

These Purchase Order Terms and Conditions (Conditions) consist of the following four (4) pages and apply to the attached Purchase Order unless the Purchase Order refers to and provides details of a separate executed formal written agreement entered into by the Supplier that applies to the provision of the Supplies to the Customer.

## 1. DEFINED TERMS AND INTERPRETATION

In this document:

**Business Day** means any day other than Saturday, Sunday or any other day which is a gazetted public holiday in the State/Territory in which the Supplies are to be provided.

**Contract** means the contract between the Supplier and the Customer consisting of:

- a) the Purchase Order;
- b) these Conditions;
- c) the "Vendor Requirements" detailed on the Customer's website; [Zinfra Vendors](#) and
- d) all other documents identified in the Purchase Order including Specifications for the Supplies ordered (excluding any terms and conditions of sale or contract forming part of the Supplier's offer which are not specifically accepted in writing by the Customer to the exclusion of these Conditions).

**Contract Price** means the Firm Price detailed in clause 3.1.

**Customer** means the entity named in the Purchase Order as the Customer.

**Delivery** means delivery of Products to the Destination and/or the completion of the Services.

**Delivery Date** means the delivery date identified in the Purchase Order.

**Destination** means the place of delivery identified in the Purchase Order.

**Documents** means the documentation to be provided by the Supplier referred to in clause 13.1 and in the Purchase Order and includes Specifications and drawings.

**Good Working Order in respect of a Supply** means that the Supply performs in accordance with the relevant Specifications for that Supply.

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Privacy Act** means the Privacy Act 1988 (Cth).

**Product** means a Supply that consists of material, goods or other items.

**Purchase Order** means the document attached to these Conditions, which is issued by, or on behalf of, the Customer to the Supplier.

**Services** means the services to be provided by the Supplier under the Contract, including services to install or ensure that the Supplies are in Good Working Order at and after Delivery in accordance with clause 7.3.

**Site** has the meaning set out in clause 13.2.

**Specifications** means, in relation to a Supply, all relevant Supplier Specifications, Standards, Warranties and all other specifications provided to the Supplier by the Customer, including without limitation the purposes, requirements, and service levels, stated or referred to in the Purchase Order for the Supplies.

**Supply/Supplies** means any item or material or Service listed in the Purchase Order to be provided by the Supplier under the Contract.

**Supplier** means the party specified in the Purchase Order as the supplier who will provide the Supplies.

**Supplier Specifications** means the Supplier's published descriptions of and technical specification for the Supplies.

**Standards** means any governmental regulations and standards applicable to the Supplies and any other standards specified in the Purchase Order.

**Tax Invoice** has the meaning given to it in the GST Act.

**Warranties** means the warranties for the Supplies set out in clause 7.3.

Worker has the same meaning as in the *Work Health and Safety Act 2011* (NSW).

## 2. CONTRACT

a) In consideration of payment of the Contract Price by the Customer, the Supplier must supply to the Customer the Supplies in accordance with the Purchase Order which includes these Conditions.

b) To the extent that the Supplier's terms and conditions of supply are supplied with the Supplies (including as printed on quotations, consignment notes, invoices, acknowledgement of the Purchase Order or other Documents), to the fullest extent permitted by law, those terms and conditions will be of no legal effect and will not constitute part of the terms and conditions applying to the Supply (even if any representative of the Customer signs those terms and conditions or annexes those terms and conditions to this Purchase Order).

c) The Purchase Order, when issued by the Customer and bearing an order number allocated by the Customer and incorporating these Conditions by reference is the only form which will be recognised by the Customer as authority for charging Supplies to its account.

## 3. PRICE

### 3.1 Firm Price

The total value specified in the Purchase Order is:

- a) firm and is not subject to increase;
- b) inclusive of all costs incurred by the Supplier in the supply of the Supplies including all charges for testing, inspection, insurance, labelling, packing, charges for freight, delivery to and off-loading at the Destination and the costs of any items used or supplied in the performance of the Supplies; and
- c) inclusive of all taxes and duties except GST (**Firm Price**).

