

PART B - STANDARD TERMS AND CONDITIONS

1. AGREEMENT

- (a) Subject to clause 1(c), this Purchase Order shall be deemed to be accepted by the Subcontractor for the Supplies from the earlier of the Subcontractor signing and returning a copy of this Purchase Order, or the Subcontractor's commencement of the Supplies after receipt of the Purchase Order.
- (b) Subject to clause 1(c), where the Subcontractor has provided its own written contract terms, its contract terms shall have no effect and the terms of this Purchase Order shall apply and shall constitute the entire agreement between the parties.
- (c) If the Purchase Order is issued under an existing contract or a standing offer, the terms of that existing contract or standing offer will apply and, other than this clause 1(c), these Standard Terms and Conditions shall have no effect.

2. PERFORMANCE

- (a) The Subcontractor shall, as an independent contractor, provide:
 - (i) all:
 - (A) goods referred to in the description of Supplies in the Particulars (**Goods**);
 - (B) services referred to in the description of Supplies in the Particulars (**Services**); and/or
 - (C) works referred to in the description of Supplies in the Particulars (**Works**); and
 - (ii) at the Subcontractor's own cost, all labour, materials, services, goods, plant, equipment, or other things necessary to provide the Goods, Services, or Works (whether not expressly described in this Purchase Order) or comply with its obligations under this Purchase Order,

(which for the purpose of this Purchase Order are collectively called the **Supplies**).
- (b) The Subcontractor shall carry out the Supplies in accordance with this Purchase Order.
- (c) The Contractor shall pay the Subcontractor the Price in accordance with this Purchase Order.
- (d) The Price is:
 - (i) firm and final;
 - (ii) not subject to rise and fall; and

- (iii) with the exception of GST, inclusive of all taxes, duties and charges imposed or levied in Australia or overseas.

3. SECURITY

- (a) The Contractor shall deduct from progress claims submitted, a provision for retention monies (5% of the Contract value) in order to secure the Subcontractor's proper performance.
- (b) If the progress claim submitted is greater than 50% of the Contract Value, 5% retention will be withheld. If the progress claim is less than 50% of the Contract value 2.5% retention will be withheld from the 1st claim and the remaining 2.5% will be withheld from the following claim, until 5% of the contract value is reached.
- (c) 50% of the retention monies will be released to the Subcontractor on practical completion under the Contract. The remaining 2.5% will be released after the Contractor's 12 months Defect Liability Periods expires, providing that all works and all outstanding defects of the Contracts have been rectified.
- (d) A satisfactory Bank Guarantee in the favour of the Contractor shall be deemed to be accepted in lieu of such cash retention.

4. SUBCONTRACTOR'S OBLIGATIONS

The Subcontractor shall carry out and complete the Supplies:

- (a) exercising a high standard of skill, care and diligence;
- (b) in accordance with this Purchase Order and the Contractor's directions;
- (c) in accordance with all legislative requirements and any relevant Australian Standards (or other standards) or codes applicable to the Supplies for the duration of this Purchase Order;
- (d) in a manner that is suitable, appropriate and adequate for the purposes stated in, or reasonably inferred from, this Purchase Order;
- (e) in consultation with the Contractor; and
- (f) with due expedition and without delay.

5. SITE

- (a) Where applicable, the Subcontractor shall only access and use the Site:
 - (i) in accordance with the Contractor's reasonable directions;
 - (ii) subject to the Contractor's right to require the prompt removal of any person from the Site; and

- (iii) at the locations directed by the Contractor.
- (b) The Subcontractor shall in providing the Supplies:
- (i) protect all people from death or injury (including by the provision and maintenance of barricades, guards, fences, signs, lighting and traffic flagging);
 - (ii) protect the Supplies (including any unfixed plant, materials and goods) and all other property (including property or works of the Contractor or others) from loss or damage; and
 - (iii) promptly make good, at its own cost, any damage caused by the Subcontractor to the Supplies or any property of the Contractor or third parties.

