

## PURCHASE ORDER TERMS AND CONDITIONS

### 1. DEFINITIONS:

The following words shall, where the context so permits, have the following meaning:

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| “Goods and Services” | means all goods, chattels, plant, equipment, machinery, stores and the services.                     |
| “Purchaser”          | means unit of NSW Health   |
| “Vendor”             | means the person, firm or corporation from whom the Goods and Services has been ordered.             |
| “Order”              | means a Purchase Order, bearing an official order number, transmitted by the Purchaser to the Vendor |

### 2. CONTRACT:

An Order, when bearing an order number, is the only form that will be recognised by the Purchaser as authority for charging Goods and Services to its account and supersedes all previous communications and negotiations. This Order, together with all documents, attached hereto or incorporated herein by reference constitutes the entire terms of order. No terms stated by the Vendor in accepting or acknowledging this order shall be binding upon the purchaser unless accepted in writing by the purchasers. The Vendor may not assign this order without written consent.

### 3. QUANTITY:

It is the vendor’s responsibility to ensure that the quantity of goods delivered shall not be greater than the amount ordered. The Purchaser may instruct the Vendor to locate and collect excess quantities at the Vendor’s expense. Acceptance of a delivery of goods without a purchase order shall not prevent rejection of the invoice, nor relieve the vendor of its responsibility to locate and collect the goods.

### 4. TIME;

Where any dates or time limits are specified in the Order they are to be adhered to.

### 5. TERMS OF PAYMENT:

Unless otherwise as read and specified in the Order, the Purchaser shall pay the Vendor forty five (45) days after the month in which invoice was issued subject to:

- Receipt of the Vendor’s invoice,
- The claim for payment being in accordance with this agreement, and
- The Goods and Services being received and accepted by the Purchaser have been delivered or provided to an acceptable standard.

### 6. TRADE PRACTICES ACT 1974:

It is the responsibility of the Vendor to ensure that prices quoted in this order comply with conditions detailed within the Act.

### 7. CONDITIONS BINDING:

The conditions of purchase as stated in this order govern in event of conflict with any terms of the Vendor’s proposal, and are not subject to change by reason of any written or verbal statements by the Vendor or by any terms stated in the Vendor’s acknowledgement unless same be accepted in writing by the Purchaser’s designated officer.

### 8. ESCALATION:

Purchaser will not accept any price escalation unless specifically negotiated or agreed to beforehand. Escalation which occurs after the due delivery date or any agreed extension thereto will also not be accepted.

### 9. PURCHASE ORDER & INVOICING:

- It is the purchaser’s preference to use electronic purchase orders<sup>1</sup>.
- An invoice or invoices shall be rendered with each consignment and forwarded, in accordance with pre-agreed arrangements or as per instructions on the Order.
- For any consignment comprising goods supplied under more than one order, a separate invoice shall be rendered in respect of each order,
- Invoices shall show method and date of despatch,
- Invoices shall show the relevant order number as quoted on Order, and
- Maintenance and repair invoices shall show a complete breakdown of costs including cost of materials; number of hours worked and rate per hour.

<sup>1</sup> Vendors who are unable to trade electronically may arrange with the purchaser an alternative manual method of trading.

- g. Any invoicing discrepancies are to be rectified by Vendors in a timely manner. Discrepancies resulting to overpayment shall be reimbursed. A discrepancy resulting in an underpayment is to be re-invoiced for a period of up to twelve (12) months from the date of the initial invoice. After 12 months any discrepancy payment claim will be void.
- h. It is the Purchaser's preference to receive electronic invoices. This preference promotes the efficient processing of invoices and is consistent with the NSW Government Electronic Procurement Implementation Strategy<sup>2</sup> and is in accordance with the Electronic Transaction Act (NSW) 2000.
- i. Invoices must display the vendor ABN, the purchase order number, the name of the purchaser, delivery location, description of item(s), item codes, unit of measures, quantity, unit prices, total price and transmitted through the Health Support Services authorised portal.

**10. FREIGHT:**

Unless previously agreed, goods shall be "Free in Store", i.e. at the Vendor's expense and nominated carrier. All goods shall be dispatched per the purchaser's instruction on the order. Any additional freight charge or excess cost occasioned by incorrect consignment will be the Vendor's responsibility.