### 3.2 ABN

The Supplier confirms that its ABN is as set in the Purchase Order.

Uncontrolled when printed or downloaded

## 4. GST

### 4.1 Definitions

For the purposes of this clause 4:

- a) the expressions **Consideration**, **GST**, **Input Tax Credit**, **Recipient**, **Supply** and **Taxable Supply** have the meanings given to those expressions in the GST Act; and
- b) Supplier means any party treated by the GST Act as making a Supply under the Contract.

### 4.2 Consideration is GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with the Contract are exclusive of GST.

### 4.3 Payment of GST

- a) If GST is imposed on any Supply made under or in accordance with the Contract, the Recipient of the Taxable Supply must pay to the Supplier an amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment.
- b) Payment of the amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with the Contract.

### 4.4 Reimbursement of expenses

If the Contract requires a party (**First Party**) to pay for, reimburse, or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by the other party (**Other Party**), the amount required to be paid, reimbursed, or contributed by the First Party will be the amount of the Reimbursable Expense net of Input Tax Credits (if any) to which the Other Party is entitled in respect of the Reimbursable Expense.

## 5. INVOICING AND PAYMENT

### 5.1 Payment claims

The Supplier must, upon Delivery, or at the intervals identified, or on the dates specified in, the Purchase Order, submit to the Customer payment claims clearly showing:

- a) the value of the Supplies supplied within the preceding interval since the previous payment claim;
- b) the Purchase Order number detailed on the Purchase Order; and
- c) any other reasonable information requested by the Customer from time to time to assist the Customer in assessment of the Supplier's claim.

## 5.2 Payment

The Customer will pay a valid Tax Invoice submitted by the Supplier within thirty (30) Business Days of receiving the invoice, unless otherwise stated in the Purchase Order. The amount which will be paid by the Customer is the amount the Customer considers to be payable under the Contract. This may not necessarily be the same as the amount claimed by the Supplier in the Tax Invoice. The Customer may deduct from any amount payable to the Supplier under the Contract any amount which is, or in the opinion of the Customer is likely to become, payable by the Supplier to the Customer under the Contract or otherwise. Payment by the Customer is on account only and does not evidence the Customer's acceptance of the Products supplied by the Supplier.

## 6. DELIVERY

- a) The Supplies must be delivered to the Destination by the Delivery Date.
- b) The Supplier acknowledges that time is of the essence in effecting Delivery of the Supplies and no variation or extension given by the Customer will be treated as a waiver of this condition.

## 7. TITLE, INSPECTION, ACCEPTANCE, QUALITY AND REJECTION

### 7.1 Title and risk

- a) Title to and property in the Supplies, free of all liens and encumbrances, passes to the Customer on payment of the Contract Price or if used by the Customer in the course of the Customer's business (whichever is the earlier).
- b) The Supplier bears all risk of loss and damage to the Supplies until final acceptance by the Customer in accordance with clause 7.2 of these Conditions.

### 7.2 Inspection and acceptance

- a) The Customer has the right to inspect or test or reject the Supplies at any time.
- b) Despite any prior inspections or payments, all Supplies will be subject to final inspection which may include measurement, testing or examination and acceptance at the Destination within a reasonable time but not more than 90 days after receipt of the Supplies. Any inspection or test or rejection carried out by the Customer does not relieve the Supplier from any of its responsibilities and obligations under the Contract.
- c) Without limiting any other right or remedy the Customer may have under the Contract, if the Customer receives a Supply that is incorrect, defective or otherwise fails to comply with the terms of the Contract (including any breach of warranty under clause 7.3 in respect of the Supply), the Customer may give the Supplier notice of non-acceptance (Notice) of that Supply (Rejected Supply) as soon as reasonably possible after the Customer becomes aware of that defect or non-compliance.

