

## General Conditions of Purchase Orders

### 1. General

- 1.1 The Vendor agrees to provide the Supplies to Icon Water and Icon Water agrees to purchase the Supplies in accordance with the terms of the Contract.

### 2. Contract documents

- 2.1 The Contract between Icon Water and the Vendor comprises the General Conditions and the Purchase Order. No agreement or contract arises unless and until Icon Water signs and delivers to the Vendor a Purchase Order for the Supplies.
- 2.2 The Vendor agrees that any terms and conditions which it may generally apply to its supply of goods and/or services to other parties do not apply to the supply of goods or services pursuant to the Purchase Order, notwithstanding any invoice, receipt or other document issued to Icon Water which states otherwise.
- 2.3 If there is any inconsistency between the Purchase Order and the General Conditions, the General Conditions prevail to the extent of that inconsistency.

### 3. Definitions

- 3.1 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 Vendor but does not include Contract Material;

**Confidential Information** means information that:

- (a) is by its nature confidential; or
- (b) is designated by Icon Water as confidential; or
- (c) the vendor 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 Vendor on or following the issue 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. Where the Supplies include Minor Works, Goods includes any plant, material or equipment supplied by the Vendor and incorporated in the Minor Works;

**GST** has the same meaning as in the GST Act;

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

**Icon Water** means Icon Water Limited (ABN 86 069 381 960)

**Icon Water Material** means any Material provided to the Vendor by Icon Water for the purpose of this Contract;

**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 other 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;

**Minor Works** means works of a minor nature (if any) to be undertaken as specified in the Purchase Order.

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

**Purchase Order** means the written purchase order issued by Icon Water to the Vendor for the Supplies and which refers to these General Conditions;

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

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

**Supplies** means the Goods, Services and/or Minor Works;

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

**Vendor** means the person named on the Purchase Order who is to supply/provide the Supplies to Icon Water, and where the Vendor includes more than one person, those persons jointly and severally; and

**Warranty Period** means the period of 24 months (or the period of the Vendor's standard warranty period if longer) from the date (as applicable):

- (a) a particular item of Goods is accepted by Icon Water; or
- (b) the Vendor notifies Icon Water that the Minor Works are complete.

- 3.2 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.

## 4. General obligations of the Vendor

- 4.1 The Vendor must provide and deliver the Supplies:

- (a) at the time, place, and in the manner, specified in the Purchase Order, or as otherwise directed by Icon Water;
- (b) to the reasonable satisfaction of Icon Water;
- (c) in accordance with the Contract, including achieving the timeframes, milestones and deliverables specified in the Purchase Order or otherwise as agreed by Icon Water and the Vendor;
- (d) with the due skill, care and diligence of a professional person trained and experienced in providing the same or similar Supplies;
- (e) in accordance with all applicable laws (including but not limited to laws in relation to work health and safety, the environment and anti-slavery) and relevant Australian standards and best practice guidelines.

- 4.2 The Vendor must supply everything necessary for the proper provision and delivery of the Supplies.

- 4.3 The Vendor must comply with any requirements relating to the provision of Supplies as stated in the Purchase Order and all Supplies must conform to any specifications relating to the Supplies as stated in the Purchase Order.

- 4.4 If at any time the Supplies are not in accordance with the Contract, Icon Water may, without limiting any other right or remedy of Icon Water, direct the Vendor to correct or vary those Supplies at no cost to Icon Water.

## 5. Supply of Goods – additional provisions

- 5.1 The Vendor must ensure that Goods are packed, marked and labelled to ensure their safe delivery and safe handling by

