

# Purchase Order Terms and Conditions



## 1. Supply of Goods or Services

- 1.1 The Contractor agrees to sell and deliver the Goods to NSS and perform the Services for NSS and NSS agrees to purchase the Goods and Services on the terms set out in this Purchase Order.
- 1.2 To the extent the Contractor's terms and conditions are supplied with the Goods or Services (including as printed on consignment notes or other documents), those terms and conditions will be of no legal effect and will not constitute part of this Purchase Order.
- 1.3 Where this Purchase Order relates to Goods or Services the subject of an existing contract between the Contractor and NSS, the terms of that contract prevail to the extent of any inconsistency with these Purchase Order Terms and Conditions.
- 1.4 The Contractor must, in Supplying the Goods and performing the Services:
  - (a) not interfere with NSS's activities at the Delivery Address or the Site;
  - (b) be aware of and comply with and ensure that the Contractor's employees, agents and suppliers are aware of and comply with:
    - (i) all applicable Laws;
    - (ii) all Site Standards and Procedures, to the extent that they are applicable to the Supply of the Goods or the performance of the Services; and
    - (iii) all lawful directions and orders given by NSS's representative or any person authorised by Law to give directions to the Contractor;
  - (c) ensure that the Contractor's employees, agents and suppliers entering the Site attend all briefings and inductions required by NSS and perform in a safe manner and are properly qualified for, and skilled in, the performance of their tasks and do not prejudice:
    - (i) safe working practices;
    - (ii) safety and care of property;
    - (iii) Health and Safety; or
    - (iv) continuity of work;
  - (d) provide all such information and assistance as NSS reasonably requires in connection with any statutory or Health and Safety investigation in connection with the Supply of the Goods or the performance of the Services;
  - (e) on request by NSS, provide to NSS and its employees, agents and consultants any information and assistance required to identify, evaluate, implement and report on any matter required by Law, including:
    - (i) producing written reports;
    - (ii) collecting data; or
    - (iii) monitoring or metering;in respect of anything used, produced or created in connection with the performance of the Contractor's obligations under this Purchase Order; and
  - (f) leave the Site in a clean and tidy state to the satisfaction of NSS.
- 1.5 NSS may direct the Contractor to remove any person from the Site if NSS believes the person to be guilty of misconduct, incompetent or negligent.
- 1.6 Whether the Purchase Order relates to the Supply of Goods, the performance of Services, or both, is determined by the details specified in the Purchase Order and all references to 'the Goods' and 'the Services' in the terms of this Purchase Order must be read in a manner consistent with those specified details.

## 2. Variations

NSS may at any time before delivery of the Goods or performance of the Services, by written notice, vary the type, nature or quantity of the Goods or Services. The value of all omissions will be deducted from the Price and the cost of all extra Goods and Services will be added to the Price.

## 3. Delivery of Goods and Services

The Contractor must Supply the Goods to the Delivery Address and perform the Services at the Site in accordance with the terms of this Purchase Order by the Delivery Date. The taking of a delivery does not constitute acceptance of the Goods and Services by NSS.

## 4. Packaging

- 4.1 The Contractor must ensure that the Goods are suitably packed to avoid damage in transit or in storage.
- 4.2 Packages must be marked with the Purchase Order number, item number, stock number, destination, contents, quality, date and method of dispatch and weight of each package.

## 5. Title and Risk

- 5.1 Title in the Goods passes to NSS upon the earlier of payment of the Price and delivery of the Goods to the Delivery Address.
- 5.2 Risk in the Goods passes to NSS when the Goods are delivered to the Delivery Address, except that Goods which have been rejected by NSS will be held by NSS at the Supplier's risk.
- 5.3 The Contractor warrants that title in the Goods, when it passes to NSS under clause 5.1 will be free and clear of any and all liens, restrictions, reservations, security interests and encumbrances.

## 6. Price

- 6.1 NSS must pay the Contractor the Price for the Goods and Services.
- 6.2 The Price is inclusive of all costs incurred by the Contractor in the Supply of the Goods and performance of the Services.
- 6.3 Payment does not constitute NSS's acceptance of the Goods or Services.

## 7. Taxes

Subject to clause 8, the Supplier must bear and pay all taxes, duties, levies, and charges imposed and assessed on the Goods and Services by all local, state or national government authorities in connection with the Goods and Services in and outside of Australia and the Supplier must indemnify NSS against all liability in respect of these taxes, duties, levies and charges.

## 8. Goods and Service Tax

- 8.1 If a supply under this Purchase Order is subject to a goods and services tax levied under GST law, the Recipient must pay to the Contractor, in respect of that supply, an amount sufficient to ensure that the Contractor retains after payment of the GST the amount that the Contractor would have received had the GST not been payable.
- 8.2 Despite any other provision of this Purchase Order, NSS need not make a payment under this clause until the Contractor has provided a GST tax invoice for that payment stating the amount of GST paid or payable by NSS in respect of the supply to which the GST tax invoice relates and evidence satisfactory to NSS that the Contractor is a registered supplier for the purposes of GST.