- d) The Supplier must, at its own cost and within five calendar days (or any longer period allowed by the Customer), of receiving the Notice from the Customer:
  - i) collect the Rejected Supply from the Customer or other location where the Rejected Supply is located at that time (as directed by the Customer); and
  - ii) supply a replacement Supply to the Customer at no additional charge to the Customer. Such replacement must comply in all respects with the Contract.
- e) Acceptance by the Customer does not waive any of its rights under the Contract. If the Customer accepts any Supplies, this does not extinguish any rights of the Customer if the Supplies do not comply with a term of the Contract.

## 7.3 Quality warranty

The Supplier warrants that the Supplies:

- a) match the description referred to in the Purchase Order;
- b) are in Good Working Order and fit for the purpose for which supplies of the same kind are commonly supplied or bought and for any other purpose specified by the Customer and made known to the Supplier;
- c) where the Supplies are Products, the Products:
  - i) conform to the Specifications;
  - ii) are of merchantable quality and, unless otherwise specified in the Purchase Order, are new;
  - iii) will be free from contamination or defects in design, material and workmanship; and
  - iv) (including their contents, labelling, marking and packaging) comply with the law in the country in which they were manufactured and any relevant Australian State or Territory in which they are to be delivered;
- d) are free from all liens and encumbrances, such as to pass to the Customer good marketable title; and
- e) where the Supplies are Services, in carrying out the Services, the Supplier will exercise all due skill, speed, care and diligence and carry out the Services in accordance with the Contract, current applicable industry codes of practice and to the standard expected of a suitably qualified, experienced and skilled contractor carrying out similar works. The Supplier acknowledges that the Customer has engaged the Supplier to carry out the Services as a result of the expertise of the Supplier in carrying out such works.

## 8. DEFECTS LIABILITY

Without limiting clause 7.2, should any Supply or part of any Supply fail or prove not to be in Good Working Order or otherwise be defective within the defects liability period identified in the Purchase Order (or, where no defects liability period is identified, within 12 months) from the date of Delivery or installation of the Product (whichever occurs later) and/or from the date on which the Services are performed, the Supplier will promptly repair or replace that Supply upon request to do so by the Customer, at the Supplier's cost, and the Customer may require the Supplier to reimburse the Customer for any expenses incurred by the Customer in repairing, re-performing or making good (as the case may be) such defective Supplies. Repairs and replacements will themselves be subject to the above obligations for a further period of 12 months from the date of delivery, re-installation or passing of tests.

## 9. PERSONAL PROPERTIES SECURITIES ACT

- a) The Customer agrees that the Supplier receives a registrable security interest under the Personal Property Securities Act ((2009) (Cth) (PPSA) in the Supplies under this Contract.
- b) The Customer agrees that:
  - i) the Supplies are collateral for the purposes of PPSA;
  - ii) if the Supplier registers a security interest under the PPSA, then the Supplier may exercise its remedies as a secured party under the PPSA without prejudice to any other rights or remedies it may have under any other agreement it has with the Customer; and
  - iii) it will execute any necessary documentation that is reasonably required to enable the Supplier to register a financing statement or financing change statement on the Personal Property Securities Register (PPSR).
- c) The Customer acknowledges that a Purchase Money Security Interest (PMSI) is granted to the Supplier in the Supplies as security for the performance of the Customer's obligations to the Supplier under this Contract.
- d) The Customer agrees that any funds received by the Supplier relating to the Supplies may be allocated in any order by the Supplier at the Supplier's discretion.

## 10. INTELLECTUAL PROPERTY RIGHTS

### 10.1 No infringement

The Supplier warrants that the Supplies, and the Customer's reasonably foreseeable use of them, will not infringe any intellectual property rights or moral rights of any person. The Supplier indemnifies and will keep indemnified the Customer (and its successors in interest) against breach of this warranty and any loss or damage (including legal fees and costs) arising from breach of this warranty or prevention or hindrance of use of the Supplies.

## 10.2 Ownership

The Customer will own all intellectual property rights arising from performance of the Services for the Customer. The Supplier hereby assigns such rights to the Customer and agrees to execute any document reasonably required by the Customer to evidence or perfect such ownership. The Supplier grants the Customer a licence of all intellectual property owned by the Supplier and not assigned under this clause, to enable it to use, modify, maintain and repair the Products and enjoy the benefit of the Services.

