



Purchase Conditions for Goods and Services

It is agreed

1. Definitions

Unless the context otherwise requires, the following terms have the meanings given when used in the Contract:

Business Day means a day that is not a Saturday, Sunday or public holiday in the capital city of the Relevant Jurisdiction.

Contract means the Purchase Order, these Purchase Conditions for Goods and Services and any other document stated in the Purchase Order to be part of the Contract.

Defect means any defects, deficiencies, omissions, faults or non-compliances in the whole or any part of the Goods or Services or that the Goods or Services are unsatisfactory or do not comply with the requirements of this Contract.

Defects Liability Period means the period of 12 months on and from the completion of the Supply in accordance with the Contract.

Delivery Date means the date/s specified in the Purchase Order by which the Goods and/or Services are to be supplied to yourtown.

Goods means the items specified in the Purchase Order (if any).

Losses means losses, damages, costs, charges, expenses, penalties, interest and fines, including those arising as a result of claims, demands, actions, proceedings or suits by any person.

Price means the prices, fees and rates or other amounts set out or referred to in the Purchase Order.

Relevant Jurisdiction means the State or Territory in which the Goods and/or Services are to be supplied to yourtown.

Services means the services specified in the Purchase Order (if any).

Site means the areas specified in the Purchase Order for the performance of

the Supply (including delivery of the Goods).

Supply means all obligations, duties and responsibilities of the Supplier under the Contract and any incidental work that can be reasonably inferred as necessary or appropriate to perform the Services and/or supply the Goods (as applicable) in accordance with the Contract.

Supplier means the party named as the 'Supplier' in the Purchase Order.

Supplier's Personnel means the Supplier's employees, agents and their suppliers (and employees, agents and suppliers of those persons).

yourtown means yourtown Limited ABN 11 102 379 386 as named in the Purchase Order.

yourtown's Policies means the yourtown policies, codes and principles, including the Providers Code of Conduct, notified by yourtown to the Supplier.

2. The Contract

The Contract commences on the earlier of acceptance of the Contract in writing (which if not accepted or rejected, is deemed to occur within 5 Business Days of issue of the Purchase Order) or commencing the Supply and continues until the earlier of the expiry of the Defect Liability Period or termination in accordance with the Contract.

3. Agreement to Supply

- (a) The Supplier must carry out the Supply by the Delivery Date/s and immediately notify yourtown of any actual or anticipated delay in performing the Supply.
- (b) Unless otherwise specified in the Purchase Order:
 - (i) the Supplier must supply all equipment, consumables and materials and importation licences/approvals necessary for the performance of the

Purchase Conditions for Goods and Services



- Supply in accordance with the Contract; and
- (ii) the Price is fixed and inclusive of all taxes (excluding GST), stamp duty, delivery, handling, courier and postage fees and the matters identified in clause 3(b)(i).

4. Subcontracting and assignment

The Supplier must not subcontract, assign, novate, transfer, delegate or otherwise deal with the Contract or any right, obligation, duty or responsibility under it, except with the prior written consent of yourtown.

5. Safeguarding obligations

If specified in the Purchase Order or otherwise directed by yourtown, the Supplier must comply with the safeguarding obligations as outlined at <https://www.yourtown.com.au/safeguarding>.

6. Laws and regulations

The Supplier must:

- (a) comply with all laws, government requirements, codes and standards affecting or applicable to the Supply (including relating to anti-corruption and anti-slavery, workplace health and safety and the environment, labour hire and privacy);
- (b) comply with yourtown's Policies as if the Supplier were bound by those policies;
- (c) pay any fees, charges, levies and taxes imposed by a government entity in relation to the Supply;
- (d) implement adequate work health and safety and environmental policies and procedures and, at the request of yourtown, provide evidence in writing of:
 - (i) those policies and procedures; and

- (ii) the Supplier's compliance with those policies and procedures; and
- (e) ensure that persons employed or engaged in the provision of the Goods and /or Services are provided with safe systems of work, adequate welfare facilities and such instruction, training and supervision as is necessary to enable the Goods and/or Services to be provided without risk to health and safety of any person or the environment.

