



## PURCHASE ORDER - TERMS AND CONDITIONS

1. **(Performance)** You must:
  - (a) as an independent contractor, provide all things including all equipment, tools, materials and anything else necessary to complete the supply of goods and any associated services as specified in the Purchase Order Particulars (**Supply**) in accordance with this Purchase Order (other than power and water which we will provide at no cost to you); and
  - (b) commence the Supply immediately:
    - (i) on the Date for Commencement specified in the Purchase Order Particulars; or
    - (ii) where a Date for Commencement is not specified in the Purchase Order Particulars, upon your acceptance of this Purchase Order or such later date as we may advise,  
**(Date for Commencement)**.
2. **(Supply)** You agree the Supply includes the provision of the services or goods described in the Supply Description in the Purchase Order Particulars in accordance with this Purchase Order.
3. **(Site Induction)** Before you commence any activity on the Site (being the premises identified in the Purchase Order Particulars or such other premises as we may advise) you must complete and pass such site induction as we require in our discretion (**Site Induction**). You must also comply with all applicable policies, procedures and directions of us and comply with the directions of any authorised supervisor of the Site.
4. **(Co-operation)** You must cooperate and coordinate with other services and occupants at the Site.
5. **(Invoices)** You must, after Completion of all of the Supply (and not before unless authorised by us in writing), submit a tax invoice which states your name, ABN number, purchase order number, description of Supply provided, the amount claimed and such other details as we reasonably require to the Invoicing Address.
6. **(Payment)**
  - (a) Subject to the other terms of this Purchase Order, within 30 business days after we receive your tax invoice provided in accordance with clause 4, we will pay you the Supply Price in accordance with the Purchase Order Particulars.
  - (b) To the extent the Purchase Order Particulars provides for payment of a lump sum, we must pay you that lump sum (which unless otherwise expressly stated is a lump sum covering all of the Supply).
  - (c) To the extent the Purchase Order Particulars provides for payment of an amount calculated by applying a schedule of rates, we must pay you the amount calculated by applying the schedule of rates to the time spent directly by you in providing the Supply.
7. **(Reduction)** For the avoidance of doubt, the amount otherwise due for payment under clause 6 will be reduced by the value of any incomplete or defective Supply and by amounts we claim from you on any account.
8. **(Completion and Delays)** Completion of the Supply is only achieved when you have fully completed the Supply and satisfied all other matters which this Purchase Order requires to be satisfied before the completion of Supply is achieved (**Completion**). We will excuse you for delays which you notify us of promptly and which are beyond your and your subcontractors' reasonable control.
9. **(Continuing Obligations)** Your obligations under this Purchase Order will continue and not be prejudiced by:
  - (a) delivery or Completion of the whole or any part of the Supply; and
  - (b) any payment made by us for or in connection with the Supply.
10. **(Goods)** To the extent the Supply is for the delivery of goods:
  - (a) you must deliver and unload the goods to the Delivery Address specified in the Purchase Order Particulars and receive confirmation of receipt from us on or before the Delivery Date (being the date for delivery specified in the Purchase Order Particulars);
  - (b) we may postpone the Delivery Date by written notice to you;
  - (c) you must ensure the goods conform with any description or sample provided by us;
  - (d) you warrant that the goods are fit for their purpose, of merchantable quality and free and clear of all liens, charges or encumbrances;
  - (e) full unencumbered title in the goods passes to us upon the earlier of any payment for the goods or delivery, but risk in the goods remains with you until Completion;
  - (f) we may return the goods at your cost and risk if we find that the goods or any part of them are not in accordance with this Purchase Order; and
  - (g) Completion of the Supply will only be achieved when we have received all documentation relating to the goods and we advise you the goods are acceptable to us or we put the goods to use (other than for testing).
11. **(Work)** To the extent the Supply is for the carrying out of work:
  - (a) you must commence the Supply on the Date for Commencement and achieve Completion by the Date for Completion;
  - (b) you must ensure, and you warrant that, the work will be carried out in a proper and workmanlike manner and that the work incorporates only new materials or plant which are of merchantable quality and fit for that purpose; and
  - (c) Completion of the Supply will only be achieved when you have completed all the work in accordance with the Purchase Order (as determined by us acting reasonably).
12. **(Services)** To the extent the Supply is for the performance of services:
  - (a) you must commence the Supply on the Date for Commencement and achieve Completion by the Date for Completion specified in the Purchase Order Particulars (as may be extended by us in accordance with the terms of this Purchase Order);
  - (b) you must use reasonable skill and care in providing the services;
  - (c) you warrant that the services will be fit for their purpose; and

