

Water Corporation Purchase Order Terms and Conditions (Version July 2020)



1. In this document:

Principal: means the Water Corporation (ABN: 28 003 434 917), a statutory body corporate created by the *Water Corporation Act 1995* (WA) and includes its successors and assigns;

Bid: means the Supplier's offer to Deliver the Item or Items;

Contract: means the contract evidenced by the Purchase Order, these Purchase Order Terms and Conditions together with any Special Conditions and Scope of Services attached to the Purchase Order, and the Bid, excluding any terms or conditions of sale or contract forming part of the Bid unless they are specifically accepted in writing by the Principal;

Defective: means any aspect of the Item which differs from that specified in the Contract, including any defect, fault, omission, error or non-conformance or, in relation to goods, is in any other way not fit for its intended purpose;

Deliver, Delivery or Delivered: includes supply, supplied, provide, provided, provision, perform, performed or performance as the context may require;

Force Majeure: means a credible threat of or act of terrorism, act of God, fire, explosion, atmospheric disturbance (excluding cyclones), lightning, flood (other than any flood which should have been reasonably anticipated), earthquake, war or warlike conditions, maritime or aviation disaster, civil commotion or civil disturbance, political unrest and demonstrations, national strikes, embargoes, blockades, riots, epidemic, ionising radiation or contamination by radioactivity, all of which must be beyond the reasonable control of, and must not have been caused by, the party claiming Force Majeure;

Intellectual Property: means any trade secret, know-how, patent, registered design, trademark or name, copyright or other intellectual property rights regardless of whether it is protected by statute, common law or equity;

Item or Items: means the works, goods, services or any combination of them, as the case may be, to be Delivered by the Supplier under the Contract;

Purchase Order: means the purchase order issued by the Principal to the Supplier;

Schedule: means a document which sets out the sequence of events or milestone dates that are to be met by the Supplier in the Delivery of the Item submitted as part of the Bid;

Scope of Services: means the specification, scope of services or brief, whichever is applicable, that sets out the Principal's requirements for Delivery of the Items; and

Supplier: means the company, partnership, firm or person to which the Purchase Order is issued.

2. The issuing of the Purchase Order to the Supplier constitutes the Principal's acceptance of the Bid. The Contract is the entire agreement between the parties and supersedes all prior commercial dealings or representations made by the parties prior to entering into the Contract. The terms of the Contract can only be varied if agreed to in writing by the parties.

3. Unless otherwise stated in the Purchase Order, the prices shown in the Purchase Order:

- (a) are in Australian currency;
- (b) are firm and not subject to adjustment other than in accordance with clause 7; and
- (c) are exclusive of GST.

4. The Supplier must Deliver the Items as set out in the Contract and all Items Delivered under the Contract shall be:

- (a) if goods;
 - (1) new, of merchantable quality and fit for the purpose for which Items of the same kind are commonly supplied and any other purpose made known to the Supplier by the Principal;
 - (2) appropriately packaged to protect against damage during handling, transit and storage; and
 - (3) unless otherwise stated in the Purchase Order, Delivered to and offloaded by the Supplier at the delivery point at the Supplier's cost with due care, diligence and skill reasonably expected of a supplier of Items of the kind described in the Contract; or
- (b) if works or services;