7. Quality of workmanship

The Supplier warrants that:

- (a) it (and each of the Supplier's Personnel) will at all times be suitably qualified and experienced to perform the Supply; and
- (b) the Supply will be performed in accordance with:
 - (i) best practice standards of diligence, skill, care and efficiency to be expected of a competent Supplier performing a supply of a similar nature to the Supply;
 - (ii) all the requirements of the Contract; and
 - (iii) any specifications and warranties related to the Supply (whether provided by yourtown as part of the Purchase Order or the manufacturer of the Goods); and
- (c) where the Supply is or includes the supply of Goods, the Goods will be of merchantable quality and fit for their intended purpose, and be free from all Defects and any imperfections affecting performance.

8. Rejection of Supply

- (a) Within 5 Business Days of delivery of the Goods to the Site or notification from the Supplier that the Services are completed, yourtown may reject the Supply by

giving notice to the Supplier.
yourtown's notice must state the reasons for rejection and may:

- (i) require the Supplier to remove the Goods and refund to yourtown any amount paid in relation to those Goods;
 - (ii) direct the Supplier to replace or rectify the Supply; or
 - (iii) elect to accept the Supply and claim damages for the Supplier's failure to comply with the Contract.
- (b) If the Supplier is directed to replace or rectify the Supply, the Supplier must notify yourtown when the replacement or rectification is completed and clause 8(a) will apply.
- (c) The Supplier must provide yourtown access to the places where the Supply is being performed for the purpose of inspecting the Goods and/or work in progress.
- (d) Nothing in this clause 8 or yourtown's payment for the Supply affects yourtown's subsequent rights in respect of a Supply that does not comply with the Contract.

9. Defects liability period

- (a) During the Defects Liability Period the Supplier must, at its expense, rectify any Defect within a reasonable time of notification by yourtown of the Defect.
- (b) If the Supplier fails to remedy the Defect in accordance with clause 9(a) to the satisfaction of yourtown, yourtown may, without prejudice to its other rights, rectify that Defect and the reasonable costs incurred in doing so will be a debt due from the Supplier to yourtown.

10. Payment

- (a) The Supplier may render a tax invoice (in the form provided by yourtown) to yourtown at the end of each month, in respect of the

Goods delivered and/or Services performed in that month, calculated by reference to the Price.

- (b) Subject to the Contract, yourtown will pay a correctly rendered tax invoice within 30 days from the end of the month in which the tax invoice is received. Without limiting clause 8(d), payment is on account only.
- (c) If a party makes a supply under or in connection with the Contract in respect of which GST is payable, the consideration for the supply but for the application of this clause 10(c) (**GST exclusive consideration**) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.
- (d) yourtown may at any time, deduct from any amount otherwise due to the Supplier any debts or other amounts due from the Supplier to yourtown and the amount of any bona fide claims that yourtown has against the Supplier under or in connection with the Contract.
- (e) yourtown must notify the Supplier in writing of any amounts deducted under clause 10(d) and the basis for the deduction.
- (f) Neither payment of moneys nor an acceptance of those moneys will be evidence that the Goods have been delivered or the Services have been performed satisfactorily. Payment will be payment on account only.

11. Risk in the Supply

- (a) The Supplier warrants that title in the Goods and materials supplied by the Supplier, when it passes to yourtown under clause 11(b), will be free and clear of any and all liens, restrictions, reservations, security interests and encumbrances.

- (b) Title to any part of the Goods or other deliverables the subject of the Supply passes to yourtown upon the earlier of payment for the Supply, provision of the Services to yourtown, delivery of the Goods to the Site or the incorporation of the materials (as applicable) into the physical manifestation of the Services.
- (c) The Supplier must protect and bears the risk of loss or damage to the Goods until they are delivered to the Site, and the materials and the physical manifestation of the Services until completion of the Services.

