

Supply Conditions

A Supplier will be deemed to have accepted these Supply Conditions upon acknowledging their receipt or upon fulfilment of a Purchase Order.

1. Definitions

- 1.1 "Consideration", "GST Amount" and "Taxable Supply" have the same meaning as they do under *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any successor legislation.
- 1.2 "Confidential Information" means any information relating to the business of WaterNSW which is not in the public domain.
- 1.3 "Contract" means these Supply Conditions, the Purchase Order and any other document attached to or incorporated by reference to the Purchase Order or these Supply Conditions.
- 1.4 "Delivery Address", "Delivery Date", "Payment Terms", "Supplier" and "WaterNSW" are as specified on the Purchase Order.
- 1.5 "Materials" means all of those goods and/or services to be performed or delivered by the Supplier under the Purchase Order.
- 1.6 "Price" means, subject to Clause 4, the amount that the Purchase Order describes as the "Total".
- 1.7 "Purchase Order" means the purchase order issued by WaterNSW to the Supplier for the supply of Materials.
- 1.8 "Supply" (in whatever word form used) means the performance, provision and/or delivery of Materials in accordance with the Contract.
- 1.9 "Supply Conditions" means these Supply Conditions.
- 1.10 Headings are for convenience only and do not affect interpretation.
- 1.11 A reference to WaterNSW includes WaterNSW's Related Body Corporate as that term is defined in the Corporations Act 2001 (Cth).

2. Contract

- 2.1 Unless otherwise agreed in writing by WaterNSW, the Contract constitutes the entire terms of the Contract between the Supplier and WaterNSW and the Contract supersedes and shall prevail over all other oral and/or written communications, the terms of any other document provided by the Supplier to WaterNSW and all other negotiations between the Supplier and WaterNSW.
- 2.2 To the extent that there is any ambiguity, conflict or inconsistency between the documents comprising the Contract the order in which the documents will prevail is as follows: Purchase Order, Supply Conditions.
- 2.3 The laws of New South Wales govern the Contract and the parties agree to the exclusive jurisdiction of the courts in New South Wales.

3. Supply of Materials and Payment

- 3.1 In consideration of payment of the Price by WaterNSW, the Supplier must Supply the Materials in accordance with the terms of the Contract.
- 3.2 Upon acceptance of the Materials by WaterNSW, WaterNSW will pay to the Supplier the Price following the receipt of a valid tax invoice from the Supplier and in accordance with the Payment Terms.
- 3.3 The Supplier's tax invoice must include any additional information reasonably required by WaterNSW.
- 3.4 WaterNSW may withhold payment of any amount that it disputes in good faith until the dispute has been resolved.

4. GST

- 4.1 If the whole or any part of the Price is the Consideration for a Taxable Supply, the Price will be adjusted to include the GST Amount in respect of the Price.

5. Delivery, Title and Risk

- 5.1 The Supplier must deliver the Materials to the Delivery Address by the Delivery Date.
- 5.2 The Supplier must ensure that the Materials are suitably packed to avoid damage in transit or in storage.
- 5.3 Title and risk in the Materials will pass to WaterNSW upon the delivery of the Materials to the Delivery Address and upon acceptance of the Materials by WaterNSW.

6. Insurance

- 6.1 The Supplier must have effective public/product liability insurance that covers the liabilities of WaterNSW and its employees for damage to real or personal property and for injury or death arising in connection with the Supply of Materials under the Purchase Order.

7. Supplier's Warranty

- 7.1 The Supplier warrants that the Materials:
 - 7.1.1 match the description referred to in the Contract;
 - 7.1.2 correspond to and are of the same nature and quality of, any samples, demonstrations, drawings, plans and specifications that the Supplier may have supplied;
 - 7.1.3 are fit for the purpose for which Materials of the same kind are commonly supplied or purchased and for any other purpose which WaterNSW makes known to the Supplier;
 - 7.1.4 are free of defects, are of merchantable quality, and, unless otherwise specified in the Contract, must be new;
 - 7.1.5 comply with any relevant Australian legislation;

- 7.1.6 will comply with any other warranties or guarantees contained in the Contract or ordinarily supplied by the Supplier and/or manufacturer of the Materials;
- 7.1.7 will be supplied with all due diligence, skill and care to be expected of persons fully qualified and experienced in providing such Materials; and
- 7.1.8 will be unencumbered and free of any claim (or right to claim) by a third party.

- 7.2 The Supplier warrants that neither the Materials, nor the use of them by WaterNSW, infringes any patent, registered design, trademark, copyright or other protected right and the Supplier indemnifies WaterNSW against all actions, costs, claims, demands, expenses and liabilities arising from or incurred by reason of any alleged or actual infringement of any such right.

8. Set off

- 8.1 WaterNSW may deduct any sums due by the Supplier to WaterNSW under any other contract that the Supplier has with WaterNSW, from any amount owing to the Supplier under the Contract.

9. Dispute Resolution

- 9.1 If any dispute arises between WaterNSW and the Supplier, such dispute shall be referred to their respective representatives to whom the parties have given authority to resolve the dispute.
- 9.2 In the event that the representatives themselves are unable to resolve the dispute, the representatives' superiors will attempt to resolve it speedily by negotiation and in good faith.

10. Indemnity

- 10.1 The Supplier indemnifies WaterNSW for any and all losses, damages, expenses, claims, demands and actions whatsoever, whether arising directly or indirectly as a result of a breach by the Supplier of its obligations under the Contract or in connection with the Materials supplied under the Contract.

11. Warranty Period and Defects

- 11.1 If the Materials breach any of the warranties provided in clause 7, or if WaterNSW considers the Materials to be defective, WaterNSW may:
 - 11.1.1 return the defective Materials to the Supplier;
 - 11.1.2 reject the defective Materials;
 - 11.1.3 repair or make good the defective Materials; or
 - 11.1.4 re-perform or make good the defective Materials.
- 11.2 The Supplier must, if requested to do so by WaterNSW and at the Supplier's cost:
 - 11.2.1 repair or replace the defective Materials; or
 - 11.2.2 re-perform or make good the defective Materials; or
 - 11.2.3 reimburse WaterNSW for any expenses incurred in repairing, re-performing or making good, as the case may be, any defective Materials.
- 11.3 Nothing in this clause limits or otherwise excludes the availability of any other right or remedy available to WaterNSW, whether pursuant to the Contract or provided at law.
- 11.4 The remedies available to the Supplier as provided in this clause 11 extend to any defects which are discovered or which become apparent after the expiry of any warranty period.

12. Termination

- 12.1 WaterNSW may terminate the Purchase Order or any part of it at any time and without notice to the Supplier provided that such termination is provided in writing to the Supplier.

13. Confidentiality

- 13.1 Confidential Information derived by, or communicated to the Supplier in connection with the Contract shall not be disclosed to any third party without the prior written consent of WaterNSW.

14. Safety

- 14.1 The Supplier must ensure that its employees, agents and contractors supply the Materials to WaterNSW in a manner that complies with all applicable workplace health and safety laws, all safety standards, policies and procedures of WaterNSW that are applicable to the Supply and any directions given by WaterNSW as to safe working practices or the safety and care of property.

15. Conflict

- 15.1 The Supplier warrants that no conflict of interest exists at the Commencement Date and agrees not to participate in activities, conduct or decisions which conflict, or appear to conflict, with either or both WaterNSW's interests and the Supplier's Obligations under this Agreement.

- 15.2 The Supplier will comply with the WaterNSW Code of Conduct.