- Icon Water after delivery and, if specific packing, marking or labelling is required under the Purchase Order, comply with those requirements.
- 5.2 The Vendor must ensure that the Goods are free of any Security Interest and that no Security Interest is registered on the Personal Property Securities Register.
- 5.3 The Vendor must obtain and provide to Icon Water manufacturer's warranties for the Goods where warranties are accepted industry practice given the nature and intended use of the Goods.
- 5.4 Icon Water accept risk for loss of or damage to the Goods from the time Icon Water takes delivery of the Goods, except to the extent that the loss or damage is caused or contributed to by the Vendor.
- 5.5 Title in the Goods passes to Icon Water on acceptance.
- 5.6 Icon Water may accept or reject the relevant Goods within 21 days after delivery of the Goods to Icon Water, or in the case of Minor Works, 21 days after the Vendor has notified Icon Water under clause 6.6. An item of Goods will be deemed to have been accepted by Icon Water if Icon Water does not issue a notice under this clause.
- 5.7 Icon Water may reject the Goods where the Goods do not comply with the requirements of the Contract including any acceptance tests specified in the Purchase Order.
- 5.8 If Icon Water rejects any Goods, the Vendor must, without limitation to Icon Water's rights otherwise arising under the Contract or a law, comply with a requirement of Icon Water to:
- (a) replace, without cost to Icon Water, the rejected Goods with Goods complying in all respects with the Contract;
  - (b) refund any payment for the rejected Goods; or
  - (c) repair the Goods, on site or otherwise, so that the Goods comply in all respects with the Contract,
- and, in the case of (a) and (c) remove the rejected Goods at the Vendor's expense.
- 5.9 Icon Water will not be liable to pay for any rejected Goods or for any damage or costs arising from inspection or rejection of Goods.
- 5.10 If Icon Water requires the Vendor to submit samples of Goods, the Vendor must:
- (a) deliver the samples to Icon Water for inspection, without additional cost to Icon Water; and
  - (b) not proceed to bulk manufacture until Icon Water has approved the samples.
- 6. Provision of Minor Works – additional provisions**
- 6.1 Before undertaking the Minor Works, the Vendor must:
- (a) fully inform itself of all information relevant to the risks, contingencies and other circumstances that may affect the Minor Works;
  - (b) at its own cost, obtain all necessary approvals, permissions, consents and other rights, unless specified otherwise in the Purchase Order; and
  - (c) on request, provide evidence to Icon Water's reasonable satisfaction that it has met the requirements in this clause 6.1.
- 6.2 Icon Water will provide the Vendor with access to the specified site to allow undertaking of the Minor Works, which may be subject to conditions and/or restrictions including any policies relating to site induction, safety and security that are notified to the Vendor in accordance with clause 8.
- 6.3 The Vendor must:
- (a) use suitable new materials;
  - (b) undertake the Minor Works with proper and tradesmanlike workmanship and manage the quality of the Minor Works in accordance with recognised Australian industry standards.
- 6.4 The Vendor must, at its own cost:
- (a) use reasonable endeavours to prevent unauthorised access to, and implement adequate protective measures at, the specified site,

including but not limited to temporary fencing, signage and lighting;

- (b) do all that is reasonably necessary to protect the Minor Works, protect the property of Icon Water and others and ensure the safety and convenience of Icon Water personnel and the public on or near to the specified site; and
- (c) maintain a clean and tidy work site, progressively remove any waste and leave the site in a good state of repair.

6.5 The Vendor must promptly notify Icon Water on becoming aware of:

- (a) any damage to material or property, environmental damage, or any injury or death that occurs in connection with the Minor Works; and
- (b) anything that may affect or delay the performance of the Minor Works, including unanticipated site, weather or access conditions or Icon Water customer engagement requirements or concerns.

6.6 The Vendor must promptly notify Icon Water when the Minor Works are complete.

6.7 Icon Water may, at any time, direct the Vendor to stop undertaking the Minor Works if deemed necessary or prudent to comply with any safety, operational, environmental requirement or otherwise required by law. On receipt of a direction, the Vendor must immediately stop undertaking the Minor Works and comply with any reasonable and lawful further directions from Icon Water.

## 7. Warranty

7.1 Without limiting any other warranty given by the Vendor, the Vendor represents and warrants that:

- (a) the Supplies are fit for the specified purpose, or if no purpose is specified, the Supplies are fit for the purpose for which goods, services or Minor Works similar to the Supplies are normally acquired;
- (b) the Goods are of merchantable quality;
- (c) the Goods and Minor Works are free from defects;

(d) it holds all necessary licences required to supply the Supplies;

(e) the Vendor has all necessary approvals of any Authority or professional body to supply the Supplies;

(f) the Supplies meet all relevant Australian standards and the requirements set out in the Purchase Order; and

(g) use of the Supplies will not cause Icon Water to be in breach of any law.

7.2 Notwithstanding clause 5.6 and without limiting any other right or remedy of Icon Water, if, during the Warranty Period, Icon Water gives notice of any defect or omission in the Supplies which is a breach of warranty, the Vendor must correct the defect or omission without delay and at no cost to Icon Water.

7.3 The Vendor represents and warrants that the provision of the Supplies was carried out in a safe manner and in compliance with work health and safety legislation, environmental and anti-slavery legislation.

