

GENERAL CONDITIONS OF PURCHASE ORDERS.

1. Purchase Orders and General Conditions

- 1.1 Upon the Supplier's acceptance of a Purchase Order, the Supplier agrees to comply with the Contract.
- 1.2 The Supplier agrees that any terms and conditions which may generally apply to its supply of goods and/or services to other parties do not apply to the supply of Supplies to the Purchaser, notwithstanding the fact that any invoice, receipt or other document issued to the Purchaser states otherwise.
- 1.3 If there is any inconsistency between the Purchase Order and the General Conditions, the General Conditions prevail to the extent of that inconsistency.

2. Definitions

- 2.1 In the Contract:

Authority means any government, statutory, public or other authority, body or department of any kind;

Background Material means Material owned by the Supplier that is, or was, created independently of the Contract;

Confidential Information means information that:

- (a) is by its nature confidential; or
- (b) is designated by the Purchaser as confidential; or
- (c) the Supplier knows or ought to know is confidential, but does not include information that is or becomes public knowledge otherwise than by breach of the Contract or any other confidentiality obligation of the parties;

Contract means the General Conditions and the Purchase Order;

Contract Material means any Material created by the Supplier on or following its acceptance of a Purchase Order, for the purpose of, or as a result of performing its obligations under the Contract;

General Conditions means these terms and conditions;

Goods mean the articles, goods, Material or parts thereof (if any) to be supplied as specified in the Purchase Order;

GST has the same meaning as in the GST Act;

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

Intellectual Property Rights means all intellectual property rights, including:

- (a) copyright, rights in relation to inventions, patents, trademarks (including goodwill in those marks), designs, domain names, trade secrets, know how, rights in relation to circuit layouts and any right to have confidential information kept confidential;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and

- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered;

Material includes property, information, documentation, or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions and the subject matter of any category of Intellectual Property Rights;

Personal Property Securities Register means the register established under the *Personal Property Securities Act 2009* (Cth);

Purchase Order means the written purchase order issued by the Purchaser to the Supplier;

Purchaser means the purchaser named in the Purchase Order requesting a supply of Supplies, which is either ActewAGL Distribution (ABN 76 670 568 688), or ActewAGL Retail (ABN 46221 314 841);

Purchaser Material means any Material provided by the Purchaser;

Security Interest means a security interest as defined in the *Personal Property Securities Act 2009* (Cth);

Services mean the services (if any) to be performed as specified in the Purchase Order;

Supplier means the person named on the Purchase Order who is to supply the Supplies to the Purchaser, and where the Supplier includes more than one person, those persons jointly and severally;

Supplies mean the Goods and/or Services; and

Third Party Material means Material owned by a third party that is included, embodied in or attached to the Contract Material or Goods or used as part of the performance of the Services.

- 2.2 In the Contract, unless the context otherwise requires: a reference to A\$, \$A or \$ is to Australian currency; a reference to time is to Canberra, Australia time; and the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions.

3. Engaging the Supplier

- 3.1 The Purchaser may request the Supplier to provide it with a quotation in respect of goods and/or services the Supplier is in the business of supplying.
- 3.2 Neither the Purchaser's request for a quotation nor a quotation provided by the Supplier forms a Contract or any other agreement between the Purchaser and the Supplier.
- 3.3 If it accepts a quotation, the Purchaser will issue a Purchase Order to the Supplier.

4. General Obligations of the Supplier

- 4.1 The Supplier must supply everything necessary for the proper provision of the Supplies and will provide the Supplies:
- to the reasonable satisfaction of the Purchaser;
 - in accordance with the Contract, including achieving the timeframes, milestones and deliverables specified in the Purchase Order;
 - with due skill, care and diligence to a high professional standard;
 - in accordance with all applicable laws (including but not limited to laws in relation to work health and safety and the environment) and relevant Australian standards and best practice guidelines.
- 4.2 The Supplier must comply with any requirements relating to the provision of Services as stated in the Purchase Order and all Goods must conform to any specifications relating to the Goods as stated in the Purchase Order.

5. Performance and Delivery

- 5.1 The delivery of all Goods and the performance of all Services must be made at the time, place, and in the manner, stated in the Purchase Order.
- 5.2 The Purchaser may reasonably specify in writing to the Supplier another time, place or manner for delivery of Goods or performance of Services, in which case that other time, place or manner applies in place of that stated in the Purchase Order.
- 5.3 The Supplier must ensure that Goods must be packed, marked and labeled to ensure their safe delivery and safe handling by the Purchaser after delivery and, if specific packing, marking or labeling is required under the Purchase Order, comply with those requirements.
- 5.4 Time is of the essence.