## 9. Invoicing

- 9.1 On delivery of the Goods and completion of the Services, the Contractor must provide to NSS a valid tax invoice which must include the following details:
  - (a) a reference to the Purchase Order and the relevant contract (if any);
  - (b) a detailed description of the delivered Goods or performed Services, including the Delivery Date or period of Services;
  - (c) an individual reference number for NSS to quote with remittance of payment;
  - (d) the price relating to the Goods and Services, broken down to reflect the same price components on the Purchase Order;
  - (e) the amount of any applicable GST; and
  - (f) the NSS contact name.
- 9.2 At NSS's request, the Contractor must provide NSS with all relevant records to calculate and verify the amount set out in its invoice.
- 9.3 NSS is not obliged to approve an invoice submitted in accordance with clause 9.1 and may withhold money due to the Contractor under this Purchase Order if the Goods or Services (or any part of them) are Defective.
- 9.4 Subject to clause 9.3 and 9.5, NSS will pay all invoices that comply with clause 9.1 within 30 days of receipt. Where NSS disputes the invoice:
  - (a) NSS may withhold payment pending resolution of the dispute; and
  - (b) if the resolution of the dispute determines that NSS must pay an amount to the Contractor, NSS must pay that amount within 14 days of resolution of that dispute.
- 9.5 NSS may reduce any payment due to the Contractor under this Purchase Order by any amount which the Contractor must pay NSS, including costs, charges, damages and expenses and any debts owed by the Contractor to NSS on any account whatsoever. This does not limit NSS's right to recover amounts due to it in other ways.

## 10. Quality

- 10.1 The Supplier must:
  - (a) ensure that the Goods and Services conform in all respects with the specification (if any) and quality stated in the Purchase Order or if no specification or quality is included in the Purchase Order, in accordance with all Law and industry standards; and
  - (b) ensure that the Goods supplied are new (unless otherwise specified in the Purchase Order), fit for the purpose for which Goods of the same kind are commonly supplied and any other purpose made known (either expressly or impliedly) to the Supplier and are of acceptable quality and free from defective material or workmanship.
- 10.2 If Goods or Services are Defective or otherwise do not comply with clause 10.1:
  - (a) the Supplier must replace the Goods or re-perform the Defective Services (as applicable) at the Supplier's cost; and
  - (b) the Company may hold the Goods for the Supplier at the Supplier's risk.

## 11. Warranty

- 11.1 The Contractor warrants at all times the Goods or Services are fit for their intended purpose and, if found to be Defective, the Contractor must (at NSS's election):
  - (a) repair or replace the Defective Goods;
  - (b) re-perform or make good the Defective Services; or
  - (c) reimburse NSS for any expenses incurred in repairing, re-performing or making good (as the case may be) any Defective Goods or Defective Services at the Contractor's cost.
- 11.2 Without limiting clause 13 below, the Contractor must pay for any damage to property on or near the Site arising from Defective Goods or Services.
- 11.3 NSS must receive the benefits of any warranties provided by manufacturers of the Goods or materials and other components which are used in the performance of the Services.

## 12. Confidential Information and Intellectual Property

- 12.1 Where the Contractor has access to any of NSS's confidential information, the Contractor must:
  - (a) keep the confidential information confidential; and
  - (b) not (except to the extent required by Law) disclose it to any person without the prior written consent of NSS.
- 12.2 The Contractor warrants that it will not infringe any third party intellectual property rights in Supplying the Goods or performing the Services. The Contractor will indemnify NSS against any claims for an infringement of intellectual property rights by the Contractor, Contractor employees, agents or suppliers.

## 13. Insurance

- 13.1 The Contractor must effect and maintain the appropriate insurance policies including but not limited to:
  - (a) workers' compensation insurance as required by applicable Laws;
  - (b) public liability insurance cover for not less than \$5 million per occurrence; and
  - (c) to the extent that the Contractor assumes a design or other professional responsibility, professional indemnity insurance with a limit of not less than \$1 million from the date of the Purchase Order until the date that is 6 years after the expiry of the completion of the Services;

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- (d) third party motor vehicle liability insurance against liability for death or bodily injury to any person or any damage to the Site or property located on the Site, for each of its vehicles that enter the Site during the delivery of the Goods or performance of the Services; and
- (e) insurance for the Goods for the period when they are in transit to the Site against all loss or damage arising from any insurable cause, for a limit of not less than the full replacement of the Goods.