12. Insurance

- (a) The Supplier must maintain and, immediately upon request by yourtown, provide yourtown with copies of its certificate of currency for product liability insurance, (providing cover in respect of each and every claim to an amount of not less than \$20 million), public liability insurance (providing cover in respect of each and every claim to an amount of not less than \$20 million), professional indemnity insurance (to the extent applicable, providing cover in respect of each and every claim to an amount of not less than \$2 million), workers compensation and motor vehicle and transit insurance (to the extent applicable).
- (b) The Supplier must ensure that the insurance policies required by clause 12(a) are effected with an insurance company authorised or licenced to operate in Australia with a security rating from A.M. Best Rating Services, Inc. of not less than "A-", on terms and conditions that are reasonably commercially available.

13. Indemnity

- (a) The Supplier indemnifies yourtown against all Losses arising in connection with:
 - (i) damage to any third party property whether located on the Site or otherwise;
 - (ii) death or injury to any person;
 - (iii) a breach by the Supplier or Supplier's Personnel of any law; or
 - (iv) a breach by the Supplier of clause 14 or clause 15,
 to the extent the Losses arise in connection with any act, error or omission of the Supplier or Supplier's Personnel.
- (b) The Supplier's liability to indemnify yourtown under this clause 13(a):
 - (i) will be reduced proportionally to the extent that the Losses are caused or contributed to by yourtown or yourtown's personnel; and
 - (ii) is a continuing obligation, separate and independent from the other obligations of the Supplier and survives the termination of the Contract.

14. Intellectual property rights

- (a) The Supplier warrants that the intellectual property rights of a third party will not be infringed by the performance of the Supply under the Contract or the use of the Supply by yourtown.
- (b) yourtown will own any intellectual property rights in any data, information or materials created, developed or produced in connection with provision of the Supply by the Supplier.

15. Confidentiality and privacy

- (a) The Supplier must regard all information in relation to the Contract, including details in relation to the Site, any other yourtown site, and any persons specified by yourtown, as confidential. The Supplier must



not, without the prior written approval of yourtown, disclose any such details and information to a third party other than to persons engaged in the performance of the Supply or for the purposes of performing the Supply.

- (b) When dealing with personal information (as that term is defined in the *Privacy Act 1988* (Cth)) in performing the Supply, the Supplier must comply with the requirements of the *Privacy Act 1988* (Cth) and not to do anything which would be a breach of an Australian Privacy Principle.
- (c) The Supplier must advise yourtown immediately if there has been a breach of this clause 15. The obligations imposed upon the Supplier under this clause 15 will not cease upon the completion, expiry or termination of this Contract.
- (d) This clause 15 does not apply in the following circumstances:
 - (i) the information in question was in possession of the Supplier prior to acquisition from yourtown;
 - (ii) the information in question was already public knowledge when disclosed to the Supplier, other than due to a breach of this clause 15;
 - (iii) disclosure to lawyers, taxation accountants or other professional service advisors;
 - (iv) the Supplier obtained the information in question from a third party without an obligation to maintain confidentiality with regard to that information;
 - (v) disclosure required by a Legislative Requirement;
 - (vi) disclosure to third parties (including sub-consultants or subcontractors of the Supplier) which is necessary

for the performance of the Supply; or

- (vii) disclosure is reasonably necessary for the Supplier to seek professional advice or to defend itself from any suit or claim.
- (e) If the Supplier becomes aware that there are reasonable grounds to suspect that there may have been an eligible data breach (as that term is defined in the *Privacy Act 1988* (Cth)) in relation to any personal information (as that term is defined in the *Privacy Act 1988* (Cth)) held by the Supplier as a result of this Contract or its provision of the Supply, the Supplier must:
 - (i) notify yourtown in writing as soon as possible, which must be no later than within 7 days; and
 - (ii) unless otherwise directed by yourtown, carry out an assessment under the direction of yourtown and in accordance with the requirements of the *Privacy Act 1988* (Cth) or take any other action as reasonably directed by yourtown.

