

STANDARD TERMS & CONDITIONS OF PURCHASE

1 Definitions and interpretation

1.1 Definitions

In these terms and conditions ('the Terms') the following have the meanings set out below:

'**Company**' means Serco Sodexo Defence Services Pty Ltd or any related subsidiary.

'**Contract**' is defined in Clause 2.1

'**Deducted Amount**' is defined in Clause 11.1

'**Deliverables**' means goods, rights and services identified in the Purchase Order.

'**Delivery Location**' means the place identified in the Purchase Order in relation to the provision of the Deliverables.

'**Goods**' means all goods, materials, equipment and parts provided by the Supplier to the Company as detailed in the Purchase Order.

'**GST**' means A new Tax System (Goods and Services Tax) Act 1999 (Cth).

'**Laws**' means the requirements of all statutes, rules, regulations, proclamations, awards, ordinances, by-laws or Australian Standards, present or future, and whether state, federal or otherwise.

'**Material**' means any material brought into existence as part of, or for the purpose of producing the Supply, and includes but is not limited to documents, equipment, information or data stored by any means.

'**Moral Rights**' means the right of attribution of authorship of work, the right not to have authorship of work falsely attributed and the integrity of authorship as defined in the *Copyright Act 1968* (Cth).

'**Party**' means a party to the Contract.

'**Personnel**' means:

(a) in relation to the Supplier, any of its employees, Subcontractors (including Subcontractors' Personnel), agents and representatives involved either directly or indirectly in the performance of the Supply;

(b) in relation to the Company, any of its past or present officers, employees, agents or representatives; and

(c) in relation to a Subcontractor, any of its employees, agents or representatives involved either directly or indirectly in the performance of the Supply.

'**Price**' is defined in Clause 8.1

'**Purchase Order**' means individual purchase orders as may be issued by the Company to the Supplier in respect of the Supply which shall be subject to the Contract.

'**Services**' means the work identified in the Purchase Order to be performed by the Supplier in accordance with the Contract.

'**Site**' means the Company's premises identified in the Purchase Order.

'**Subcontractor**' means any person engaged by the Supplier in accordance with Clause 19 to perform all or any part of the Supply on behalf of the Supplier.

'**Supplier**' means the Party (as identified in the Purchase Order) responsible for providing the Supply.

'**Supplier Default Notice**' is defined in Clause 17.2

'**Supply**' means the supply of Deliverables in accordance with the Purchase Order.

1.2 Interpretation

Unless the context requires otherwise, the singular includes the plural and vice versa, reference to a gender includes all genders, reference to a 'person' includes a natural person, company, body corporate or other form of legal entity, and reference to 'including' and 'includes' is to read as if followed by 'without limitation'.

2 Evidence of Contract and precedence of documents

2.1 Contract

(a) The Contract consists of the following documents:

- (i) The Purchase Order;
- (ii) These Terms and Conditions ('the Terms'); and
- (iii) Any express written agreement from the Company which is attached to, or incorporated by reference in, the Purchase Order or these Terms.

(b) The Company is not contractually bound until a formal Purchase Order is placed by the Company and then only to the extent of the issues specifically covered by that Purchase Order.

2.2 Precedence of documents

If any of the terms of the Contract conflict with or contradict each other, those terms will over-ride each other in the following order of priority: (1) any express written agreement from the Company; (2) our Purchase Order; (3) these Terms.

2.3 Entire agreement

(a) The Contract contains the entire agreement between the Company and the Supplier with respect to its subject matter and supersedes all prior communications and negotiations between the Company and the Supplier in this regard, unless those communications expressly form part of the Contract.

(b) No terms or conditions submitted by either Party that are in addition to, different from or inconsistent with those contained herein or in the Purchase Order, including, without limitation, the Supplier's printed terms and conditions, and any terms and conditions contained in any Supplier's quotation, invoice, Purchase Order acknowledgment, confirmation, acceptance, bill of lading or other instrument, shall be binding upon either Party unless specifically and expressly agreed to in a writing signed by duly authorised representatives of both parties.

