is also inclusive of all taxes except GST.

9.3 The price may not be increased without our prior consent. We have the right to refuse to give our consent.

10. Invoicing and payment

10.1 You must submit invoices to us:

- a) Upon delivery of the goods; and/or
- b) At the completion of the services unless the Purchase Order states that progress payments are to be made; or
- c) Where progress payments are to be made for the provision of services, at the end of each calendar month (or other period specified in this Agreement) for services performed by you in that month or that period (as the case may be).

10.2 No interest will be payable by us in respect of any invoice rendered to us by you under Clause 10.1 which remains due and unpaid.

10.3 Unless otherwise agreed, any money payable to you is to be paid in Australian currency.

11. Termination

11.1 Either party may immediately terminate the Purchase Order by notice in writing to the other party if the other party:

- a) Does not carry out its obligations under the Purchase Order and such breach is not remedied within 30 days of notice being given to the party to remedy the breach;
- b) Breaches any law relating to the supply of the goods or services;
- c) Becomes insolvent;
- d) Enters into voluntary administration;
- e) Has a receiver or receiver and manager appointed to any of its assets; or
- f) Is convicted of a criminal offence.

12. Independent Contractor

Both parties acknowledge that you are our contractor and not our agent or employee.

13. Warranties

- 13.1 You warrant that the goods and/or services will:
- a) Be free from any defect in design, performance, workmanship and makeup;
 - b) Be rendered with due care and skill and be of high quality and workmanship and otherwise satisfactory;
 - c) Not infringe or contribute to the infringement of any Intellectual Property Rights; and
 - d) Will conform with these terms and conditions for the warranty period.
- 13.2 If, during the warranty period, we find any of the goods to be defective goods and/or any of the services or their results to be defective services we may, at our option:
- a) Return the defective goods to you;
 - b) Reject the defective services by notifying you that we are rejecting them;
 - c) Make good the defective goods; or
 - d) Re-perform or make good the defective services.
- 13.3 At our option and request, during the warranty period you must:
- a) Repair or, at our option, replace any defective goods that we return to you free of charge;
 - b) Re-perform or make good any defective services that we reject free of charge; or
 - c) Reimburse us for any expenses we incur in making good any defective goods and/or services.
- 13.4 Any:
- a) Repairs or replacement goods provided by you under this clause are subject to the same warranty as the original goods, from the date of repair or replacement; and/or
 - b) Defective services that are re-performed or made good by you under this clause are subject to the same warranty as the original services.
- 13.5 You are not liable for any defect or fault in the goods and/or services that are caused by our negligence or the negligence of our employees.
- 13.6 The remedies provided in this clause do not exclude any other remedies provided by law.

14. Insurance

- 14.1 You must take out and maintain:
- a) Insurance for the goods up to the time they are delivered and installed (if required) for an amount not less than their replacement value;
 - b) A comprehensive public and products liability policy to cover all sums which you may become legally liable to pay as compensation;
 - c) 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 you in connection with the Agreement,

and you must ensure that all subcontractors are similarly insured in respect of their employees. This insurance must be in compliance with the laws of the relevant jurisdiction in which the services are to be carried out; and

- d) A policy of insurance against any and all liability, loss and damage of any kind whatsoever (including consequential loss) arising directly or indirectly from the use, non-use, failure, breakage or any other act, omission or matter arising in respect of any plant, equipment, tools, appliances or other property owned, rented or hired by you to give effect to the supply of goods and/or services.

14.2 You must notify us immediately of any cancellation of a relevant insurance policy and of any change to the policy which affects our interests.

15. Liability and Indemnities

15.1 We are not liable to you (whether in tort or in contract) in respect of any loss or damage of any kind whatsoever arising directly or indirectly from any act or omission (whether negligent or otherwise) on our part or on the part of any of our employees, agents, contractors and/or subcontractors in connection with or relating to this Agreement.

15.2 You acknowledge that if you enter our premises, you do so at your own risk. You must ensure that your employees, agents, contractors and subcontractors are also aware that they enter our premises at their own risk.