16. Default and termination

- (a) yourtown may terminate this Contract (in whole or in part) immediately by written notice to the Supplier:
 - (i) if the Supplier becomes insolvent or bankrupt;
 - (ii) if, following notification from yourtown that the Supplier has failed to perform or comply with any of its obligations under the Contract (**Supplier Default**), the Supplier fails to remedy the Supplier Default within a reasonable time and to the satisfaction of yourtown; or
 - (iii) for any reason in yourtown's absolute discretion. yourtown



is not required to provide the Supplier with any reasons and may engage another Supplier to perform the Supply (or any part of the Supply) terminated under this subclause 16(a)(iii).

- (b) On receiving a notice under clause 16(a), the Supplier must:
 - (i) immediately cease performance of the Supply to the extent specified in the written notice;
 - (ii) immediately take all possible action to mitigate any Losses incurred by it or yourtown as a result of such termination; and
 - (iii) take any action relating to the termination of the Contract reasonably required by yourtown.
- (c) Without limiting any other rights or remedies yourtown may have, if yourtown terminates under clause 16(a)(i) or 16(a)(ii), the Supplier must pay or reimburse yourtown's reasonable costs of obtaining replacement Goods and/or Services.
- (d) Upon termination under clause 16(a), yourtown will pay to the Supplier the Price for the provision of the Supply up to the date of such termination. If yourtown terminates the Contract under clause 16(a)(iii), yourtown will also pay to the Supplier any costs for Goods properly ordered prior to the date of termination for which the Supplier has paid or is legally bound to pay, provided the Supplier complies with its obligations under clause 16(b) and such costs are substantiated to yourtown.

17. Anti-slavery

The Supplier must provide yourtown with any information it reasonably requires (and provide all reasonable assistance) to enable yourtown to comply with its obligations under all applicable anti-slavery laws and government

requirements affecting or applicable to the Supply.

18. Miscellaneous provisions

- (a) A notice under the Contract must be in writing, in English and addressed to the receiving party and will be deemed to have been received:
 - (i) if posted, on the 4th day after posting;
 - (ii) if delivered personally, upon delivery; or
 - (iii) if sent by email on a Business Day, on dispatch of the transmission or on a day other than a Business Day, on the next Business Day, unless the sender's server indicates a malfunction or error in transmission or the recipient immediately notifies the sender of an incomplete transmission.All notices sent by email must be sent to the party's nominated contact person under the Contract, or to another person if the other party directs.
- (b) If there is any discrepancy, inconsistency or ambiguity between a Purchase Order and these Purchase Conditions for Goods and Services, the Purchase Order shall prevail. The Purchase Order and these Purchase Conditions for Goods and Services shall have precedence over any other documents forming part of the Contract.
- (c) All provisions of the Contract which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of the Contract (including yourtown's rights under the Contract in respect of any Defect in the Supply) will survive the rescission, termination or expiration of the Contract.
- (d) The Contract contains the entire agreement between the parties



and supersedes all prior arrangements between the parties relating to the Goods or Services (any Supplier terms and conditions contained in delivery notes, invoices, quotes or elsewhere are expressly excluded).

- (e) The Contract is governed by and must be construed and enforced in accordance with the laws of the Relevant Jurisdiction and the parties unconditionally submit to the exclusive jurisdiction of the courts of the Relevant Jurisdiction (and courts of appeal from them).

- (v) a party includes its executors, administrators, successors and permitted assigns; and
- (vi) where a party is more than one person the Contract binds all of them separately and each of them together.

19. Interpretation

In the Contract unless the contrary intention appears:

- (a) the singular includes the plural and vice versa and a gender includes all other genders;
- (b) the words 'include' and 'including' are to be construed without limitation;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) a reference to:
 - (i) a clause, schedule or appendix is a reference to a clause, schedule or appendix to the Contract and a reference to the Contract includes any schedules and appendices;
 - (ii) a document or agreement includes a reference to that document or agreement as novated, altered or replaced from time to time;
 - (iii) 'A\$', '\$A', 'AUD', 'dollar' or '\$' is a reference to Australian currency;
 - (iv) a person includes any individual, firm, body corporate, partnership, unincorporated association, government, state or agency of a state, joint venture or authority;