3 Acceptance

(a) The Company only purchases Deliverables on these Terms.

(b) If the Supplier accepts the Company's Purchase Order it will be on these Terms and no other standard terms.

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- (c) The performance of any part of this Contract will be deemed to be acceptance of the conditions stated herein, regardless of any inconsistency in the Supplier's own small print.
 - (d) If the Supplier wishes to reject the Company's Purchase Order and make a counter-offer, the Supplier must reply to the Company's Purchase Order in words explicitly and clearly indicating rejection.
 - (e) Equally, if the Supplier makes a counter-offer which is not clearly labelled as such (or as a rejection of the Company's Purchase Order) no subsequent behaviour of the Company, in accepting the Supply, can be taken to imply any acceptance by the Company of that counter-offer.
 - (f) These Terms can only be changed, or other terms agreed, in written correspondence signed by a director or other senior officer of the Company.
 - (g) These Terms are available from the Company on request and are posted on the Company's website.
- (b) If the change would increase the Supplier's costs, the Supplier may notify the Company promptly, in writing, of a proposed revision of the Price fairly and proportionately reflecting any such unavoidable increased cost;
 - (c) If the change would for any reason be unachievable the Supplier may notify the Company of that promptly and in writing. Both parties will then use reasonable efforts to reach a mutually acceptable Contract variation;
 - (d) Failing notice by the Supplier the change proposed by the Company will be deemed to have been accepted, and the Contract will be deemed to have been varied with immediate effect to reflect the requested specification change with no increase of the Price; and
 - (e) In no event, agreed or not, will the Company be liable to the Supplier in respect of any contract variation for more than a reasonable and proportionate reflection of such increased costs as the Supplier could not reasonably have been expected to avoid. The Price will not in any circumstance increase except with the Company's express written agreement under, or referring explicitly to, this sub-section.

4 Performance by Supplier

The Supplier must perform the Supply in accordance with the terms of the Contract and in consideration of the payment of the Price by the Company.

5 Specifications

- 5.1 If the Company orders Goods, then, unless otherwise stated, the Contract is deemed to include the supply of all relevant documentation and certification, and of any commissioning of those Goods, necessary to enable the Company to use them for their intended purposes.
- 5.2 If the Company orders Services then, unless otherwise stated, the Contract includes the complete performance of those services including any employee instruction, manuals, explanations or certifications necessary to enable the Company to benefit from them for their intended purposes.
- 5.3 If the Company orders Goods or Services then, unless otherwise stated, the Contract includes any legal rights necessary to use those Goods or Services for their intended purposes.
- 5.4 The quantity, quality and description of Deliverables will be as specified in the Company's Purchase Order or as agreed by the Company in writing, subject to which then in full accordance with Clause 6.
- 5.5 The Supplier has sole responsibility for complying with all applicable regulations and other legal and regulatory requirements concerning the performance of the Supply, and for ensuring that the Company can, in compliance likewise, fully utilise the Deliverables for their intended purposes.
- 5.6 The Company will be allowed to inspect any ordered Goods during manufacture and storage so long as the inspection is requested with reasonable notice. If, as a result of the inspection, the Company is not satisfied that the quality of the Goods or the standards of their manufacture, storage or handling conforms with the Contract, the Supplier will take such steps as are necessary to ensure compliance. If, after that, the Company is still not satisfied, it can cancel the Purchase Order without penalty.
- 5.7 If, before Supply has occurred, the Company notifies the Supplier in writing of any change in the desired specification (including as to quality and time frame) the Supplier will respond as follows:
 - (a) If the change would reduce the Supplier's costs, the Price will reduce to fairly reflect that saving;

- 5.8 The Supplier will comply with any reasonable requirements the Company may have as regards the packaging and packing of any ordered Goods, and as to information to be displayed on packaging or included on dispatch documentation and bills of lading. Subject to that, the Supplier will ensure that all packaging, packing, labelling and documentation is such as to ensure full compliance with legal requirements throughout the delivery process.