13.2 Upon request by NSS, the Contractor must provide evidence of insurance acceptable to NSS.

## 14. Indemnity

14.1 The Contractor must indemnify and hold harmless NSS, its employees, agents and contractors (**Indemnified Parties**) against all losses, damages, costs, charges, expenses, penalties, interest and fines including those losses arising as a result of claims, demands, actions, proceedings or suits by any person (**Losses**) arising in connection with:

- (a) any damage to the Site or any property whether located on the Site or otherwise;
- (b) death or injury to any person whether located on the Site or otherwise;
- (c) a breach by the Contractor of any Law in connection with the performance of the Services;
- (d) any actual or alleged infringement of any intellectual property rights, caused by the performance of the Services or the use of any process, work, material, matter, thing or method used or supplied by the Contractor; and
- (e) the breach by the Contractor of an obligation under the Purchase Order or a warranty given by the Contractor under this Purchase Order,

if the Losses arise in connection with any act, error or omission of the Contractor or a subcontractor or their employees, agents, subcontractors or assigns.

If the Losses are caused in part by any act, error or omission of an Indemnified Party then the Contractor's liability to indemnify that Indemnified Party under this clause 14 will be reduced proportionally to the extent that the Losses are caused by the act, error or omission of that Indemnified Party.

14.2 Notwithstanding any other provision of this Purchase Order, a party (**First Party**) will not be liable to the other party (**Second Party**) in contract (including under any indemnity), tort (including in negligence or for breach of statutory duty) or otherwise, for any:

- (a) special, indirect, consequential loss or economic loss or damage of any nature; or
- (b) loss of profit, revenue, business, contracts or anticipated savings, (**Consequential Loss**) related to or connected with this Purchase Order, except:
- (c) Consequential Loss incurred as a result of the fraud or wilful, reckless or deliberate breach of the Purchase Order by the First Party, its employees, agents or contractors; or
- (d) Consequential Loss forming part of a claim by the Second Party for contribution or indemnity from the First Party in respect of claims by third parties for personal injury, death or property damage.

## 15. Termination

NSS may terminate this Purchase Order by notice in writing to the Contractor:

- (a) if the Contractor fails to Supply the Goods or perform the Services (as applicable) by the Delivery Date;
- (b) if Defective Goods are not repaired or replaced within 7 days of receipt of written notice by the Contractor;
- (c) if Defective Services are not re-performed or made good;
- (d) if the Contractor fails to remedy a breach of any other term or condition of this Purchase Order within 5 Business Days of being directed in writing to do so by NSS; and
- (e) in its absolute discretion at any time and for any reason by giving the Contractor 14 days written notice.

## 16. Applicable Law

The Purchase Order is governed by and must be construed and enforced in accordance with the Laws of the State or Territory in which the Purchase Order is issued and the parties unconditionally submit to the exclusive jurisdiction of the courts of State or Territory in which the Purchase Order is issued (and courts of appeal from them).

## 17. Definitions

**NSS** means the NSS entity named in the Purchaser Order.

**Contractor** means the entity to which the Purchase Order is addressed.

**Defective** means Goods or Services (or any aspect of them) which are not in accordance with the Purchase Order or which are damaged, deficient, faulty, inadequate or incomplete.

**Delivery Address** means the place for delivery specified in the 'ship to' box in the Purchase Order.

**Delivery Date** means the due date for delivery of the Goods or completion of the Services specified in the Purchase Order.

**Goods** means the goods, if any, described on the Purchase Order.

**GST** has the meaning given to that term under *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Health and Safety** means health, safety, environment and community.

**Law** means:

- (a) Commonwealth, State and local government legislation including regulations, bylaws, orders, awards and proclamations;
- (b) common law and equity;
- (c) authority requirements and consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals); and
- (d) guidelines of authorities with which the Contractor is legally required to comply.

**Price** means the price set out in the Purchase Order which is exclusive of GST, but is inclusive of all other costs and charges.

**Purchase Order** means:

- (a) an order for Goods or Services issued by NSS to the Contractor containing, amongst other things, a description of the Goods or Services;
- (b) these Purchase Order Terms and Conditions; and
- (c) any other document stated in the Purchase Order to be part of the Purchase Order.

**Site** means the site of NSS described in the Purchase Order or where Services are performed.

**Site Standards and Procedures** means NSS's standards, procedures and policies relating to safety, the environment, quality, energy, operations and purchasing and such standards, procedures and policies as notified by NSS, as amended from time to time and published at [www.nsspl.com.au](http://www.nsspl.com.au) and any other guidelines, rules, requirements or Site specific conditions which NSS makes available to the Contractor from time to time.

**Services** means the services, (including any installation and commissioning of Goods) if any, described in or contemplated by the Purchase Order.

**Supply** includes the supply, delivery and storage of Goods in accordance with this Purchase Order.