- (d) Completion of the Supply will only be achieved when you have performed all the services in accordance with the Purchase Order (as determined by us acting reasonably).
13. **(Subcontracting and Assignment)** You must not subcontract any of the Supply or assign any right or obligation under this Purchase Order without our prior written consent. You are responsible for acts or omissions of subcontractors (whether or not we have consented to the subcontract).
14. **(Intellectual Property)** You:
- grant us an irrevocable and royalty-free licence to use any intellectual property connected with the Supply for any of our own purposes; and
  - indemnify us against any loss or liability arising from third party claims in connection with the intellectual property.
15. **(Representatives)** To the extent the Supply requires you to perform activities at the Site, you must ensure Your Representative is available at all times at the Site while you are engaged in the Supply. You agree Your Representative is authorised by you to conduct any dealings on your behalf and receive any notices from us on your behalf.
16. **(Legal Requirements)** You must ensure, and you warrant to us, that you have complied and will continue to comply with all applicable laws and approvals (including, without limitation, the *Privacy Act 1988* (Cth) (**Privacy Act**) and all laws and legal requirements relating to bribery, corruption, money laundering, fraud or similar activities).
17. **(Work Health and Safety)** To the extent the Supply is for the carrying out of work:
- you will:
    - comply with and discharge all obligations imposed on you under the *Work Health and Safety Act 2011* (Qld) (**WHS Act**), the *Work Health and Safety Regulation 2011* (Qld) (**WHS Regulation**) and all other applicable work health and safety legislation, regulations, rules, Codes of Practice and Australia Standards (**WHS Laws**);
    - unless otherwise advised in writing, accept that you are the person having management or control of the "workplace" (as defined in the **WHS Act**) at which the Supply is being undertaken;
    - discharge the duties of a person who conducts a business or undertaking under the **WHS Laws**; and
    - without limiting this clause 17(a), ensure your officers, workers and agents, subcontractors and its subcontractors' officers, workers and agents discharge their respective duties under the **WHS Laws** in connection with the Supply;
18. **(Your General Obligations)** You are also responsible for complying with and ensuring that all of your officers, employees, agents, subcontractors or subcontractors' agents comply with all requirements (including fully discharging all duties imposed upon any of them) under or in connection with **WHS Law**, whether or not we are also obliged to comply with or discharge any of the duties.
19. **(Reinstatement of Supply)** You will (at your cost) reinstate the Supply if it is damaged or destroyed by any cause prior to Completion (other than loss or damage caused by any negligent act or omission by us or our employees, consultants or agents).
20. **(Defects)** If at any time prior to 12 months after Completion (or in relation to rectification required, 12 months after completion of the relevant rectification works) we determine that any part of the Supply does not comply with this Purchase Order, you must do any of the following, at your cost, as we direct (acting reasonably):
- refund all money paid for the defective Supply; or
  - rectify any defects;
- and reimburse us any damages suffered directly from the defective Supply.
- If you fail to act as and when directed under this clause we may, without further notice, engage another party to rectify the defective Supply at your risk and cost. All costs and expenses contemplated by this clause that are incurred by us will be recoverable from you as a debt due and payable.
21. **(People, Property, Environment)** You must take all possible steps to protect people from death or injury and protect the Supply, the environment and any property belonging to us or others from loss or damage arising from or in connection with You providing the Supply.
22. **(Indemnity)** You indemnify us (and our agents and employees) against any claims, damages, losses, costs, expenses or other liabilities arising from or in connection with:
- property loss or damage, personal injury or death (including to your employees) or environmental damage arising from or in connection with you providing the Supply (except to the extent our negligence has directly caused the loss, damage, injury or death); or
  - any breach by you of this Purchase Order or any law.
23. **(Insurance)** Unless we agree otherwise in writing, from the Date for Commencement, you must effect and maintain the following insurances:
- (Public and Products Liability)** while you continue to have any obligations regarding the Supply, public and products liability insurance in the amount of \$20 million per occurrence which names us as an insured party;
  - (Professional Indemnity)** where you are providing any design, specification or other professional services in connection with the Supply, until at least 6 years after Completion, professional indemnity insurance in the amount of \$5 million per claim;
  - (Motor Vehicle)** while you continue to have any obligations to supply goods or services which will involve the use of a motor vehicle, motor vehicle third party property damage and bodily injury insurance in the amount of \$20 million per occurrence;
  - (Workers Compensation)** workers compensation insurance as required by law; and
  - (Plant, Material and Goods (including Transit insurance))** insurance in respect of any plant, equipment, material or goods included in or in connection with the Supply during transit to and unloading at the Delivery Address and while in storage off-site for at least the amount of the value of the plant, equipment, material or goods.
24. **(Evidence of Insurance)** You must provide us with evidence of all policies of insurance required to be maintained by you and copies of the conditions applying to the insurance when requested.
25. **(Changes of Requirements)** We may for any reason (including our convenience) direct you in writing to:
- accelerate or delay the progress of, change the sequence of or suspend for any period the Supply or any part of it; or
  - change the extent, character or quality of the Supply (including by adding or omitting (and having others provide) any part of the Supply or changing methods of Supply),
- in which case:

- (c) the Supply Price, the Delivery Date (in the case of goods) and the Date for Completion (in the case of work or services) shall be adjusted by an agreed amount unless our direction arises from (1) your act, omission or default (in which case you shall have no claim for additional cost or extension of time) or (2) from a suspension for a matter beyond our control (in which case you shall be entitled to an extension of time but shall have no claim for additional cost);
- (d) you are not entitled to any other cost, expense, loss or damage (including loss of profit) arising from or in connection with a direction made pursuant to this clause; and
- (e) if we omit any part of the Supply (including rectification), we may ourselves perform or have others perform such obligations at your cost without any liability to you.
- 26. (Your Responsibility)** You must satisfy yourself as to and assume full responsibility for all conditions and characteristics of the Site and all risks (including safety, delay and cost risks) which may arise in connection with the Supply, without relying upon any information, approval or direction we may give you (unless we expressly agree in writing to you so relying).
- 27. (Right to Information and Information Privacy)** You acknowledge that we are a Government Owned Corporation and are subject to Queensland law, including the *Right to Information Act 2009* (Qld) and the *Information Privacy Act 2009* (Qld) (**RTI & IP Law**). The RTI & IP Law extends to all Related Bodies Corporate of us. You acknowledge that documents and information generated in connection with this Purchase Order may be subject to disclosure under the RTI & IP Law and you agree that any disclosure by us or our Related Bodies Corporate that is necessary under RTI & IP Law is permitted, despite other provisions of this Purchase Order.
- 28. (Anti-competitive Arrangements)** In connection with the Supply and this Purchase Order, you warrant to us that you have not entered into any improper or anti-competitive arrangement or understanding with any other party.
- 29. (GST and Other Taxes)** If the Supply Price is exclusive of GST, we will pay you the GST that applies to the Supply after you provide us with a valid tax invoice. You must pay all taxes and charges payable in connection with the Supply. Where we incur GST on any supply we are required to make to you, you must pay us that GST.
- 30. (Withholding)** We may withhold from payment to you any amount which we reasonably consider we are or may be required by law to withhold, including PAYG and the foreign entity withholding tax.
- 31. (Termination)** We may terminate this Purchase Order at any time and for any reason (including for our convenience) by no less than 2 days prior notice to you in writing (in which case we will pay for Supply completed to the date of termination together with such justifiable extra and unavoidable costs incurred by you in relation to the period prior to the termination date (but excluding indirect costs) on the incomplete portion of the Supply).
- 32. (Post Termination Obligations)** Within 2 business days after termination or expiry of this Purchase Order (for any reason), you must deliver to us:
- if requested, a written report on the current Supply the subject of this Purchase Order;
  - all plant, equipment, materials, property (including without limitation keys), documentation, information or other items of ours which we provided to you in connection with this Purchase Order; and
  - any of the materials or other items which under this Purchase Order have become our property.
- 33. (Breach or Insolvency)** Without limiting our rights against you, if you are in breach of any obligation under this Purchase Order (and fail to rectify that breach within five days of notice to do so), or if we consider for any reason that you cannot pay your debts as and when they fall due or if you become insolvent, we may:
- terminate this Purchase Order (in whole or in part) immediately;
  - carry out ourselves or have others carry out your obligations at your cost without any liability to you; or
  - suspend payment of any further amount under the Purchase Order while the breach continues.
- 34. (Breach by NQBP)** if we are in breach of any obligation under this Purchase Order (and fail to rectify that breach within five days of notice to do so) then you may:
- terminate this Purchase Order immediately; or
  - suspend any part of the supply under the Purchase Order whilst the breach continues.
- 35. (Conflict of Interest)**
- You warrant to us that you are not aware of any reason why the provision of the Supply will or may place you in a position of conflict as regard any other interest or duty (including as a result of any relationship) of yours or any of your personnel, employees, agents and subcontractors.
  - You must fully disclose to us any such conflict or possible conflict immediately when you become aware of it.
  - You must not accept any other engagement, employment or enter into any agreement or dealing with any person which may place you in a position of conflict in respect of any obligation under this Purchase Order.
- 36. (Contract Terms)** Despite any other provision:
- subject to paragraph (b) below, the terms of this Purchase Order:
    - operate to the exclusion of all other terms (including in any document, standard terms and conditions, material or communication issued by you at any time (whether before or after your receipt of this Purchase Order));
    - only include documents referred to in the Supply Description in the Purchase Order Particulars to the extent those documents describe the Supply (including without limitation its performance characteristics) and not for any other purpose (including without limitation terms or conditions proposed by you for the Supply); and
    - will include documents expressed to form part of this Purchase Order that are not known to you until after this Purchase Order is issued (including Additional Documents) only from the time they are made known to you and you will be taken to have accepted those documents unless you notify us of any objections within 14 days of receipt;
  - where a formal agreement prepared by us and signed by you prior to or after the issue of this Purchase Order covers the Supply, the terms and conditions of that agreement shall apply to the Supply in place of this Purchase Order; and
  - no waiver of a breach of any provision of this Purchase Order shall constitute a waiver of any other breach of such provision or any other provision.
- 37. (Completing Purchase Order Particulars)** You authorise us to edit or revise the Purchase Order Particulars for the purposes of correcting any errors or completing the Purchase Order Particulars to the extent required to give effect to the parties' intentions relating to the Supply or Purchase Order.
- 38. (General)**