6 Warranties and liability

- 6.1 The Supplier warrants that:
 - (a) The quantity and quality for the Deliverables will be those set out in the Purchase Order and in accordance with the Company's specifications, apart from which then of the highest standard reasonably to be expected in the market for that kind of Deliverable;
 - (b) Any Goods will be new and free from defects in materials and workmanship;
 - (c) Any Deliverables will comply with all statutory requirements and regulations, and with all normally applicable quality standards, relating to their sale or supply;
 - (d) All claims made by the Supplier about any Deliverables, and all apparently serious claims in the Supplier's advertising and promotional material, are correct and can be relied upon;
 - (e) Any Services will be performed by appropriately qualified and trained Personnel; and
 - (f) Neither the sale and supply of any Deliverable, nor its proper use by the Company for an intended purpose, will breach any property rights in or about that Deliverable, including intellectual property rights, of any other person.
- 6.2 All warranties, conditions and other terms implied by statute or common law in the Company's favour will apply to any Deliverables purchased from the Supplier.
- 6.3 The Supplier will indemnify and keep indemnified the Company immediately upon the Company's written demand against any cost, claim, expense or liability arising from any risk for which the Supplier is responsible under this Contract.

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6.4 If the Supplier fails to comply with any obligation under the Contract the Company will be entitled, at its discretion, to reject any Deliverable and the Supplier will not be entitled to receive payment for that Deliverable.

6.5 If any Deliverables were bought or obtained by the Supplier from a third party then any benefits or indemnities that the Supplier holds from that other party, in respect of those items, will be held on trust for the Company.

6.6 To the extent permitted by laws and for the benefit of the Company, the Supplier consents, and must use its best endeavours to procure that each author of Material consents in writing, to the use by the Company of Material, even if the use may otherwise be an infringement of their Moral Rights.

6.7 The Supplier will insure itself, and keep insured until Supply is complete, against all normal insurance risks relevant to the Supply, on terms and for amounts consistent with normal business prudence. The Supplier will demonstrate to the Company the terms and currency of any such insurance on request.

6.8 The Supplier will maintain relevant industry qualifications, permits and licences.

6.9 The Supplier will provide copies of such qualifications, permits and licences to the Company upon request.

7 Delivery, title and risk

7.1 Delivery

- (a) The Supplier agrees to provide the Deliverables nominated on the Purchase Order within the time(s) quoted, any failure of which will entitle the Company, in addition to other rights and remedies, to cancel the order and be relieved of all liabilities for any undelivered portion. A waiver of the Company's right to cancel the acceptance of any items after the nominated delivery date shall not constitute a waiver of such rights as to future deliveries.
- (b) Time is of the essence when Goods are supplied to the Company.
- (c) A packing note quoting the number of the Purchase Order must accompany each delivery of Goods.
- (d) If the Goods are not supplied on or by the agreed date then, in addition to any other remedies available to the Company, the Company will be entitled to deduct 1% of the overall Price for those Goods, for every week's delay.
- (e) Where Goods are supplied in instalments, the Purchase Order is to be treated as a single order. If the Supplier fails to deliver or perform any instalment the Company may treat the whole Purchase Order as repudiated.
- (f) The Company may accept or reject any Deliverables which are not fully in accordance with the Contract within 14 days after the Supply and, in the case of latent defect, within a reasonable time after the defect becomes apparent.
- (g) If any of the Goods do not comply with all order requirements the Company can demand that the Supplier repair them or supply replacement goods within seven days or, at the Company's sole discretion, the Company can reject the goods and demand the repayment of any sum already paid for them.

(h) The Company will not be bound to return to the Supplier any packaging or packing material, but if any relevant requirement for packaging recycling applies, the Supplier will take materials back free of charge on request.