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

## 8. Compliance with Icon Water's policies

8.1 The Vendor must, when delivering the Supplies or using Icon Water's premises or facilities comply with all reasonable directions of Icon Water and all applicable laws and reasonable procedures and policies of Icon Water, including but not limited to those relating to:

(a) personal and professional standards such as the Code of Conduct;

(b) work health and safety requirements (including any requirements of the *Work Health and Safety Act 2011* (ACT)); and

(c) security in effect at those premises or in regard to those facilities,

whether specifically drawn to the attention of the Vendor or as notified by Icon Water or as might reasonably be inferred from the use of which the premises or facilities are being put.

## **9. Inclusive price and GST**

9.1 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 and includes:

- (a) subject to clause 9.2, all taxes, duties and other imposts for which the Vendor is liable;
- (b) all insurance costs;
- (c) all amounts payable for the installation and/or 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.

9.2 Where GST is imposed on any supply made by the Vendor and the price of the Supplies is stated to be GST exclusive in the Purchase order, Icon Water will, in addition to the price payable for the Supplies pay, subject to receiving a valid tax invoice within the meaning of the GST Act, an amount equal to the GST payable in respect of that supply.

## **10. Payment**

10.1 Icon Water will pay to the Vendor the agreed amount for the Supplies as per Icon Water's standard payment terms of 30 days from the date of receipt of a correctly rendered tax invoice.

10.2 An invoice will be correctly rendered if it:

- (a) is addressed in accordance with the Purchase Order;
- (b) identifies the Icon Water Purchase Order number;
- (c) is, where required by Icon Water, 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.

10.3 Where Icon Water, acting reasonably, disputes:

- (a) the amount, or any part of the amount, to be paid to the Vendor;
- or

(b) the nature, quantity or quality of the Supplies supplied,

it will notify the Vendor and Icon Water is not obliged to pay that invoice until the dispute is resolved, except Icon Water may elect to pay any undisputed part of an invoice.

## **11. Icon Water Material**

11.1 The Vendor must ensure that Icon Water Material is used:

- (a) only for the purpose of the Contract; and
- (b) strictly in accordance with any conditions notified by Icon Water in the Purchase Order (if any).

## **12. Intellectual property**

12.1 All Intellectual Property Rights in the Contract Material vest in Icon Water.

12.2 To the extent that Icon Water needs to use any of the Background Material or Third Party Material provided by the Vendor to receive the benefit of the Supplies, the Vendor grants to Icon Water a perpetual, world-wide, royalty free, non-exclusive licence, reproduce adapt, modify, distribute and communicate that Background Material or Third Party Material.

## **13. Termination for convenience**

13.1 Icon Water may at any time for any reason by giving at least 14 days' notice in writing to the Vendor terminate the Contract or reduce the scope of the Supplies.

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

## **14. Termination for default**

14.1 Without limiting any other rights or remedies the parties may have against the other arising out of or in connection with the Contract, the non-defaulting party may terminate the Contract effective immediately by giving notice to the defaulting party if:

- (a) the defaulting party breaches a provision of the Contract where that breach is not capable of remedy;

- (b) the defaulting party breaches any provision of the Contract where that breach is capable of remedy and fails to remedy the breach within 30 days after receiving notice requiring it to do so; or
  - (c) an event specified in clause 14.2 happens to the defaulting party, subject to Parts 5.1, 5.2 and 5.3A of the *Corporations Act 2001* (Cth).
- 14.2 An affected party must notify the other immediately if:
- (a) the Vendor begins a corporation, there is any change in the direct or indirect beneficial ownership or control of the Vendor;
  - (b) the Vendor 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) a party being a company enters into liquidation or has a controller or managing controller or liquidator or administrator appointed;
  - (d) the Vendor being a natural person is declared bankrupt or assigns his or her estate for the benefit of creditors; or
  - (e) any analogous event occurs.
- 15. Payments after termination or reduction in scope**
- 15.1 Subject to clause 15.2, where, before termination of the Contract, Icon Water has made any payment in advance on account of the contract price to the Vendor, the total amount of that payment must be repaid by the Vendor to Icon Water on termination and if not repaid is recoverable by Icon Water from the Vendor as a debt.
- 15.2 If the Contract is terminated or the Supplies reduced in scope in accordance with the provisions of clauses 13 or 14;
- (a) Icon Water will be liable only for:
    - (i) in the case of termination, payments under the payment provisions of the Contract for the Supplies rendered before the effective date of termination; and
    - (ii) reasonable costs incurred by the Vendor and directly attributable to the termination of the Contract or reduction of scope of the Supplies.
  - (b) If the scope of the Supplies is reduced, Icon Water's liability to:
    - (i) pay the contract price payable under the Contract; and
    - (ii) comply with its obligations under the Contract, abates in accordance with the reduction in the scope of the Supplies.
- 15.3 The aggregate of any compensation and any sums paid or due or becoming due to the Vendor under clause 15.2 will not exceed the contract price payable under the Contract.
- 15.4 The Vendor is not entitled to compensation for loss of prospective profits.
- 16. Consequences of termination**
- 16.1 In the event of termination for any reason, the Vendor must cease to use the Contract Material and Icon Water Material in any manner whatsoever. The Vendor must deliver up to Icon Water all copies of the Contract Material and Icon Water Material in the possession, custody or control of the Vendor.
- 16.2 Termination of the Contract does not affect any accrued rights or remedies of a party.
- 17. Survival**
- 17.1 Clauses 4, 5, 6, 7, 8, 10, 11, 12.2, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25 and 32, survive expiry or termination of the Contract.
- 18. Confidentiality**
- 18.1 The Vendor must keep confidential all Confidential Information which the Vendor 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 Icon Water;
  - (b) the information is disclosed to the Vendor's employees or professional advisers on a need to know basis solely for the purposes of the Contract.