- (a) Despite any other provision of this Purchase Order, neither party will be liable to the other for any indirect loss.
- (b) This Purchase Order may be executed electronically and may be executed in counterparts.
- (c) The laws in force in Queensland apply to this Purchase Order and both parties submit to the exclusive jurisdiction of the courts of Queensland, except that the United Nations Convention on Contracts for the International Sale of Goods does not apply.
- (d) Subject to disclosures that are necessary under law or to provide Goods and Services, you must keep confidential all information of NQBP, including this Purchase Order, information that is marked confidential or concerns the commercial or operational affairs of NQBP, and is not in the public domain.
- (e) You acknowledge that we are a Government Owned Corporation.

**39. (Queensland Government Supplier Code of Conduct & Ethical Supplier Requirements)**

- (a) You must ensure, and you warrant that, you comply with all of the expectations contained in the Queensland Government Supplier Code of Conduct.
- (b) You warrant and agree that you have not and will not:
  - (i) breach the requirements of the "Ethical Supplier Threshold" set out in Principal 2.3 of the Queensland Procurement Policy, the Queensland Government Ethical Supplier Mandate and the Queensland Government Supplier Code of Conduct (***Ethical Supplier Requirements***); and
  - (ii) in connection with the Supply under this Purchase Order, deal or contract with any officers, employees, agents, subcontractors or subcontractors' agents or other third party which you are aware, or should reasonably have been aware, have breached any Ethical Supplier Requirements.
- (c) You warrant that you have not been subject to the imposition of a demerit or sanction in relation to the Ethical Supplier Requirements.
- (d) You authorise NQBP and Queensland Government Procurement Compliance Branch to obtain information about you and your compliance with government policies and legislation including without limitation the Queensland Procurement Policy and the Ethical Supplier Requirements.