6. Supply of Goods

- 6.1 Where the Purchase Order relates to the supply of Goods, the Supplier must ensure that the Goods are free of any Security Interest and that no Security Interest is registered on the Personal Property Securities Register.
- 6.2 The Supplier must deliver the Goods to the place specified by the Purchaser and provide a delivery receipt and valid tax invoice.
- 6.3 The Purchaser, acting reasonably, may reject any Goods that have not been supplied in accordance with the Purchase Order.
- 6.4 Where the Purchaser rejects any Goods, the Purchaser may direct the Supplier to promptly rectify any defects or re-supply any Goods at no additional cost to the Purchaser and the Supplier must promptly comply with such directions from the Purchaser.
- 6.5 Without limiting any other warranty given by the Supplier, the Supplier represents and warrants that:
- the Goods are of merchantable quality;
 - the Goods are free from defects;
 - the Goods are fit for the specified purpose, or if no purpose is specified, the Goods are fit for the purpose for which goods similar to the Goods are normally acquired;
 - the Supplier has all necessary approvals of any Authority or professional body to supply the Goods;
 - the Goods meet all relevant Australian standards; and
 - use of the Goods will not cause the Purchaser to be in breach of any law.

7. Inspection and Acceptance of Goods

- 7.1 The Purchaser may inspect the Goods at any time prior to acceptance and reject any Goods found not to be in accordance

with the Contract. After acceptance the Purchaser may reject any Goods for any non-conformity with the Contract which could not have been discovered by reasonable inspection before acceptance.

- 7.2 The Purchaser will not be liable to pay for any rejected Goods or for any damage or costs arising from inspection or rejection of Goods.
- 7.3 If the Purchaser rejects any Goods, the Supplier must, without prejudice to the Purchaser's rights otherwise arising under the Contract or at law, comply with a requirement of the Purchaser to:
- replace, without cost to the Purchaser, the rejected Goods with Goods complying in all respects with the Contract;
 - refund any payment for the rejected Goods; or
 - repair the Goods, on site or otherwise, to the satisfaction of the Purchaser; and, in the case of (a) or (b), remove the rejected Goods at the Supplier's expense.
- 7.4 Without additional cost to the Purchaser, the Supplier must provide access to premises and all other necessary assistance for the Purchaser's representatives to inspect the manufacture of the Goods.
- 7.5 If the Purchaser requires the Supplier to submit samples of Goods, the Supplier must not proceed to bulk manufacture until the Purchaser has approved the samples in writing.

8. Title in Goods

- 8.1 Title in, and risk of loss of, or damage to, the Goods passes to the Purchaser on delivery or payment, whichever is earlier, except where the Purchaser within a reasonable time after delivery notifies the Supplier under clauses 6.3 or 6.4.

9. Supply of Services

- 9.1 Where the Purchase Order relates to the supply of Services, the Supplier must:
- complete the Services in accordance with any directions in the Purchase Order or where there are no directions, within a reasonable time;
 - meet relevant Australian standards and perform the Services with the degree of skill and care expected of a person experienced in performing the same or similar services;
 - comply with clauses 4.1 - 4.2.3 (inclusive) and 4.3.2 of the Ring-fencing Guidelines, as if they were the Purchaser (these Guidelines are available from <https://www.aer.gov.au/> or on request from the Purchaser);
 - supply everything necessary for the proper performance of the Supplier's obligations;
 - perform the Services to the Purchaser's reasonable satisfaction;
 - on completion of the Services, provide to the Purchaser a valid tax invoice.

10. Compliance with the Purchaser's Policies

- 10.1 The Supplier must, when using the Purchaser's premises or facilities, comply with all reasonable directions of the Purchaser and all applicable laws and procedures and policies of the Purchaser, including but not limited to those relating to work health and safety requirements (including any requirements of the *Work Health and Safety Act 2011*(ACT)), and security in effect at those premises or in regard to those facilities, whether specifically drawn to the attention of the Supplier or as notified by the Purchaser or as might reasonably be inferred from the use to which the premises or facilities are being put.