- (c) Despite any other provision of this Purchase Order:
- (i) the Subcontractor accepts the risk of all known and unknown conditions of the Site (including, without limitation, natural or artificial conditions, contamination, services, facilities and improvements on the Site (including those installed or constructed by other contractors)) (**Site Conditions**);
 - (ii) the Subcontractor shall not be entitled to any adjustment to the Price or claim for any costs, expenses, damages, delay or disruption costs or other liabilities or extension of time arising from any Site Condition;
 - (iii) the Subcontractor shall carry out all works required to ensure the Supplies are in accordance with this Purchase Order despite any Site Conditions;
 - (iv) the Contractor gives no warranty and makes no representation as to the capacity of the Site to support the Works or Goods; and
 - (v) the Subcontractor warrants the Site is suitable for and can support the Works or Goods and that the Subcontractor can provide the Supplies in accordance with this Purchase Order so that the completed Supplies comply with the requirements of this Purchase Order.

6. GOODS

- (a) Without limiting clause 4, the Subcontractor shall:

- (i) properly package and protect the Goods to prevent damage during transit and upon Completion; and
 - (ii) give the Contractor full access to the Subcontractor's premises for the Contractor to inspect the Goods prior to Completion.
- (b) The Subcontractor warrants that the Goods:
- (i) will be new (unless otherwise specified);
 - (ii) will conform with its description;
 - (iii) are free from all third party rights and claims; and
 - (iv) are of merchantable quality and are fit for the purpose for which the Contractor requires them.
- (c) The warranties given by the Subcontractor in this clause are in addition to and shall not derogate from any conditions or warranties implied by legislative requirements.

7. PROFESSIONAL SERVICES

Where the Subcontractor is to provide professional services (including, without limitation, any design), the Subcontractor shall, in addition to its other obligations in this Purchase Order:

- (a) ensure that in providing the Supplies, it exercises the standard of skill and care expected of a competent and qualified professional; and
- (b) unless the Contractor expressly agrees otherwise, effect (before commencing the Supplies) and maintain (for at least 6 years after Completion) professional indemnity insurance of at least \$10,000,000 per claim with insurers and on terms and conditions acceptable to the Contractor.

8. COMPLETION

- (a) The Subcontractor shall achieve Completion by the Date for Completion.
- (b) The Subcontractor will be entitled to make a written claim for an extension of time (**EOT**) if:
 - (i) the Subcontractor is, or will be, delayed in achieving Completion by the Date for Completion due to any delay act, default or omission of the Contractor; and
 - (ii) that claim for an EOT is given to the Contractor within 5 Business Days of the occurrence of the delay.
- (c) The Contractor may, in its absolute discretion and for its own benefit only, direct an EOT.

- (d) If:
 - (i) Completion is not achieved by the Date for Completion; and
 - (ii) liquidated damages are specified in the Particulars,

then the Contractor shall be entitled to liquidated damages as specified in the Particulars for every day from the Date for Completion until the date of Completion. The amount calculated shall be a debt due and payable by the Subcontractor to the Contractor.

9. SOLE REMEDY

The Subcontractor accepts:

- (a) the risk of all increased costs resulting from delay or disruption to the Works and the performance of its other obligations under this Purchase Order; and
- (b) that it has no claim arising out of or in any way in connection with such delay or disruption (including for any act or omission of the Contractor, directions given under the Contract, variations, or any breach of the Subcontract or negligence by the Contractor).

10. OWNERSHIP AND RISK

- (a) Ownership of, and unencumbered title in, the Supplies shall pass to the Contractor on the earlier of:
 - (i) Completion; or
 - (ii) the date of payment for the Supplies.
- (b) The Subcontractor shall be responsible for the care of the Supplies until the date that risk passes in accordance with clause 10(d).
- (c) If loss or damage occurs to the Supplies while the Subcontractor is responsible for their care, the Subcontractor shall, at its cost, promptly rectify such loss or damage.
- (d) Risk in the Supplies shall pass to the Contractor on Completion.
- (e) The Subcontractor grants to the Contractor an irrevocable licence to enter the Subcontractor's premises to remove all Goods for which ownership has passed to the Contractor. To the extent permitted by law, the Subcontractor indemnifies the Contractor against all claims arising out of or in connection with the Contractor's exercise of the licence granted under this clause.

