



SEDGMAN LIMITED
TERMS AND CONDITIONS FOR PURCHASE ORDERS

1. **DEFINITIONS**
In this Agreement, except where the context otherwise requires:
"Acceptance" means the date that the Purchaser advises the Supplier in writing that the Goods have been accepted;
"Agreement" means the agreement between the Purchaser and the Supplier set out in the Purchase Order and these Terms and Conditions;
"Business Day" means all days except Saturday, Sunday and public holidays where the Delivery Place is located;
"claim" includes any claim for an adjustment to the Price or to costs, expenses, damages, liabilities or any other amounts of whatever nature under this Agreement or otherwise at law or in equity (including under statute, in tort (including negligence) or for restitution, unjust enrichment or quantum meruit);
"Date for Delivery" means the required delivery date stated in the Purchase Order;
"day" means calendar day;
"Defects Liability Period" means the period commencing on Acceptance and expiring on the date that is 24 months after the date of Acceptance, or such further period as determined under clause 10(b);
"Delivery" has the meaning in clause 6;
"Goods" means those goods as specified in the Purchase Order which the Supplier is required to deliver under this Agreement;
"Price" means the total amount payable to the Supplier by the Purchaser as set out in the Purchase Order;
"Purchase Order" means the purchase order or standing order to which these Terms and Conditions apply;
"Purchaser" means the purchaser stated in the Purchase Order;
"Security" has the meaning in clause 9;
"Services" means those services specified in the Purchase Order which the Supplier is required to carry out under this Agreement;
"Delivery Place" means the delivery address stated in the Purchase Order;
"Site" means the site stated in the Purchase Order;
"Supplier" means the supplier stated in the Purchase Order;
"Supplies" means the Goods and/or Services, as the case may be; and
"Supply Material" means documents and materials including but not limited to samples, models, patterns, calculations, drawings and specifications created or required to be created under the Agreement.
2. **THE AGREEMENT**
(a) Subject to clause 2(b):
(i) this Agreement contains the entire agreement between the parties and supersedes all earlier conduct and prior agreements, representations, communications and understandings between the parties in connection with the subject matter of this Agreement, whether oral or in writing; and
(ii) this Agreement shall be deemed to be accepted by the Supplier for the Supplies from the earlier of:
• (A) the Supplier signing and returning a copy of this Agreement; or
• (B) the Supplier's commencement of the Supplies after receipt of the Purchase Order.
(b) If the Purchase Order is issued under an existing contract or a standing offer, the terms of that existing contract or standing offer will apply and, other than this clause 2(b), these Terms and Conditions shall have no effect.
3. **PERFORMANCE AND PAYMENT**
(a) The Supplier shall carry out the Supplies in accordance with this Agreement.
(b) The Purchaser shall pay the Supplier the Price in accordance with this Agreement.
(c) The Price is:
(i) firm and final;
(ii) not subject to rise and fall; and
(iii) with the exception of GST, inclusive of all taxes, duties and charges imposed or levied in Australia or overseas.
4. **SUPPLIER OBLIGATIONS**
The Supplier shall carry out and complete the Supplies:
(a) exercising a high standard of skill, care and diligence;
(b) in accordance with this Agreement and the Purchaser's directions;
(c) in accordance with all legislative requirements and any relevant Australian Standards (or other standards) or codes applicable to the Supplies for the duration of this Agreement;
(d) in a manner that is suitable, appropriate and adequate for the purposes stated in, or reasonably inferred from, the Purchase Order;
(e) in consultation with the Purchaser;
(f) with due expedition and without delay; and
(g) if the Supplies include the provision of work on the Site, in accordance with any rules and regulations of the Purchaser or the proprietor of the Site applying generally to access to and use of the Site or its adjoining areas.
5. **THE GOODS**
(a) Without limiting clause 4, the Supplier shall:
(i) properly package and protect the Goods to prevent damage during transit and upon Delivery; and
(ii) give the Purchaser full access to the Supplier's premises for the Purchaser to inspect the Goods prior to Delivery.
(b) The Supplier warrants that the Goods:
(i) will be new (unless otherwise specified);
(ii) will conform with its description;
(iii) are free from all third party rights and claims; and
(iv) are of merchantable quality and are fit for the purpose for which the Purchaser requires them.
(c) If the Supplier has to design the Goods or any part of the Goods, the Supplier:
(i) shall exercise a high standard of skill, care and diligence in carrying out the design;
(ii) acknowledges that the Purchaser is relying on the skill, care and diligence of the Supplier in carrying out the design; and
(iii) warrants that:
• (A) the design will be fit for the purpose stated in, or reasonably inferred from, the Purchase Order; and
• (B) the Goods manufactured in accordance with the design will comply with this Agreement.
(d) The warranties given by the Supplier in this clause are in addition to and shall not derogate from any conditions or warranties implied by legislative requirements.