11. Warranty

- 11.1 In addition to the warranties set out in clause 6.5 and without limiting any other warranty given by the Supplier, if the Purchaser gives notice of any defect or omission discovered in the Supplies, the Supplier must correct that defect or omission without delay and at no cost to the Purchaser.

11.2 The Supplier must meet all costs of, and incidental to, the discharge of warranty obligations, including any packing, freight, disassembly and reassembly costs.

12. Inclusive Price and GST

12.1 The price of the Supplies is the price set out in the Purchase Order. The price stated in the Purchase Order is firm and fixed (unless varied with the consent of the Purchaser in writing) and includes:

- (a) subject to clause 12.2, all taxes, duties and other imposts for which the Supplier is liable;
- (b) all insurance costs;
- (c) all amounts payable for the use thereof (whether in the course of manufacture or use of Intellectual Property Rights);
- (d) all charges for supply of the Supplies; and
- (e) all charges for testing, inspection, packing, delivery or otherwise.

12.2 Where GST is imposed on any supply made by the Supplier, the Purchaser will, in addition to the price payable for the Supplies pay an amount equal to the GST payable in respect of that supply.

13. Payment

13.1 The Purchaser will pay to the Supplier the agreed amount for the Supplies as per the Purchaser's standard payment terms of 30 days from the date of receipt of a correctly rendered tax invoice.

13.2 An invoice will be correctly rendered if it:

- (a) is addressed in accordance with the Purchase Order;
- (b) identifies the ActewAGL Purchase Order number;
- (c) is, where explanation is necessary, accompanied by documentation substantiating the amount claimed; and
- (d) is, where required by Australian law, a valid tax invoice within the meaning of the GST Act.

13.3 Where the Purchaser, acting reasonably, disputes:

- (a) the amount, or any part of the amount, to be paid to the Supplier; or
- (b) the quality of the Supplies supplied, it will notify the Supplier and the Purchaser is not obliged to pay any invoice until the dispute is resolved, except the Purchaser may elect to pay any undisputed part of an invoice.

13.4 The Purchaser reserves the right to set off any amount owing under the Contract against any amount due by the Supplier to the Purchaser for any reason whatsoever under the Contract. This does not limit the Purchaser's right to recover those amounts in other ways.

14. Purchaser Material

14.1 The Supplier must ensure that Purchaser Material is used strictly in accordance with any conditions notified by the Purchaser or where none, for the purposes of performing its obligations under this Contract.

15. Intellectual Property

15.1 All Intellectual Property Rights in the Contract Material vest in the Purchaser.

15.2 To the extent that the Purchaser needs to use any of the Background Material or Third Party Material provided by the Supplier to receive the benefit of the Supplies, the Supplier grants to, or must obtain for, the Purchaser a perpetual, world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce adapt, modify, distribute and communicate that Material.

16. Termination for Convenience

16.1 The Purchaser may at any time by giving notice in writing to the Supplier terminate the Contract or any part without cause.

16.2 On receipt of the notice, the Supplier must cease or reduce work as specified in the notice and take all steps possible to mitigate losses.

16.3 If the Contract is terminated or partially terminated in accordance with the provisions of this clause 16, the Purchaser will be liable only for:

- (a) payments under the payment provisions of the Contract for the Supplies rendered before the effective date of termination; and
- (b) reasonable costs incurred by the Supplier and directly attributable to the termination or partial termination of the Contract.

16.4 The aggregate of any compensation and any sums paid or due or becoming due to the Supplier under this clause will not exceed the contract price payable under the Contract.

17. Termination for Insolvency or Breach

17.1 Without limiting any other rights or remedies the Purchaser may have against the Supplier arising out of or in connection with the Contract, the Purchaser may terminate the Contract effective immediately by giving notice to the Supplier if:

- (a) the Supplier breaches a provision of the Contract where that breach is not capable of remedy;
- (b) the Supplier breaches any provision of the Contract where that breach is capable of remedy and fails to remedy the breach within 7 days after receiving notice requiring it to do so; or
- (c) an event specified in clause 17.2 happens to the Supplier.

17.2 The Supplier must notify the Purchaser immediately if:

- (a) the Supplier being a corporation, there is any change in the direct or indirect beneficial ownership or control of the Supplier;
- (b) the Supplier disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business, ceases to carry on business or ceases to be able to pay its debts as they become due;
- (c) the Supplier being a company enters into liquidation or has a controller or managing controller or liquidator or administrator appointed;
- (d) the Supplier being a natural person is declared bankrupt or assigns his or her estate for the benefit of creditors; or
- (e) any analogous event occurs.