11. DOCUMENTS AND INTELLECTUAL PROPERTY

- (a) Documents provided by the Contractor under this Purchase Order or otherwise, remain the Contractor's property and shall be returned to the Contractor on demand. The Contractor grants to the Subcontractor a licence to use the documents to carry out the Supplies and any rectification, maintenance or servicing as necessary for the purposes of this Purchase Order.
- (b) The Subcontractor shall not use, copy or reproduce the documents provided by the Contractor for any purpose other than the Supplies.

12. PAYMENT

- (a) Subject to clause 15(d), the Subcontractor shall be entitled to claim payment:
 - (i) on the 25th day of each month for Supplies carried out to the end of that month until Completion is achieved; and
 - (ii) on Completion.
- (b) All claims for payment:
 - (i) must be sent and uploaded via Samways Procure Portal.
 - (ii) must include the Subcontractor's ABN;
 - (iii) must state the relevant Purchase Order Number as set out in the Particulars.
- (c) Subject to clauses 12(d), 12(e) and 12(f), on receipt of a progress claim which is compliant with this clause 12, the Contractor shall:
 - (i) issue a certificate assessing the amount owing within 10 Business Days; and
 - (ii) pay the amount assessed to the Subcontractor within 30 days of the end of the month following the month in which the compliant progress claim is received.
- (d) Payment by the Contractor of any claim shall be a payment on account only and shall not constitute evidence that the Supplies have been carried out satisfactorily.
- (e) The Contractor may deduct from any payment otherwise due to the Subcontractor:
 - (i) any debt or other amount due from the Subcontractor to the Contractor; or
 - (ii) any claim to payment which the Contractor may have against the Subcontractor whether for damages or

otherwise, under this Purchase Order or at law.

- (f) Despite any other provision of this Purchase Order, the Subcontractor shall not be entitled to make a claim for any payment until the Subcontractor has provided to the Contractor:
 - (i) evidence of the Subcontractor having effected all insurances required to be effected by it under this Purchase Order; and
 - (ii) documentary evidence (satisfactory to the Contractor) that all the Subcontractor's employees, sub-subcontractors and sub-subcontractor's employees have been paid for all work, services, plant, goods and materials provided by them in connection with the carrying out of the Supplies at the relevant award or rate specified in any applicable industrial agreement.

13. DEFECTS

- (a) Between the date of this Purchase Order and the expiration of the Defects Liability Period, the Contractor may give the Subcontractor a direction to rectify a defect or omission in the Supplies within a certain time period.
- (b) If the Contractor gives the Subcontractor a direction under clause 13(a) the Defects Liability Period shall be extended by a period determined by the Contractor not exceeding a further 12 months.
- (c) The Subcontractor shall carry out rectification as directed and at times and in a manner causing as little inconvenience to others as is reasonably possible.
- (d) If the rectification is not carried out as directed, the Subcontractor shall refund any amount paid to the Subcontractor in relation to the Supplies.

14. INDEMNITY

The Subcontractor indemnifies the Contractor against:

- (a) loss or damage to property, including existing property on or around the Site including property belonging to third parties;
- (b) claims against the Contractor in respect of personal injury, death, or loss or damage to any property; and
- (c) claims against the Contractor in respect of any infringement of any intellectual property or moral rights,

arising out of or in connection with carrying out the Supplies.

15. INSURANCE

- (a) The Subcontractor shall effect and maintain the following insurance policies, with a reputable insurance company:
 - (i) public and products liability insurance in the amount of \$10 million for any one loss or occurrence, for the duration of this Purchase Order;
 - (ii) insurance to cover physical loss or damage to the Supplies, including loss or damage during transit or unloading. The policy or policies shall be maintained until risk in the Supplies passes to the Contractor or the Subcontractor otherwise ceases to be responsible for the care of the Supplies;
 - (iii) workers compensation or personal accident and illness insurance as required by law; and
 - (iv) any other insurance reasonably required by the Contractor.
- (b) The insurances in clause 15(a) shall be on such terms (including deductible levels) as would otherwise be procured and maintained by a prudent supplier acting in accordance with best industry.
- (c) Prior to carrying out the Supplies and within 3 Business Days of any request by the Contractor, the Subcontractor shall give to the Contractor evidence of insurance required to be effected and maintained, including the certificates of currency of that insurance.
- (d) It is a condition precedent to payment that the Subcontractor has complied with its obligations under this clause 15.