## 10.3 Confidential information

The Supplier must ensure that its officers, employees, contractors and agents keep confidential all information of the Customer or relating to the Contract, and not use or disclose that information except to fulfil its obligations under the Contract. All confidential information supplied by the Customer will be returned to it by the Supplier on completion of the Contract.

The obligations of confidentiality under this clause 10.3 do not apply to any information that is generally available to the public (other than by reason of a breach of the Contract) or is required to be disclosed by any applicable law.

## 11. INDEMNITIES AND INSURANCE

### 11.1 Indemnities

The Supplier indemnifies the Customer and its related bodies corporate and the directors, officers, agents and employees, successors and assigns of each of them against all claims, suits, actions, proceedings, demands, liabilities, loss, judgments, costs or damages whether ordinary, special or consequential arising directly or indirectly from or in connection with:

- the acts, negligence, omissions or wilful misconduct of the Supplier or any of its employees, agents or contractors;
- the Supplies;
- a breach of any of the Supplier's warranties or any other terms of the Contract;
- a claim that any Product or Service supplied to the Customer infringes upon or misappropriates any intellectual property interest of another; and
- a claim of any lien, security interest or other encumbrance made by a third party.

### 11.2 Insurance

In addition to any insurance the Supplier is obliged to effect under all applicable laws, the Supplier will effect and maintain, at its own expense, with reputable insurer(s), insurance to cover its liability under this clause 11 and all events that may cause loss of or damage to property or injury or death of a person in the performance of the Supplies. Such insurance will at least include workers compensation, public liability and goods in transit until delivered to the Customer in accordance with the limits and requirements set out in the Purchase Order.

The Supplier will provide evidence of such insurance to the Customer on request and will ensure that every subcontractor it engages in respect of the Purchase Order carries similar policies of insurance.

### 11.3 Limited liability

The Customer's liability under the Contract will not exceed the Contract Price.

## 12. CANCELLATION AND TERMINATION

### 12.1 With cause

In the event that:

- the Contract is breached by the Supplier and the Supplier fails to remedy that breach within seven calendar days;
- the Supplier becomes insolvent, or a receiver of its business or assets is appointed;
- the Supplier makes any assignment or arrangement for the benefit of its creditors;
- a change in control occurs in relation to the Supplier without the consent of the Customer;
- any representation, warranty or statement made or repeated by the Supplier in or in connection with the Contract is untrue or misleading in any material respect (including by omission) when so made or repeated; or
- the Supplier ceases to threaten to cease to carry on business or a substantial part of it,
- the Customer may without prejudice to any other rights to recover damages or any other rights, by giving notice to the Supplier in writing:
  - cancel (in whole or in part) any undelivered Supplies;
  - terminate the Contract; and/or
  - make any other arrangements as the Customer considers necessary

and the Customer will not be obliged to make any further payments under the Contract. Any additional expenditure incurred by the Customer in connection with such cancellation/termination will be a debt due from the Supplier to the Customer. Such termination will not prejudice any right of the Customer to recover from the Supplier damages for any breach.

### 12.2 Without cause

The Customer may cancel the Purchase Order and terminate the Contract in whole or in part at its absolute discretion by providing written notice to the Supplier and without assigning any reasons for the termination. Under such circumstances the Customer will pay the Supplier for any Product delivered prior to the date of cancellation. Where Product is manufactured or fabricated to the Customer specifications, upon receipt of a notice of cancellation, the Supplier will cease manufacture, supply or work in accordance with the notice and will do everything possible to mitigate any cost after such cancellation.

If the Supplier is not in default of the Contract, the Customer will pay the Supplier the costs directly incurred in connection with the Purchase Order to the date of cancellation, provided that:

- the cancellation costs are reasonably proportionate to the value of the Product received or work done and include a profit margin of no more than 6%; and

- the maximum amount payable by the Customer under the Contract, inclusive of the cancellation costs, does not exceed the Contract Price.