Where, before termination of the Contract under this clause 17, the Purchaser has made any payment in advance on account of the contract price to the Supplier, the total amount of that payment must be repaid by the Supplier to the Purchaser on termination and if not repaid is recoverable by the Purchaser from the Supplier as a debt.

17.3 If the Contract is terminated under this clause:

- (a) the parties are relieved from future performance, without prejudice to any right of action that has accrued at the date of termination;
- (b) rights to recover damages are not affected; and
- (c) the Supplier indemnifies the Purchaser in respect of any loss it incurs in purchasing similar Supplies from other suppliers.

18. Consequences of Termination

18.1 In the event of termination for any reason, all rights of the Supplier granted under the Contract will terminate and the Supplier must cease to use the Contract Material and Purchaser Material in any manner whatsoever. The Supplier must deliver up to the Purchaser all copies of the Contract Material and Purchaser Material in the possession, custody or control of the Supplier.

18.2 Termination of the Contract does not affect any accrued rights or remedies of a party.

19. Survival

19.1 Clauses 11, 14, 15, 16.2, 16.3, 16.4, 16.5, 17.3, 18, 19, 20,21, 22, 23, 26, 28, 29 and 30 survive expiry or termination of the Contract.

20. Confidentiality

20.1 The Supplier must keep confidential all Confidential Information which the Supplier receives or comes across in the process of performing its obligations under the Contract, unless:

- (a) such disclosure is required by law or consented to by the Purchaser;
- (b) the information is disclosed to the Supplier's employees or professional advisers on a need to know basis solely for the purposes of the Contract.

20.2 If the Supplier is required by any law to disclose Confidential Information, the Supplier must promptly (and in any case prior to disclosure) notify the Purchaser in writing of the information and reasons for disclosure.

21. Indemnity

21.1 The Supplier indemnifies the Purchaser and its officers, employees and agents against any liability or losses arising out of, or as a consequence of:

- (a) any unlawful or negligent act or omission or breach of the Contract by the Supplier;
- (b) an infringement or an alleged infringement, of the Intellectual Property Rights of any person, which occurred by reason of an act done by the Purchaser, or its sub-licensees within the scope of the Purchaser's Intellectual Property Rights and licences under the Contract, in relation to any part of the Supplies, except to the extent that any negligent act or omission by the Purchaser or its officers, employees and agents contributed to the relevant liability.

22. No liability for consequential loss

22.1 The Purchaser is not liable to the Supplier for any loss of profits, business or anticipated savings or for any other indirect or consequential loss arising out of or in connection with the Contract whether in contract, tort (including negligence) or otherwise.

23. Insurance

23.1 The Supplier must have and maintain:

- (a) all insurances required by any law; and
- (b) insurance cover sufficient to cover any loss or costs that may be incurred and for which the Supplier is liable in connection with the supply of the Supplies, including, as applicable, product liability insurance, public liability insurance and professional indemnity insurance.

23.2 The Supplier will provide evidence of such insurance at the request of the Purchaser.

24. Dispute Resolution

24.1 The parties must use reasonable endeavours to resolve any dispute under the Contract by mediation or other alternative dispute resolution method before they commence legal proceedings (except proceedings for interlocutory relief).

25. Assignment and Subcontracting

25.1 The Supplier must not, without the prior written consent of the Purchaser, assign or novate its rights and obligations under the Contract or subcontract any part of the performance of the Contract.

26. Waiver

26.1 Waiver of any provision of, or right under, the Contract:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

27. Variation

27.1 The Contract may be varied only in writing signed by each party.

28. Entire Understanding

28.1 Unless the Purchaser specifies in writing that another contract shall govern the relationship between the Supplier and the Purchaser in relation to the Supplies, the Contract contains the entire agreement and understanding between the Purchaser and the Supplier on everything connected with the subject matter of the Contract and supersedes any prior agreement or understanding on anything connected with that subject matter.

29. Relationship

29.1 The Contract does not create a relationship of employment, agency or partnership between the parties and the parties must not represent themselves as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.

30. Governing law and jurisdiction

30.1 The Contract is governed by the law of the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.