15.3 You are liable for and must indemnify us and keep us indemnified from and against any liability and/or any loss or damage of any kind whatsoever, arising directly or indirectly from:

- a) Any breach of any warranty or any of the terms and conditions of this Agreement by you;
- b) The illness, injury or death of any of your employees, agents, contractors and/or subcontractors arising out of or in connection with this Agreement;
- c) Any loss or damage arising out of, or in connection with, any personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind whatsoever caused or contributed to by:
 - (i) The goods and/or services, and/or; and
 - (ii) The entry onto and the activities undertaken on and in our premises by you and/or your employees, agents, contractors and/or subcontractors.
- d) Any criminal act, fraud, negligence or wilful act or omission by you and/or any of your employees, agents, contractors and/or subcontractors in connection with this Agreement;
- e) Any claim made against us by any of your employees, agents, contractors and/or subcontractors in respect of any relevant legislation concerning income tax, workers compensation, annual leave, long service leave, superannuation or any applicable award, determination or Agreement of a competent industrial tribunal;
- f) Any penalty imposed for breach of an applicable law in connection with the supply of the goods and/or performance of the services by you;
- g) Loss or damage to any plant, equipment, tools, appliances or other property owned, rented or hired by you and used relation to this Agreement; and
- h) Any claim that the goods, the services or the results of the services, anything you do in supplying us with the goods and/or the services, or our use of the goods or the results of the services infringes or allegedly infringes the Intellectual Property Rights of any person.

- 15.4 Every exemption, limitation, defence, immunity or other benefit contained in this Agreement to which we are entitled is held by us for the benefit of, and extends to protect, each of our employees, agents, contractors and subcontractors (excluding you, your employees, agents, contractors and subcontractors) and our related bodies corporate and their employees, agents, contractors and subcontractors (excluding you, your employees, agents, contractors and subcontractors).
- 15.5 Each indemnity in this Agreement is a continuing obligation separate and independent from your other obligations and survives termination of this Agreement.
- 15.6 It is not necessary for us to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.
- 15.7 Neither party is liable to the other party in any circumstances for any indirect, economic, special or consequential loss or damage, including but not limited to loss of revenue, loss of production or loss of profit.

16. Taxes

- 16.1 Unless otherwise expressly provided in this Agreement, you must pay all taxes including sales tax, payroll tax, levies, duties and assessments due in connection with the goods and/or services.
- 16.2 If any supply made under this Agreement is or becomes subject to GST, the party to whom the supply is made ("the Recipient") must pay to the party making the supply ("the Supplier") as consideration in addition to any consideration payable or to be provided elsewhere in this Agreement, subject to issuing a Valid Tax Invoice, an additional amount on account of GST, such amount to be calculated by multiplying the consideration by the applicable rate of GST.

17. Assignment and Subcontracting

- 17.1 The Contractor must not assign or sub contract any part of the Deliverables without prior written approval of HWC, which may be given or withheld in HWC's absolute discretion and may be given subject to conditions.
- 17.2 The Supplier will be liable to HWC for the acts, defaults and omissions of the Supplier's subcontractors (and the employees and agents of such subcontractors) as if they were those of the Supplier.

18. Personal Property Security Act 2009 (PPSA)

- 18.1 Title in goods passes to HWC free of any Security Interest upon the earlier to occur of the payment of the Fee or delivery of the Goods to the Site.
- 18.2 The parties agree that for the purposes of Section 115 of PPSA, the following sections of the PPSA will not apply to any relevant Collateral;
- (a) Section 120 (enforcement of liquid assets);
 - (b) Section 126 (apparent possession); and
 - (c) Section 128 (secured party may dispose of collateral).

HWC may give notice to the Contractor requiring the Contractor to do anything (including provide all reasonable assistance to HWC in relation to the registration of a security in respect to HWC's rights, including the execution of documents relating to such registration) that in HWC's opinion is necessary or desirable. The Contractor must comply with the requirements of that notice within the time stipulated in the notice.