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- (1) performed expeditiously in accordance with the Contract with due care and skill and appropriate industry or professional standards;
 - (2) the Supplier shall supply, unless stated otherwise in the Contract, all labour, equipment, materials, and other requirements necessary to complete each Item in accordance with the Contract; and
 - (3) performed in accordance with the Schedule.
5. The Supplier shall ensure that any warranty offered by the manufacturer of an Item or part thereof shall be assigned to and directly enforceable by the Principal.
6. If any of the Items includes goods:
 - (a) risk in the goods is the responsibility of the Supplier until those Items are received by the Principal at the delivery point or collected by the Principal, as set out in the Contract; and
 - (b) ownership of the goods transfers to the Principal on payment for those Items by the Principal.
7. The Principal may at any time prior to completion of the Contract direct a variation by increasing, decreasing or omitting any part of the Items with a commensurate increase or reduction in the price. Variations shall be priced in accordance with the prices in the Contract, if applicable, or by agreement between the Supplier and the Principal. The Supplier must not vary any of the Items or commence Delivery of any additional Items until the variation has been agreed in writing between the parties and the Purchase Order has been amended and re-issued by the Principal. No variation shall invalidate the Contract.
8. The Scope of Services will identify if the Principal requires any aspect of an Item to be designed, manufactured, tested or installed to specific requirements or standards, or to be Delivered in accordance with specific requirements or standards and the Supplier shall provide to the Principal such information as the Principal may require to verify compliance with the specified requirements or standards.
9. If anytime within 12 months after Delivery of the Item, the Principal discovers that the Item or part of the Item is Defective, the Principal may reject the Item or any part of the Item that is Defective and notify the Supplier of the deficiency and require the Supplier at the Principal's sole discretion to either:
 - (a) promptly repair, replace (including removal of the Defective Item) or re-perform any rejected Item or the part of the Item that is rejected, at the Supplier's cost; or
 - (b) refund to the Principal any moneys paid for the rejected Item or any part of the Item that is rejected and to subsequently remove the rejected Item or part of the Item from the Principal's premises or site at the Supplier's cost.
10. The Supplier warrants that the Item and any design, materials, documents and methods of working provided by the Supplier shall not infringe any third party intellectual property right and indemnifies the Principal against any such infringements. The Principal shall be the owner of all Intellectual Property created under the Contract. If either party has provided any existing Intellectual Property which is incorporated into the Items, ownership of such Intellectual Property shall remain with the party that provided it. The Supplier grants to the Principal an irrevocable, non-exclusive, royalty free licence to use that existing Intellectual Property for the purpose for which the Items are provided including any operation, installation, subsequent repairs, maintenance or servicing, additions or alterations. The Principal grants a non-exclusive, non-transferrable, revocable license to the Supplier to use the Principal's Intellectual Property and any Intellectual Property created under the Contract solely for the purpose of performing its obligations under the Contract.
11. Vehicles, plant or equipment used for Delivery of an Item on any of the Principal's premises or sites shall be well maintained and have a high level of operational availability. Operators of such vehicles, plant or equipment, shall be suitably qualified to operate the vehicles, plant or equipment.
12. Unless otherwise stated in the Contract, the Supplier shall issue an invoice to the Principal for Items Delivered, which if approved, shall be paid by the Principal within 20 days from the Principal's receipt of the Supplier's invoice.
13. The Principal shall not be obliged to pay for any part of the invoice where:
 - (a) any Item is not Delivered in accordance with the Contract or which is subsequently found to be



Defective;

- (b) any invoice does not show the Purchase Order number; or
- (c) any Items in the invoice are not shown on the Purchase Order.

In cases where the Principal does not intend to make full payment, the Principal shall issue a written notification to the Supplier within 15 days of receipt of the Supplier's invoice, detailing those Items in the invoice that are rejected or will not be paid for in full. In addition, the Principal may deduct any amounts as required by law and any debts or moneys due or becoming due from the Supplier to the Principal under the Contract.

14. The parties confirm that they are both registered for GST pursuant to the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and that should either of them cease to be so registered they will inform the other at the earliest opportunity. All taxes other than GST that are applicable to this Contract shall be paid by the Supplier and must be included in the Contract price.

If the Supplier fails to provide to the Principal an Australian Business Number, the Principal shall deduct "Pay As You Go" tax, at the top marginal rate from any payment due to the Supplier under the Contract and remit the amount of that tax to the Australian Taxation Office for the benefit of the Supplier.

15. The Supplier shall not, without the prior written approval of the Principal, novate or assign any of its rights or obligations under the Contract.

16. The Principal and the Supplier shall maintain as confidential and shall not disclose to any third party any information or documentation identified by either of them as confidential (in relation to the Principal, this includes information in connection with: this Contract; the Principal's business, operations, strategy, planning, marketing, intellectual property; and any acquired or developed by the Supplier in connection with the Contract), or which a party should reasonably have known was confidential, unless required by law or the information enters the public domain other than through the acts or omission of a party. The Supplier shall not advertise, publish or release information or statements to the media or the public concerning the Contract, the Items, or operations of the Principal, without the prior written agreement of the Principal. If directed by the Principal the Supplier shall sign a confidentiality agreement.