7.2 Title

Full unencumbered title to each Good will pass to the Company upon the earlier of:

- (a) The Company making payment in full to the Supplier for that Good; or
- (b) The Good being delivered to the Delivery Location and accepted by the Company.

7.3 Risk

Risk in each Good will remain with the Supplier until its delivery and acceptance by the Company.

8 Price

8.1 The Price means the aggregate amount payable by the Company to the Supplier in relation to the Supply.

8.2 The Price will be as specified in the Company's Purchase Order and, unless otherwise stated, will be:

- (a) Exclusive of any applicable GST (which will be payable by the Company subject to the receipt of a valid GST invoice);
- (b) Inclusive of all expenses incurred by the Supplier in relation to the provision of the Supply, including, without limitation, travel expenses and subsistence expenses, and of any duties or levies other than GST; and
- (c) Payable in Australian Dollars.

8.3 The Company will be entitled to any discount for prompt payment, bulk purchase or the like normally granted by the Supplier in comparable circumstances.

8.4 If the Company is reliant on the Supplier for any supplies of maintenance, training, spare parts, consumables or other goods, rights or services, to benefit fully from the Goods ('Follow-on Deliverables'), then the Supplier will provide those Follow-on Deliverables or procure them to be provided, for at least 12 months following full supply, at fair and reasonable prices which take no advantage of the Company's dependence on the Supplier for their supply.

9 Goods and Services Tax (GST)

The parties agree that:

- (a) GST is payable on certain supplies of goods and/or services;
- (b) Words defined in the GST Law have the same meaning in these terms and conditions unless specifically defined in this clause;
- (c) All charges and amounts payable by one Party to another under the Contract are stated exclusive of GST; and
- (d) For each taxable supply under or in connection with the Contract:
 - (i) The Supplier will be entitled to charge the Company for any GST payable by the Supplier in respect of the taxable supply;
 - (ii) The Company must pay to the Supplier the amount of the GST at the same time as the relevant charge applicable to the Supply becomes payable under the Contract;

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- (iii) The Supplier must provide a valid tax invoice (or a valid adjustment note) to the Company in respect of the taxable supply.

10 Payment

10.1

- (a) The Supplier must render an invoice ('the Invoice') to the Company in relation to the provision of the Supply on or after the provision of the Supply, calculated by reference to the prices, fees or other amounts specified in the Purchase Order;
- (b) The Invoice must be in a form acceptable to the Company and must contain the following information:
 - (i) The number of the Purchase Order to which the Invoice relates;
 - (ii) A brief description of the Supply provided in the period covered by the Invoice; and
 - (iii) Any further verification or documentation in relation to the Invoice as is reasonably required by the Company.
- (c) No sum may be invoiced more than six months late.

10.2 Subject to Clause 10.3, 11 and 17.1 the Company will pay to the Supplier the amount shown on the Invoice within 30 days from the receipt of the Invoice.

10.3 If the Company disputes any amount shown on the Invoice, it must notify the Supplier within 14 days from receipt of the Invoice and must pay any amounts not in dispute in accordance with Clause 10.2, provided that the payment by the Company of any amount the subject of a disputed Invoice is not to be considered as an acceptance of the amount in dispute or of the Company's liability to make that payment.

11 Deductions

11.1 The Company may:

- (a) Deduct from any moneys due or becoming due to the Supplier pursuant to Clause 10.2 the following amounts:
 - (i) All debts and moneys due from the Supplier to the Company;
 - (ii) All liabilities which the Company may have paid, suffered or incurred and which the Supplier is liable to bear, pay or reimburse to the Company; and
 - (iii) The cost of remedying any defective or damaged Goods; or
- (b) Without prejudice to the Company's rights pursuant to any other provision of the Contract, if the Supplier fails to perform any of its obligations under the Contract, without notice withhold payment of all or part of any amounts payable to the Supplier under the Contract, until the matter has been remedied.