6. **OWNERSHIP, RISK AND DELIVERY**
(a) Ownership of, and unencumbered title in, the Goods shall pass to the Purchaser on the earlier of:
(i) Delivery; or
(ii) the date of payment for the Goods.
(b) The Supplier shall be responsible for the care of the Goods until the date that risk passes in accordance with clause 6(d).
(c) If loss or damage occurs to the Goods while the Supplier is responsible for their care, the Supplier shall, at its cost, promptly rectify such loss or damage.
(d) Risk in the Goods shall pass to the Purchaser on the later of:
(i) Delivery; or
(ii) Acceptance.
(e) Signing for or otherwise confirming Delivery by the Purchaser shall not constitute Acceptance.
(f) If the Purchaser fails to advise the Supplier in writing that the Goods have been accepted, Acceptance is deemed to occur on the date that is 2 Business Days after Delivery.
(g) The Supplier shall deliver the Goods to the Delivery Place by the Date for Delivery. Time shall be of the essence.
(h) The Purchaser may, in its absolute discretion and for its own benefit only, direct an extension to the Date for Delivery.
(i) If:
(i) the Goods are not delivered and accepted by the Date for Delivery; and
(ii) liquidated damages are specified in the Purchase Order, then the Purchaser shall be entitled to liquidated damages as specified in the Purchase Order for every day from the Date for Delivery until the date that the Goods are delivered and accepted. The amount calculated shall be a debt due and payable by the Supplier to the Purchaser.
(j) Acceptance of the Goods shall not prejudice any rights, powers or remedies the Purchaser may have as a result of a breach of this Agreement by the Supplier.
(k) The Supplier grants to the Purchaser an irrevocable licence to enter the Supplier's premises to remove all Goods for which ownership has passed to the Purchaser. To the extent permitted by law, the Supplier indemnifies the Purchaser against all claims arising out of or in connection with the Purchaser's exercise of the licence granted under this clause.
7. **DOCUMENTS AND INTELLECTUAL PROPERTY**
(a) Documents provided by the Purchaser under this Agreement or otherwise, remain the Purchaser's property and shall be returned to the Purchaser on demand. The Purchaser grants to the Supplier a licence to use the documents to carry out the Supplies and any rectification, maintenance or servicing as necessary for the purposes of this Agreement.
(b) The Supplier shall not use, copy or reproduce the documents provided by the Purchaser for any purpose other than the Supplies.
(c) Intellectual property rights in the Supply Material shall vest in the Purchaser upon creation. The Purchaser grants to the Supplier a non-exclusive, non-transferable licence to use the Supply Material to carry out the Supplies and any rectification, maintenance or servicing as necessary for the purposes of this Agreement.
- (d) The Supplier warrants that it has all intellectual property rights and moral rights necessary to provide the Supplies to the Purchaser and that the provision of the Supplies under this Agreement will not infringe any third party's intellectual property or moral rights.
8. **PAYMENT**
(a) A claim for payment of the Price:
(i) unless otherwise specified, shall only be issued after completion of the Supplies; and
(ii) shall be submitted to the Purchaser in a valid GST tax invoice format.
(b) Subject to clauses 8(d) and 12(e), on receipt of a claim for payment which is compliant with this clause, the Purchaser shall pay the amount assessed to the Supplier within 30 days of the end of the month in which the compliant claim for payment is received.
(c) Payment by the Purchaser of any claim shall be a payment on account only and shall not constitute evidence that the Supplies have been carried out satisfactorily.
(d) The Purchaser may deduct from any payment otherwise due to the Supplier:
(i) any debt or other amount due from the Supplier to the Purchaser; or
(ii) any claim to payment which the Purchaser may have against the Supplier whether for damages or otherwise, under this Agreement or at law.
9. **SECURITY**
(a) If specified in the Purchase Order, the Supplier shall provide Security for the amount stated in the Purchase Order.
(b) Security shall be in the form of cash, retention moneys or an unconditional undertaking in a form approved by the Purchaser in its absolute discretion.
(c) The Purchaser may, at any time, use the Security to pay itself the amount of any claim for payment that the Purchaser may have against the Supplier under the Agreement or otherwise.
(d) Upon the expiration of the last Defects Liability Period, the Supplier shall be entitled to claim from the Purchaser for the release and return of the Security held.
10. **DEFECTS**
(a) Between the date of this Agreement and the expiration of the Defects Liability Period, the Purchaser may give the Supplier a direction to rectify a defect or omission in the Supplies within a certain time period.
(b) During the Defects Liability Period, the Purchaser may give the Supplier a direction to rectify a defect or omission within a certain time period, upon which the Defects Liability Period shall be extended by a period determined by the Purchaser not exceeding a further 24 months.
(c) The Supplier shall carry out rectification as directed and at times and in a manner causing as little inconvenience to others as is reasonably possible.
(d) If the rectification is not carried out as directed, the Supplier shall refund any amount paid to the Supplier in relation to the Supplies.