If requested by the Principal in writing, the Supplier must promptly deliver up to the Principal (and subsequently after delivery to the Principal, then destroy) all confidential information that is in the custody, possession or control and of the Supplier. The Supplier warrants that it has appropriate technical and security measures to comply with this clause 16. Nothing in this clause 16 limits the Principal's entitlement to institute proceedings to seek injunctive or urgent declaratory relief for non-compliance with this clause 16.

17. Notwithstanding any other provision of the Contract but to the extent permitted by law:

- (a) the Principal's total liability to the Supplier for all claims (other than claims for personal injury or death) arising out of, or in connection with the Contract, other than the obligation to pay under clause 13, is limited to the greater of:

- (1) \$10,000; or
- (2) any amounts the Principal is able to recover under any insurances;

- (b) the Supplier's total liability to the Principal for all claims arising out of or in connection with the Contract is limited to:

- (1) \$100,000 or the value of the Contract, whichever is the greater; and
- (2) any amounts the Supplier is able to recover under any insurances required to be provided by the Supplier under the terms of the Contract, or which it would have been able to recover if the insurances had been taken out, or which it would have been able to recover under the insurances, in either case, but for any act, failure or omission by the Supplier,

provided that any such limitations in this clause 17(b) will not apply to:

- (3) personal injury (including sickness and death);



- (4) an infringement of Intellectual Property;
 - (5) any breach of any statute, fraud, intentional dishonesty or any wilful act or omission of the Supplier or its employees made with reckless indifference to any possible harmful consequences arising from that act or omission; or
 - (6) a breach of any obligation of confidentiality or privacy;
- (c) neither party is liable to the other for any indirect, consequential, special, contingent or penal loss or damage, including but not limited to, loss of use, loss of profit, loss of revenue or cash flow, loss of reputation, loss of opportunity or loss of anticipated savings, howsoever arising; and
- (d) Part 1F of the *Civil Liability Act 2002* (WA) is excluded from application to this Contract.
18. Subject to clause 19, and except in circumstances constituting an indemnity under subsection 175AA(7) of the *Workers' Compensation and Injury Management Act 1981* (WA), the Supplier shall indemnify the Principal against:
- (a) loss of or damage to property of the Principal;
 - (b) claims by any person against the Principal in respect of personal injury or death or loss of or damage to any other property; and
 - (c) any liability incurred by the Principal resulting from the Principal being deemed an employer under the *Workers' Compensation and Injury Management Act 1981* (WA), as provided for under section 175 of that Act,
- arising out of or as a consequence of carrying out the Contract by the Supplier, except to the extent such loss, damage, death or injury has been caused or contributed to by the Principal.
19. The Supplier shall maintain insurances relevant to the responsibilities of the Supplier under the Contract including, but not limited to:
- (a) Public Liability insurance of \$10,000,000;
 - (b) Motor vehicle insurance covering third parties and property damage;
 - (c) if goods are to be Delivered under the Contract, Product Liability insurance of \$10,000,000;
 - (d) if professional services or advice are to be Delivered under the Contract, Professional Indemnity insurance of \$1,000,000 to be maintained for seven (7) years after the completion of the Contract; and
 - (e) Workers' Compensation insurance against statutory and common law liability for the amount required by law. Where permitted by law, the insurance policy shall be extended to provide indemnity for the Principal's statutory liability to the Supplier's employees.

If the Supplier is a natural person or has a working director without workers' compensation insurance coverage providing services under this Contract, the natural person or working director shall be covered under the Principal's workers' compensation insurance. In this regard the Supplier shall promptly provide any information the Principal may require in order to determine the premiums for the Principal's workers' compensation insurance coverage, including an estimate of the value of the Items performed by the natural person or working director for the Principal as a percentage of the Contract price, which information will not be used for any other purpose and shall be kept confidential.

The Supplier shall provide evidence of insurances in the form of certificates of currency to the Principal on request.