11.2 The Company must notify the Supplier of the details of any amounts withheld or deducted pursuant to Clause 11.1

12 No minimum purchase or exclusivity

12.1 No minimum purchase

Nothing in the Contract obliges the Company to request or acquire any minimum level of Supply from the Supplier.

12.2 No exclusivity

The Contract is not evidence of, nor does it create, an exclusive relationship between the Company and the Supplier in respect of the Supply.

13 Health, safety and environment

13.1 Application of clause

This Clause 13 applies to the extent the Supplier or any of its Personnel are required to be on, or near the vicinity of, the Site for the purposes of the Supply.

13.2 Compliance with health, safety and environmental laws, policies and standards

The Supplier agrees to comply, and to ensure that its Personnel comply, with:

- (a) The Company's Workplace Health, Safety and Injury Management and Environmental Management Policies which can be viewed at www.ssds.com.au; and
- (b) All relevant health, safety and environmental legislation and laws in force from time to time.

Without limiting any other provision of the Contract, the Supplier must familiarise itself with the work area and any potential hazards prior to commencing work.

13.3 Environmental management

The Supplier will observe the principles of ecologically sustainable development where its activities and operations affect the environment.

The Supplier will ensure that it does not pollute, contaminate or damage the environment and keep the Company's premises clean and tidy and free of refuse during the performance of the Services.

13.4 Supplier to remain liable

Nothing in this Clause 13 limits or removes any obligation or duty imposed on the Supplier or any of its Personnel, whether under the Contract or otherwise, to secure or have regard to the health and safety of any of its Personnel.

13.5 Removal from Site

Notwithstanding any other term of the Contract, in the event of any breach of this Clause 13, the Company may:

- (a) Require the Supplier, Supplier's Personnel and/or any other person to leave the Site immediately; and
- (a) Require the Supplier and/or any of its Personnel to remove any material or substance from the Site, and the Supplier must, at its own cost, ensure such request is immediately complied with and take all possible action to ensure the protection and safety of all works, personnel and the environment.

14 Termination

- (a) The Company may suspend performance of, or cancel, or suspend and then at any subsequent time cancel, the Contract without any liability to the Supplier, if the Supplier's business fails.
- (b) The Supplier's business will be treated for this purpose as having failed if:
 - (i) The Supplier makes any voluntary arrangement with its creditors;

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- (ii) (Being an individual or firm) the Supplier becomes bankrupt;
 - (iii) (Being a company) the Supplier becomes subject to an administration order or goes into liquidation;
 - (iv) Any third party takes possession of, or enforces rights over, any of the Supplier's property or assets under any form of security;
 - (v) The Supplier stops or threatens to stop carrying on business;
 - (vi) The Supplier suffers any process equivalent to any of these, in any jurisdiction; or
 - (vii) The Company reasonably believes that any of the events mentioned above is about to occur and notifies the Supplier accordingly.
- (c) Any right of cancellation or suspension under this section is additional to any rights available to the Company under the law of any relevant jurisdiction.

15 Termination at will

- 15.1 If Goods have been offered to the Company by the Supplier as, or if they are, standard or stock items, the Company can, by notice to the Supplier, at any time up to delivery cancel the commitment to buy the Goods.
- 15.2 Any other commitment to receive and pay for the Goods may be cancelled by the Company as follows: the Company will be bound to reimburse the Supplier for all irrecoverable costs incurred, or unavoidably committed, by the Supplier up to the point of cancellation. By "costs" is meant for this purpose the direct costs to the Supplier, to an aggregate amount not exceeding 75% of the purchase price for the cancelled commitment.
- The Company will be entitled to the benefit of the part-finished Goods in question.

16 Termination or reduction of Services for convenience

- 16.1 In addition to any other rights it has under the Contract, the Company, acting in good faith, may at any time terminate the Contract or reduce the scope or quantity of the Services by notifying the Supplier in writing. If the Company issues such a notice, the Supplier must stop or reduce work in accordance with the notice; comply with any directions given by the Company; and mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination or reduction in scope.
- 16.2 The Company shall only pay to the Supplier the proportion of the Price payable in respect of the work done and /or services performed by the Supplier up to the date of termination, to a maximum of the Price less any payments already made, and any reasonable costs incurred by the Supplier that are directly attributable to the termination, if the Supplier substantiates these amounts to the satisfaction of the Company.