## 13. TRANSPORTATION AND WORK ON SITE

### 13.1 Transportation

All Product will be packed, marked and transported as specified in the Purchase Order. If not specified, all Product will be packed, marked and transported in a proper and suitable manner so it will not be damaged and, in all cases, in accordance with the proper requirements of the relevant carrier. The Supplier will be liable for any difference in freight charges arising from its failure to follow any transport instruction in the Purchase Order or to properly describe the Product transported.

### 13.2 Work on site

Where the Supplier is required to be present or provide Supplies on or near premises specified by the Customer (**Site**), the Supplier will:

- supply all labour, tools, equipment, materials and the like necessary to provide the Supplies and in accordance with the requirements contained in clause 17;
- not interfere with the Customer activities or the activities of any other person at the Site;
- be aware of and comply with and ensure its employees, agents, invitees and subcontractors are aware of and comply with all laws, standards rules and procedures relevant to it and the Site, to the extent applicable to the provision of the Supplies by the Supplier, and obey all lawful requirements, directions and orders given by the Customer, or any person authorised by any law to give directions to the Supplier (including participating in any training or induction training required by the Customer);
- provide the Customer all such information and assistance as it reasonably requires in connection with any statutory or regulatory investigation in connection with the performance of the Purchase Order;
- ensure that the Supplier's Workers, entering the Site are suitably qualified for, experienced and skilled in, the performance of their tasks and are of such character as not to prejudice safe working practices, safety and care of property and continuity of work; and
- where applicable, provide the Customer with a complete list of all chemicals, hazardous materials and ingredients in the composition of Product used in the performance of the Supplies and a copy of the material safety data sheet for such chemicals and hazardous materials. The submission of such list will not relieve the Supplier of exclusive responsibility for the safe transportation, use, storage and disposal of such materials prior to acceptance by the Customer in accordance with clause 7.2.

## 14. DOCUMENTS AND LICENCES

### 14.1 Documents

The Supplier will provide the Customer with all user Documents including engineering data containing sufficient information to enable the Customer to operate, make full use of and maintain the Supplies, together with any other Documents specified in the Purchase Order (including safety documentation such as risk assessments). Unless otherwise stated in the Purchase Order, all Documents must be provided by the Supplier upon Delivery.

### 14.2 Licences

Unless otherwise specified in the Purchase Order, the Supplier will, at its cost, obtain and maintain all requisite licences, qualifications, certificates, accreditations, permits and authorities required to perform any task associated with the Supplies and will provide copies of such documents to the Customer upon request. The Supplier must comply with all applicable laws, acts, regulations, ordinances, regulations, codes of practice, Australian standards, proclamations, orders, rules and with the lawful requirements of public and other authorities in any way related to or in respect of performing the Supplies.

## 15. GENERAL

### 15.1 Privacy

The Supplier must at all times comply with its obligations under the Privacy Act. The Supplier must on request provide evidence of compliance.

### 15.2 Applicable law

The Contract will be governed by the law of the Australian state in which the Customer is located, as stated in the Purchase Order, and the Customer and the Supplier agree to submit all disputes arising between them to courts of that state and any court competent to hear appeals. Notwithstanding the above, the Customer may institute such proceeding as it sees fit in the court of any country, state or territory in which the Supplier is resident or the work is to be performed, and the Supplier in such case accepts and submits to the jurisdiction of those courts.

### 15.3 Assignment and subcontracting

The Supplier will not assign or subcontract the Supplies (in whole or in part), or payment, or any other right, benefit or interest in respect of the Purchase Order, without immediately notifying the Customer in writing and obtaining the Customer's prior written consent.

### 15.4 Precedence of documents

In the event of inconsistency, the documents listed in the definition of 'Contract' will take precedence in the order in which they are listed.

### 15.5 Entire agreement

The Contract constitutes the entire agreement between the parties and supersedes any previous agreement or arrangement between the parties relating to the Supplies.