16. DEFAULT

If the Subcontractor commits a breach of this Purchase Order, the Contractor may issue a notice to the Subcontractor requiring the Subcontractor to show cause why the Contractor should not terminate this Purchase Order.

If the Subcontractor fails to show reasonable cause within the period stipulated in the Contractor's notice to show cause, the Contractor may, by further notice, terminate this Purchase Order.

17. TERMINATION FOR CONVENIENCE

Without prejudice to any of the Contractor's other rights under this Purchase Order, the Contractor may:

- (a) at any time and for any reason, by written notice to the Subcontractor, terminate this Purchase Order; and

- (b) either itself or by a third party complete the uncompleted part of the Supplies under this Purchase Order,

and the Subcontractor is entitled to claim for the cost of Supplies incurred up to that date but is not entitled to any payment for loss of profit or loss of opportunity on the Works that have not been performed at the time of termination of this Purchase Order.

18. INSOLVENCY

If the Subcontractor:

- (a) informs the Contractor that it is insolvent or financially unable to proceed with this Purchase Order;
- (b) being a person, commits an act of bankruptcy, is made bankrupt, has a bankruptcy petition presented against it, or makes an assignment of its estate for the benefit of its creditors; or
- (c) being a company, becomes insolvent, has a liquidator, provisional liquidator, administrator or receiver appointed, has a change in ownership or control, takes or has taken or instituted against it any action which may result in the liquidation of the company, or if it enters into any agreement with its creditors,

the Contractor may, without issuing a notice to show cause, terminate this Purchase Order by written notice.

19. WORK HEALTH AND SAFETY

The Subcontractor shall:

- (a) Ensure compliance with all laws and legal requirements relating to workplace health and safety; comply with the Contractor's Site Manual which is accessible for download from <http://www.samways.com.au/download/1471/> The Subcontractor acknowledges that it has obtained the Contractor's Site Manual prior to commencing performance of the Supplies; and
- (b) comply with all reasonable directions of the Contractor with respect to workplace health and safety and ensure nothing done by the Subcontractor places the Contractor in breach of its obligations under all laws and legal requirements.

20. LICENCE

- (a) This clause 20 applies to the extent the Subcontractor is required by a legislative requirement to hold a licence to carry out the Supplies.
- (b) The Subcontractor shall not carry out any Supplies which require a licence unless it holds the proper licence permitting the Subcontractor to lawfully carry out those Supplies.

- (c) If the Subcontractor is unable to carry out Supplies which requires a licence because it has failed, refused, or been unable to obtain a proper licence or has had its licence suspended or cancelled, or has had conditions imposed on its licence, then the Subcontractor shall be in substantial breach of this Purchase Order.

21. VARIATION

- (a) The Contractor may direct the Subcontractor to vary the Supplies. The price of the variation shall be agreed by the parties or, if not agreed, as determined by the Contractor.
- (b) The Subcontractor is barred from any claim, has no entitlement to payment and releases and indemnifies the Contractor from all liability in connection with any variation to the Supplies that has not been directed in writing or approved in writing by the Contractor prior to provision of the Supplies commencing.

22. PPSA

22.1 Contractor's Personal Property

For the purposes of this clause 22:

- (a) **Contractor's Personal Property** means all personal property the subject of a security interest granted under this Purchase Order; and
- (b) words and phrases used in this clause 22 that have defined meanings in the PPS Law have the same meaning as in the PPS Law unless the context otherwise indicates.

22.2 Further assurance

If the Contractor determines that Purchase Order (or a transaction in connection with it) is or contains a security interest for the purposes of the PPS Law, the Subcontractor agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Contractor asks and considers necessary for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected and otherwise effective; and/or
- (b) enabling the Contractor to apply for any registration, complete any financing statement or give any notification, in connection with the security interest; and/or
- (c) enabling the Contractor to exercise rights in connection with the security interest.

22.3 No requirement for PPSA notices

The Contractor need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given.