17 Supplier default

17.1 Supplier Default Notice

If the Supplier breaches any term of the Contract, the Company may serve a notice of default (Supplier Default Notice) on the Supplier containing the information specified in Clause 17.2.

17.2 Supplier Default Notice requirements

A Supplier Default Notice must:

- (a) Either require that the breach be remedied within a specified period of not less than 14 days after service of the Supplier Default Notice on the Supplier or state that the breach is incapable of remedy; and
- (b) State that if the breach is not remedied within the period specified in the Supplier Default Notice or is incapable of remedy, then the Company may by further notice to the Supplier do one or more of the following:
 - (i) Elect wholly or partly to suspend payment under the Contract until the breach has been remedied by the Supplier;
 - (ii) Take such action as the Company deems necessary to cure the breach (the cost of such action so taken by the Company being recoverable from the Supplier as a debt due to the Company by the Supplier); or
 - (iii) Terminate the Contract or any part of it with effect from a specified date.

17.3 No prejudice

Notwithstanding the terms of any Supplier Default Notice, no action taken by the Company under this Clause 17 will prejudice the existence of any of its rights and remedies under the Contract which the Company may have as a result of the relevant breach.

18 Assignment

The Supplier must not assign any of its rights or obligations under the Contract without the prior written consent of the Company, which consent the Company may grant or withhold in its absolute discretion.

19 Subcontracting

19.1 Consent required

The Supplier must not subcontract the whole or part of any work in relation to the Supply without consent in writing by the Company, which consent the Company may grant or withhold in its absolute discretion.

19.2 Liability for subcontractors

The Supplier will be liable to the Company for the acts and omissions of any Subcontractors as if those were the acts or omissions of the Supplier. The Supplier remains fully responsible for the performance of the terms of the Contract, notwithstanding any subcontract or consent on the Company's part to a subcontract.

20 Severability

If any provision of the Contract is held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of the Contract shall remain in full force and effect.

21 Waiver

Any waiver by the Company of any rights under this Contract will not constitute a general waiver of those or other rights.

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22 Notices

Any written notice under these Terms will be deemed to have been sufficiently served if posted by pre-paid official postal service, or if sent by fax then on receipt by the sender of a transmission control report from the despatching machine indicating that the transmission has been made without error, or if sent by e-mail (but in this case only on evidence of successful transmission and only if the parties have regularly communicated on contract matters by that e-mail route).

23 Anti-corruption and bribery

Both parties represent and affirm that (i) they will comply with all applicable country laws relating to anti-bribery and anti-corruption, including but not limited to the UK Bribery Act and the US Foreign and Corrupt Practices Act; and (ii) they will not promise, offer, give or receive bribes or corrupt actions in relation to the procurement or performance of this Contract. For the purposes of this clause, 'bribes or corrupt actions' mean any payment, gift or gratuity, whether in cash or kind, intended to obtain or retain an advantage, or any other action deemed to be corrupt under the applicable country laws.

24 Dispute resolution

- (a) If any dispute arises under these Terms, such dispute shall be notified by the aggrieved Party to the other Party and first attempted to be settled amicably for the interest of the parties. Any resolution made shall be recorded in writing, signed and shall be final and binding for the parties.
- (b) Failing settlement within 60 business days, either the Company or the Supplier may commence legal proceedings.

25 Compliance with Laws

The Supplier must ensure that it and all Subcontractors comply with all relevant laws in connection with the Supply and all its obligations under Australian tax laws.

26 Governing Law

This Contract is governed by the Laws of Queensland and each Party irrevocably submits to the non-exclusive jurisdiction of the courts of that State.