18.2 The Vendor is required by any law to disclose Confidential Information, the Vendor must:

- (a) notify the receiving person that the information is Confidential Information;
- (b) not provide the information unless the receiving person agrees to keep the information confidential;
- (c) promptly (and in any case prior to disclosure) notify Icon Water in writing of the information and reasons for disclosure.

## 19. Indemnity

19.1 The Vendor indemnifies Icon Water 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 Vendor;
- (b) An infringement or an alleged infringement, of the Intellectual Property Rights of any person, which occurred by reason of an act done by Icon Water, or its sub-licensees within the scope of Icon Water'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 Icon Water or its officers, employees and agents contributed to the relevant liability.

## 20. Audit and access

20.1 Icon Water may at reasonable times and on giving reasonable notice to the Vendor conduct audits relevant to the performance of the Vendor's obligations under the Contract.

20.2 The Vendor must provide Icon Water with:

- (a) access to its premises and relevant records; and
- (b) any reasonable assistance, necessary for Icon Water to exercise its rights under this clause.

## 21. Privacy

21.1 The Vendor must:

- (a) Comply with all privacy laws;

- (b) Use any personal information provided by Icon Water or collected as part of supplying the Supplies for the purpose for which it was collected;

- (c) Protect personal information held on Icon Water's behalf from misuse, loss, unauthorised access or disclosure.

21.2 The Vendor must endure that personal information relating to Icon Water is protected against loss or unauthorised access, use, modification, disclosure or misuse.

21.3 In this clause 20 'personal information' has the meaning in the *Privacy Act 1988* (Cth).

## 22. Insurance

22.1 The Vendor 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 Vendor is liable in connection with the supply of the Supplies, including, as applicable:
  - (iii) product liability insurance;
  - (iv) public liability insurance;
  - (v) professional indemnity insurance;
  - (vi) works insurance.

22.2 The Vendor must maintain, for seven years following the expiry or termination of this Contract, valid and enforceable insurance policies for professional indemnity and products liability (as applicable).

22.3 The Vendor must provide evidence of such insurance at the request of Icon Water.

## 23. Dispute resolution

23.1 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).

## **24. Assignment and subcontracting**

- 24.1 The vendor must not, without the prior written consent of Icon Water, assign or novate its rights and obligations under the Contract or subcontract any part of the performance of the Contract.

## **25. Waiver**

- 25.1 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.

## **26. Notices**

- 26.1 Notices given under the Contract must be in writing. Electronic notices are considered given once the receiving party has acknowledged receipt.

## **27. Variation**

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

## **28. Entire understanding**

- 28.1 The Contract contains the entire agreement and understanding between Icon Water and the Vendor 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. Severability**

- 29.1 A term or part of a term of this Contract that is illegal or unenforceable may be severed from this Contract and the remaining terms or parts of the terms of this Contract continue in force.

## **30. No merger**

- 30.1 The rights and obligations of the parties under this Contract do not merge on completion of any transaction contemplated by this Contract.

## **31. Relationship**

- 31.1 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.

## **32. Governing law and jurisdiction**

- 32.1 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.

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