22.4 Notices to be given to the Main Contractor

The Subcontractor shall notify the Contractor as soon as the Subcontractor becomes aware of any of the following:

- (a) if any personal property which does not form part of the Contractor's Personal Property becomes an accession to the Contractor's Personal Property and is subject to a security interest in favour of a third party, that has attached at the time it becomes an accession;
- (b) if any of the Contractor's Personal Property is located or situated outside Australia; or
- (c) upon request by the Contractor, of the present location or situation of any of the Contractor's Personal Property.

22.5 Negative undertakings

The Subcontractor shall not:

- (a) create any security interest or lien over any of the Contractor's Personal Property whatsoever (other than security interests granted in favour of the Contractor);
- (b) sell, lease or dispose of its interest in the Contractor's Personal Property;
- (c) give possession of the Contractor's Personal Property to another person except where the Contractor expressly authorises it to do so;
- (d) permit any of the Contractor's Personal Property to become an accession to or commingled with any asset that is not part of the Supplies;
- (e) change its name without first giving the Main 15 Business Days' notice of the new name or relocate its principal place of business outside Australia or change its place of registration or incorporation.

22.6 Costs and expenses relating to the PPSA and registration

Everything the Subcontractor is required to do under this clause 22 is at the Subcontractor's expense.

22.7 Confidentiality for the purposes of the PPSA

Neither the Contractor nor the Subcontractor will disclose information of the kind mentioned in section 275(1) of the PPSA and the Subcontractor will not authorise, and will ensure that no other party authorises, the disclosure of such information.

This clause 22.7 does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

23. GENERAL

- (a) The Subcontractor shall not assign this Purchase Order or any right, benefit or interest under this Purchase Order or subcontract any part of the Supplies without the Contractor's written approval.
- (b) Notwithstanding any other provision of this Purchase Order, the Contractor shall not be liable upon any claim (other than a claim for payment of the Price under clause 12) unless a written notice of claim is given to the Contractor within 5 Business Days after the date the Subcontractor ought reasonably have become aware of the facts or circumstances upon which the claim is based.
- (c) The laws of the jurisdiction where the Site is located shall apply to this Purchase Order.
- (d) The Subcontractor shall continue to carry out the Supplies despite any dispute between the Contractor and Subcontractor.

24. DEFINITIONS AND INTERPRETATION

In these Standard Terms and Conditions, except to the extent that the context otherwise requires:

Business Day means any day which is not a weekend day or public holiday at the Site;

Completion means when the Supplies are complete to the reasonable satisfaction of the Contractor (except for immaterial defects which the Contractor considers can later be conveniently rectified) and all conditions required by the Purchase Order are satisfied;

Contractor means the relevant party identified in the Particulars;

Date for Completion means the required completion date specified in the Particulars;

Defects Liability Period means the period commencing on the Date for Completion and expiring 12 months after the date of the last defects liability period under the Head Contract, or such further period as determined under clause 13;

EOT has the meaning in clause 8;

Goods has the meaning in clause 2;

Head Contract means the contract between the Principal and the Contractor for the Project;

Particulars means the particulars in Part A of this Purchase Order;

PPS Law means:

- (a) the PPSA;
- (b) any regulations made at any time under the PPSA;

- (c) any provision of the PPSA or regulations referred to in paragraph (b);
- (d) any amendment to any of the above, made at any time; or
- (e) any amendment made at any time to the *Corporations Act 2001* (Cth) or any other legislation in connection with the implementation or as a consequence of the PPSA;

PPSA means the *Personal Property Securities Act 2009* (Cth);

Price means the total amount payable to the Subcontractor by the Contractor as set out in the Particulars;

Principal means the person named in item 2 of the Particulars;

Purchase Order means an agreement on the terms of Part A and Part B of this document issued by the Contractor to the Subcontractor for the Supplies which the Contractor requires;

Services has the meaning in clause 2;

Site means the site specified in the Particulars;

Site Conditions has the meaning in clause 5;

Standard Terms and Conditions means the standard terms and conditions in Part B of this Purchase Order;

Subcontractor means the relevant party providing the Supplies as identified in the Particulars;

Supplies has the meaning in clause 2; and

Works has the meaning in clause 2.

In this Purchase Order, except to the extent that the context otherwise requires:

- (a) words importing the singular include the plural and vice versa unless the context otherwise requires;
- (b) 'includes' or 'including' means includes or including without limitation; and
- (c) any reference to time is to the time at the Site.