19. Confidentiality

19.1 The Supplier must treat This Agreement and all information provided by HWC or on behalf of HWC under or in respect of this Agreement, including Personal Information as defined in the Government Information (Public Access) Act 2009 (NSW)(GIPA Act) as confidential and must not disclose:

- (a) Its existence, the information contained in it or its subject matter to any third party or use it for advertisement, display or publication without prior written consent of HWC; or
- (b) Information about the obligations under this Agreement, the terms of payment or performance in respect of any obligation under this Agreement at any particular time or any information of the kind described in section 275(91) of the PPSA,

Except:

- (c) To its officers, employees, legal and other advisers and auditors of the purpose of performing the Deliverables;
 - (d) With the consent of HWC; or
 - (e) To the extent it is necessary for the Contractor to disclose information to comply with any applicable law, the rules of any securities or stock exchange or an order of a court or tribunal and the other party is given prior notice of the disclosure.
- 17.2 The Contractor its employees, agents, directors, partners, shareholders or consultants shall not disclose to any person, any confidential information relating to HWC or affairs of others which may have come to its or their knowledge as a result of this Agreement.

20. General

- 20.1 Any of our rights under these terms can only be waived by us in writing.
- 20.2 These terms may not be varied except in writing signed by both parties.
- 20.3 We may exercise a right, remedy or power in any way we consider appropriate.
- 20.4 You must obtain at your own expense any necessary licences or permits and comply with applicable laws in supplying the goods and/or services to us.
- 20.5 The rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Agreement.
- 20.6 All rights, obligations and liabilities under or in connection with this Agreement are to apply, even where the relevant circumstances involve a failure to take reasonable care and the existence of concurrent wrongdoers (as that term is defined in Section 34(2) of the Civil Liability Act 2002 (NSW), unlimited and otherwise unaffected by anything that, but for this clause, may by virtue of the provisions of the Civil Liability Act 2002 (NSW) have limited or otherwise affected those rights, obligations and liabilities.

21. Governing Law

- 21.1 This Agreement is governed by the laws of New South Wales, Australia.
- 21.2 Each party submits to the non-exclusive jurisdiction of the courts of New South Wales.

Agreement means this document and separately each Purchase Order

Defective Goods means goods which are not in conformity with this Agreement or are defective in design, performance, workmanship or makeup.

Defective Services means services or the results of any services which are not in conformity with this Agreement, are of inferior quality or workmanship or are otherwise unsatisfactory.

Deliverables means the supply and delivery of the Goods and /or the performance of the Services as the case requires.

GST means the goods and services tax imposed by the New Tax System (*Goods and Services Tax*) Act 1999 (Cth) and the related imposition Acts of the Commonwealth

Goods means the goods specified in this Agreement (including any part of the goods specified).

HWC means Hunter Water Corporation.

Insolvent means with respect to a party, that it is insolvent (*as defined in the Corporations Act 2001* (Cth) in liquidation or provisional liquidation, receivership, bankruptcy (protective or otherwise) or under administration, unable to pay its debts as and when they fall due or otherwise insolvent, entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors or any analogous event

Intellectual Property Rights includes without limitation the protected rights attaching to inventions, patents, registered designs, trade marks, copyright, circuit layouts and confidential information

Licences means all licences, qualifications, registrations and other statutory requirements necessary for the supply of goods and/or services under this Agreement

Party means you or us

Parties means you and us

Price means the price specified in the Purchase Order, or as otherwise agreed with us

Purchase Order means the Purchase Order for goods and/or services issued by us to you from time to time containing, amongst other things, a description of the goods and/or services

Services means the services specified in this Agreement (including any part of the specified services and the results of the specified services)

Taxes means any and all present and future sales, use, personal, property, real property, value added, goods and services, turnover, stamp, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whosoever imposed (other than taxes on our net income) by any government, governmental, semi-governmental or other relevant authority, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed or otherwise payable

Valid Tax Invoice is an invoice which complies with GST law relating to the production and form of tax invoices for GST purposes

You means the person named in this Agreement as the Supplier of the goods or services

Warranty Period means the period of 24 months from the date of delivery or 12 months from the date of installation or initial use of the goods, whichever is the sooner and/or 12 months from the date on which the service is performed.