**11. INDEMNITY:**

The Vendor will be liable in respect of, and indemnifies, and shall keep indemnified, the Purchaser and its officers, employees and agents against any claim, loss or expense (including a claim, loss or expense arising out of personal injury or death or damage to property) which any of them pays, suffers, incurs or is liable for (including legal costs on a solicitor and client basis) (together "the loss") as a result of:

- a) any unlawful, negligent, reckless or deliberately wrongful act or omission of the Vendor (or its employees, agents or subcontractors or their employees) in the processing of this Purchase Order; or
- b) any breach of this Agreement or the confidentiality deeds required by this Purchase Order.
- c) The Vendor's liability in respect of, and indemnity given in, shall be reduced proportionally to the extent that any unlawful, negligent, or deliberately wrongful act or omission of the Purchaser, its officers, employees or agents caused or contributed to the loss.  
The level of indemnity is set by the Purchaser at a level commensurate with the risk associated with the goods and/or services being procured. A figure of \$20 million indemnity is set in respect to standard purchases unless the procurement is of such type that risks are considered minimal or extreme and require an amount other than the \$20 million level.

**12. WORKCOVER:**

The Vendor must be prepared to provide details of any Work Cover prosecutions and /or pending prosecutions when requested.

**13. INSURANCE:**

Goods are not to be insured unless specifically requested by the Purchaser.

**14. MARKING OF PACKAGES:**

- a) Each package shall be marked with the quoted order number, Purchaser's name and address and show the total number of packages included in the delivery
- b) A packing list shall be enclosed with each package.

**15. COMPLIANCE:**

Where applicable all Goods must be packed, branded or identified to comply with the NSW Dangerous Goods Act 1975 and / or NSW Occupational Health and Safety Act 2000 and /or NSW Occupational Health and Safety Regulations 2001 or any other applicable Commonwealth or State Legislation.

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<sup>2</sup> NSW Government Electronic Procurement Implementation Strategy is a whole of government framework to advance electronic commerce in procurement, maximise consistency in implementation and minimise the costs to suppliers. The implementation strategy supports the strategies in the Policy Statement for NSW Government Procurement and Construct NSW on the take up of electronic commerce in procurement and information technology in construction

The NSW Government Electronic Procurement Implementation Strategy is also consistent with Connect.NSW, the NSW Government's strategic framework which outlines the use of information technology to streamline internal government practices, reduce costs, improve service delivery and generally enhance the quality of life for the NSW community. The Implementation Strategy builds upon the Government's Electronic Service Delivery (ESD) goals outlined in Memorandum 2000-12 Meeting the Government's Information and Communications Technology Strategic Agenda.

**16. OTHER CHARGES:**

No charges are allowed for boxing, crating, packing, carting, handling or small orders unless previously agreed.

**17. WARRANTY/STANDARDS:**

Vendor warrants that the Goods shall conform to its description and any applicable specifications shall be of good merchantable quality, and fit for the known purpose for which it is sold. Goods and Services must be in accordance with recognised standards and / or Australian Standards Association code. Vendor also warrants that all workmanship will be carried out and performed in a proper and workmanlike manner. These warranties are in addition to any warranties or service guarantees stated in the Order.

**18. SITE INSPECTION:**

All Goods and Services are subject to Purchaser's inspection after arrival at ultimate destination. If upon inspection any Goods and Services are found to be unsatisfactory, incorrect, defective or of inferior quality or workmanship or fails to meet the specifications or any other requirements of the Order, then the Purchasers may return such Goods and Services whether sterile or non sterile at Vendor's expense. Acceptance of delivery or payment of the invoice shall not prevent rejection of materials found to be unsatisfactory.

Upon return of any unsatisfactory or incorrect or defective Goods and Services, Vendor shall reimburse Purchaser for:

- a. Any amounts paid by Purchaser on account of the purchaser price or return Goods and Services, and
- b. Any cost incurred by Purchasers in connection with the delivery or return of such Goods and Services.

**19. TERMINATION THROUGH DEFAULT:**

In the event of a breach by the Vendor of any of the terms of this order, including the Vendor's warranties, the Purchaser may at its option, and without prejudice to any of its other rights, cancel any undelivered Goods and Services.