11. **INDEMNITY**
The Supplier indemnifies the Purchaser against:
(a) loss or damage to property, including existing property on or around the Delivery Place or the Site including property belonging to third parties;
(b) claims against the Purchaser in respect of personal injury, death, or loss or damage to any property; and
(c) claims against the Purchaser in respect of any infringement of any intellectual property or moral rights, arising out of or in connection with carrying out the Supplies.
12. **INSURANCE**
(a) The Supplier shall effect and maintain the following insurance policies:
(i) public and products liability insurance in the amount, unless otherwise stated, of \$20,000,000 for any one loss or occurrence, for the duration of this Agreement; and
(ii) where Services are to be carried out, professional indemnity insurance in the amount, unless otherwise stated of \$5,000,000 for any one loss or occurrence, for the duration of this Agreement and thereafter for a period not less than 6 years.
(b) Where Goods are to be delivered, the Supplier shall insure the Goods for 110% of their replacement value against loss or damage, including loss or damage during transit or unloading. The policy or policies shall be maintained until risk in the Goods pass to the Purchaser.
(c) The insurances in paragraphs (a) and (b) shall be:
(i) effected with reputable insurers, domiciled in Australia, with a financial security rating of A- or better by Standard & Poors or the equivalent rating with another recognised rating agency; and
(ii) on such terms (including deductible levels) as would otherwise be procured and maintained by a prudent supplier acting in accordance with best industry practice, providing supplies similar to the Supplies.
- (d) If the Supplies include the provision of work on the Site, the Supplier shall also effect and maintain workers compensation or personal accident and illness insurance or any other insurance required by law.
(e) The Supplier shall, within 3 days of the Purchaser's request, give evidence of insurance required to be effected and maintained. Evidence of insurance is a precondition to payment and the Purchaser may withhold payment in full until satisfactory evidence is given.
13. **COMPLIANCE WITH STATUTES**
(a) The Supplier shall comply with all legislative requirements relating to the Supplies, including any direction from a local authority or other body having jurisdiction over the carrying out of the Supplies.
(b) The Supplier shall not perform any Supplies which require a licence under any legislative requirement unless it holds a licence permitting the Supplier to lawfully carry out those Supplies.
14. **DEFAULT**
(a) If the Supplier commits a breach of this Agreement, the Purchaser may issue a notice to the Supplier requiring the Supplier to show cause why the Purchaser should not terminate this Agreement.
(b) If the Supplier fails to show reasonable cause within the period stipulated in the Purchaser's notice to show cause, the Purchaser may, by further notice, terminate this Agreement.
15. **TERMINATION FOR CONVENIENCE**
(a) The Purchaser may immediately terminate this Agreement for any reason by the giving of written notice.
(b) If this Agreement is terminated under clause 15(a), the Supplier shall:
(i) immediately cease carrying out the Supplies;
(ii) promptly return to the Purchaser all property, documentation or information provided by the Purchaser to the Supplier in connection with this Agreement; and
(iii) use best endeavours to mitigate all costs in connection with the termination of this Agreement.
(c) If this Agreement is terminated under clause 15(a), the Supplier shall be entitled to claim from the Purchaser:
(i) the amount determined by the Purchaser for the Supplies carried out to the date of termination; and
(ii) the cost of materials reasonably ordered by the Supplier for the Supplies, which the Supplier cannot return, cannot otherwise use, cannot re-sell, or which order cannot be cancelled, but only if the materials become the property of the Purchaser upon payment.
(d) The Supplier is not entitled to any other claim, including any claim for loss of profits, costs, losses, damages or expenses suffered or incurred, other than those amounts payable under clause 15(c).
16. **INSOLVENCY**
If the Supplier:
(a) informs the Purchaser that it is insolvent or financially unable to proceed with this Agreement;
(b) being a person, commits an act of bankruptcy, is made bankrupt, has a bankruptcy petition presented against it, or makes an assignment of its estate for the benefit of its creditors; or
(c) being a company, becomes insolvent, has a liquidator, provisional liquidator, administrator or receiver appointed, has a change in ownership or control, takes or has taken or instituted against it any action which may result in the liquidation of the company, or if it enters into any agreement with its creditors,
the Purchaser may, without issuing a notice to show cause, terminate this Agreement by written notice.
17. **GENERAL**
(a) The Purchaser may direct the Supplier to vary the Supplies. The price of the variation shall be agreed by the parties or, if not agreed, as determined by the Purchaser.
(b) The Supplier shall not assign this Agreement or any right, benefit or interest under this Agreement or subcontract any part of the Supplies without the Purchaser's written approval.
(c) Notwithstanding any other provision of this Agreement, the Purchaser shall not be liable upon any claim (other than a claim for payment of the Price under clause 8) until unless a written notice of claim is given to the Purchaser within 7 days after the date the Supplier ought reasonably have become aware of the facts or circumstances upon which the claim is based.
(d) The laws of Queensland, Australia shall apply to this Agreement.