20. If the Supplier commits a breach of the Contract, including, but not limited to:
- (a) failing to Deliver the Items by the date for Delivery;
 - (b) failing to proceed at a rate of progress reasonably satisfactory to the Principal;
 - (c) failing to provide evidence of insurance, when requested to do so under clause 19;
 - (d) failing to carry out any direction of the Principal in respect to the Contract;
 - (e) being unable or refusing to complete its obligations under the Contract; or



(f) an administrator, receiver or liquidator is appointed to the Supplier or the Supplier suffers any other act of insolvency or bankruptcy,

then the Principal may give a written notice to the Supplier requesting that the Supplier rectify the breach. If the Supplier does not rectify the breach within the time specified in the notice, the Principal may, without prejudice to its rights to recover damages or any other rights at law, by written notice to the Supplier, terminate the Contract from the date stated in the notice and make such other arrangements as the Principal may consider necessary. Where clause 20(f) applies, the Principal may, at its sole discretion, terminate the Contract effective immediately by giving written notice to the Supplier. The Supplier's sole entitlement for any termination under this clause 20 is payment to the date of termination for those Items or parts of those Items which have been Delivered in accordance with the Contract but which have not been paid for by the Principal. In any event, the Principal's liability to the Supplier for termination shall under no circumstances exceed the amount for the Items otherwise payable under the Contract.

21. The Principal may at any time, and at its absolute discretion, terminate the Contract by written notice to the Supplier. The Principal will not be required to provide any reason for the termination and under such circumstances the Principal shall pay the Supplier for any Items or parts of the Items which have been Delivered in accordance with the Contract prior to the date of termination but which have not been paid for by the Principal, and shall reimburse the Supplier for its reasonable costs otherwise incurred as a result of the Contract being terminated. The Principal's liability to the Supplier under this clause 21 shall under no circumstances exceed the Contract price payable for the Items.
22. Any goods Delivered after the date for Delivery specified in the Contract (or any later date for Delivery if the date for Delivery is varied in writing by the Principal), may be returned by the Principal to the Supplier and the Principal shall not be liable for payment of those Items. Any additional expenditure incurred by the Principal in connection with returning the Items shall be a debt due from the Supplier to the Principal.
23. The Contract shall be governed by and construed with reference to the laws in force in the State of Western Australia. The Parties agree to submit to the exclusive jurisdiction of the courts of Western Australia, and any court that may hear appeals from those courts. The Supplier must comply with applicable legislation throughout the Contract and the Supplier warrants that Items Delivered under the Contract have been Delivered in full and complete compliance with all applicable legislation.
24. Nothing in the Contract limits the Principal's rights under any law, including (without limiting the generality of the foregoing) under the *Competition and Consumer Act 2010* (Cth), the *Sale of Goods Act 1895* (WA) or the *Fair Trading Act 1987* (WA).
25. Where in performance of an Item the Supplier attends the Principal's premises or sites it shall comply with:
 - (a) all directions, instructions and notices issued by the Principal's employees regarding Occupational Safety and Health;
 - (b) any security requirements for the Principal's premises or sites that are advised to the Supplier, and where applicable to the Item being Delivered:
 - (c) the version of the Principal's Health, Safety and Environment (HSE) Requirements for Contractors current at the issue date on the Purchase Order, which may be obtained from the Principal's website under the Suppliers section at [Health and Safety for Contractors](#) and for this purpose the Contract has been assessed as having the level of risk stated in the Purchase Order; and
 - (d) Should any inconsistency exist between:
 - (1) Part 3 Workplace Safety Requirements; Division 12 - Construction Industry - Consultation on Hazards and Safety Management, etc., of the OSH Regulations; and
 - (2) Health, Safety and Environment (HSE) Requirements for Contractors,the higher standard of the two requirements shall prevail.
26. Where the Supplier is required to carry out work under the Contract, the Principal authorises the Supplier and all persons employed or engaged by the Supplier to enter property, in accordance with subsections 84(4), 95(5), 98(4), 110(4), 112(6), 121(2), 129(2), 129(3), 130(1), 130(2), 140(1) and



141(1) of the *Water Services Act 2012* (WA), for the purposes of carrying out the work. The Supplier must ensure that notification and entry requirements as required by the *Water Services Act 2012* (WA) are satisfied prior to entering any property.