**20. FORCE MAJEURE:**

In the event of force majeure (which for the purpose of this clause shall mean any event beyond the control of the Purchaser, including act of hostility, strikes or union action, lockouts and acts of God) the Purchasers shall not be liable to the Vendor for any failure re inability to perform its obligations and may either cancel this order by notice in writing or extend the delivery of the order for the duration of the force majeure event.

**21. NON WAIVER:**

The waiver of relaxation partly or wholly of any of these conditions or other terms of the contract shall be valid only if in writing and signed by the Purchaser and shall apply to a particular occasion and shall not be continuing unless expressed so to be and further shall not constitute a waiver or relaxation of any other condition or term.

**22. PROPER LAW:**

The parties accept the laws of the State of New South Wales as the proper law of the contract and both parties hereby submit to the jurisdiction of the Courts of the State of New South Wales.

**23. CONFIDENTIALITY:**

Except for purposes directly relevant to this Purchase Order, the Supplier must not, without the Purchaser's written approval, make public or disclose any Confidential Information. The Purchaser may impose such terms and conditions as it believes appropriate on any approval. The Purchaser may disclose matters relating to the Purchase Order, including the Purchase Order, except where such information may breach the Privacy Act 1988, to appropriate governmental departments and agencies. This clause shall survive expiration or termination of this Purchase Order

**24. OCCUPATIONAL HEALTH AND SAFETY:**

The Vendor shall ensure compliance with the highest health and safety standards and shall:

- a. Ensure that the goods supplied are safe and without risk to health when properly used,
- b. Assist in minimising the risks associated with manual handling, usage and disposal of the goods, and
- c. Provide all relevant safety information and instructions for correct use including (MSDS and SOP).

**25. ENVIRONMENTAL IMPACT**

The Vendor shall, ensure that Goods supplied in no way impact on the surrounding environment. This may include environmental barriers or containment measures. The Vendor shall have in place policies and procedures that address spills or contamination as well as supply material safety data sheets for all chemicals. These items shall be kept on site at all times and shall be made available for review by the Purchaser upon request.

The list of potential environment impacts and issues which may apply are as follows. The Purchaser does not claim that this is an exhaustive list and some hazards may be created at any time particularly in respect to new products and processes.

- a) Land Management: Erosion, Soil degradation, Contamination, Deforestation, Bushfire, Disruption of flora and fauna communities, Need for rehabilitation due to earthworks, heavy machinery etc.
- b) Water Management: Contamination of surface water (fresh), Contamination of ground water, Pollution of marine environment, Pollution of estuarine waters
- c) Air Quality: Odours, Emission of greenhouse gases, Emission of ozone depleting substances, Emission of toxic substances, Emission of particulate matter
- d) Noise Pollution and Vibration: Equipment that generates noise at excessive levels, Processes that generate excessive vibration
- e) Aesthetics: Visually intrusive temporary structures, Scarring of landscape, Floating debris in water, Litter
- f) Waste Generation: Hazardous waste, Recyclable waste, Domestic refuse, Industrial waste, Wastewater
- g) Dangerous Goods: Storage, Use, Transport, Manufacture, Disposal
- h) Energy Use: Use of non-renewable energy, Consumption of energy
- i) Resources: Numbers of adequately trained/skilled personnel, Quantity and type of materials input into process, Suppliers of inputs, Costs
- j) Product: Characteristics e.g., low recyclability, Poor quality and durability
- k) Processes: Procedures, Operating conditions, Alternative work practices

## **26. PAYMENT**

The Purchaser's preferred payment method is via Electronic Funds Transfer (EFT). The vendor is to ensure a bank account is activated to accept payments from the Purchaser.

## **27. DELIVERY**

The Vendor will supply the goods / services at the delivery location identified on the PO and by the date specified therein or, if no date is so specified, within a reasonable time after the Vendor receive the PO. Risk of loss of goods remains with the Vendor and title will not pass to the Purchaser until the delivery is accepted by the Purchaser's authorised personnel. Goods that are not in good condition, damaged in-transit or rejected as not conforming to the PO shall, at the Purchaser's option be returned to the Vendor at the Vendor's risk and expense and may not be replaced by the Vendor without authorisation from the Purchaser.