### 15.6 No waiver

Failing to insist on strict performance of any provisions of the Contract is not a waiver of any later breach or default.

### 15.7 Variation must be in writing and notified

The Customer may in writing, amend, supplement or replace any Purchase Order, Specification or these Conditions. Such change will take effect on and from the time of notification to the Supplier.

## 16. DISPUTE RESOLUTION

- a) If any dispute, question or difference of opinion between the Customer and the Supplier arises out of or under the Contract (**Dispute**), a Party may give to the other Party a notice (**Dispute Notice**) specifying the Dispute and requiring its resolution under this clause 16.
- b) If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other Party, each Party must nominate one representative from its senior management to resolve the Dispute (each, a **Dispute Representative**).
- c) If the Dispute is not resolved within 30 days of the Dispute being referred to the respective Dispute Representatives, then either Party may commence legal proceedings in an appropriate court to resolve the matter.
- d) During the existence of any Dispute, the Parties must continue to perform all of their obligations under the Contract without prejudice to their position in respect of such Dispute, unless the Parties otherwise agree.
- e) Nothing in this clause 16 prevents a Party from seeking any urgent interlocutory relief.

## 17. WORK HEALTH, SAFETY AND ENVIRONMENT PROTECTION

The Supplier must comply with all relevant work health and safety, environmental and workers compensation legislation including all acts, regulations, codes of practice and Australian standards. Without limiting its obligations under relevant legislation, where relevant the Supplier must:

- a) ensure, that any plant and equipment used by it is appropriate for the task and is adequately maintained and safe for use;
- b) ensure that its Workers are competent and qualified to undertake the work associated with the Supplies and have been provided with adequate information, instruction and training (including induction training);
- c) conduct risk assessments by appropriately qualified and competent persons and in consultation with relevant Workers;
- d) develop and maintain systems of work and procedures necessary to ensure that any work associated with the Supplies is conducted to the highest industry standard, in an efficient and workmanlike manner and without risk to health and safety of any persons. Any procedures prepared by the Supplier must be prepared by appropriately qualified and competent persons, in consultation with relevant Workers, and reflect relevant risk assessments. All relevant Workers and persons must be trained in those procedures;

- e) identify and control all hazards and risks associated with the Supplies, including ensure adequate documentation regarding the implementation and maintenance of controls of such hazards and risks is maintained;
  - f) in accordance with clause 15.3, notify the Customer of any sub-contractors it may wish to engage to provide the Supplies;
  - g) immediately verbally notify the Customer of any safety incident or "near-miss" safety incident (whether a person is injured or not);
  - h) immediately verbally notify the Customer if it is issued with any statutory notices by a regulator and provide a copy of any statutory notice to the Customer;
  - i) comply will all work health and safety, environment and workers compensation/ rehabilitation rules, requirements and directions of the Customer relating to the Supplies and any ancillary matters as notified to the Supplier by the Customer or any person authorised by any law to give directions to the Supplier;
  - j) provide and maintain in a safe condition all necessary and appropriate safety equipment for its Workers (and, where applicable, the Workers of the Customer and other persons) including personal protective equipment;
  - k) consult, co-operate and co-ordinate its activities with any other person or company who has a work health and safety duty in relation to the Supplies;
  - l) cease work if there are any changes to risks, tasks, scope of work, the working environment or personnel, and review, and amend if necessary, any relevant risk assessment(s) and work procedures. The Supplier must conduct any refresher training required as a result of those changes and retain documented evidence to demonstrate that this has occurred. The Supplier must not recommence work until this has occurred and the amended risk assessment(s) and work procedures have been submitted to the Customer upon request;
  - m) ensure adequate supervision is provided at all times by appropriately qualified personnel and inform the Customer of any changes to supervisory personnel during provision of the Supplies; and
  - n) ensure the health and safety of the Customer's Workers where relevant, and any other persons that may be affected by its undertaking.
- The Supplier must, upon request by the Customer, provide documented evidence of the Supplier's and its authorised subcontractor's compliance with any of the matters in this clause 17.