27. Neither party shall be considered to be in default of its obligations under the Contract to the extent that it can be established that the performance of such obligations is prevented by a Force Majeure event which arises after the date of the Purchase Order and which was not foreseeable at the date of the Purchase Order.

Subject to the provisions of this clause but notwithstanding any other provisions of this Contract:

- (a) the non-performance by a party of an obligation on that party contained in this Contract, will be excused during the time and to the extent, whether wholly or in part, that such performance is prevented by the Force Majeure event;
 - (b) the party claiming Force Majeure shall use its reasonable endeavours to mitigate the effects of the Force Majeure event and to recommence the performance of its obligations affected by the Force Majeure event as quickly as possible;
 - (c) the period of time during which the performance of any obligation of this Contract is prevented by a Force Majeure event will be added to the time provided under the Contract for the performance of that obligation and to the time required for doing of any act dependant thereon; and
 - (d) if the Force Majeure event continues for a period of 30 days, whether or not that period is comprised of a continuous period or is comprised of a number of non consecutive periods related to the same Force Majeure event, then the party who is not claiming Force Majeure may terminate this Contract immediately by giving written notice to the party affected by the Force Majeure event.
28. In the event of any dispute, disagreement or difference of opinion between the parties, arising out of or in connection with the Contract (Dispute), a party shall give notice to the other party specifying details of the Dispute and the parties shall meet within 7 days of such notice to resolve the Dispute. If the Dispute is not resolved within 7 days of that meeting, a senior manager from each party shall meet to resolve the Dispute. If the Dispute is not resolved within 30 days of the Dispute being referred to the senior managers, then either party may commence legal proceedings in an appropriate forum to resolve the matter. The parties shall continue to perform their obligations despite the existence of any Dispute. Nothing in this clause 28 prevents a party from seeking urgent interlocutory relief in relation to the Contract.
29. The Supplier agrees to comply with the *Privacy Act 1988* (Cth) in respect to the collection, management and disclosure of any personal information obtained or disclosed to them in the performance of the Contract. The Supplier indemnifies the Principal in respect of any losses, costs or damages arising in relation to any breach by the Supplier of its obligations under this clause 29 or the *Privacy Act 1988* (Cth).
30. If there is any conflict or inconsistency between the documents constituting the Contract, the documents will rank in the following order of precedence: any Special Conditions of Contract attached to the Purchase Order; these Purchase Order Terms and Conditions; the Scope of Services; the Bid (excluding any terms or conditions of sale or contract forming part of the Bid which are not specifically accepted in writing by the Principal); and any other documents incorporated into the Contract by reference in, or which are attached to, the Purchase Order.
31. The Supplier is an independent contractor and nothing in this Contract establishes the Supplier, its employees or agents as a partner, employee or agent of the Principal. No party has any authority to bind the other party for any reason, unless expressly authorised to do so by that party in writing.
32. The engagement by the Supplier of any subcontractors for the Delivery of any part of an Item:
- (a) is conditional upon the subcontract including a provision that the subcontract shall exclude part 1F of the *Civil Liability Act* (WA); and
 - (b) does not in any way relieve the Supplier from full and entire responsibility to duly and punctually observe, perform and comply with its obligations under the Contract.
33. If the whole or part of any provision of this Contract is void, invalid or unenforceable it shall be severed

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and the remainder of this Contract shall continue in full force and effect.

34. Each Party to the Contract must pay its own legal and other costs incurred in the preparation, negotiation, execution and registration of the Contract, as applicable.
35. A right or remedy may only be waived in writing (signed by the Party giving the waiver) and a waiver of a right or remedy (either wholly or in part) on one or more occasions does not operate as a waiver of that right or remedy or as an estoppel precluding enforcement of that right or remedy if it arises again.
36. Nothing in this Contract obliges the Principal to request or acquire a minimum level of Items from the Supplier and does not create an exclusive relationship in respect of Delivery of the Items.
37. Words in the singular include the plural and vice versa where applicable in the context.
38. Clauses 5, 6(b), 8, 9, 10, 16, 17, 18, 20, 23, 28 and 30 survive the termination, completion or expiry of the Contract.