

PURCHASE ORDER TERMS AND CONDITIONS

1. INTERPRETATIONS AND GENERAL MATTERS

1.1 Definitions

Goods means all goods, equipment, materials, articles, or any other property or parts to be provided to ISS by the Supplier under the Purchase Order and includes, without limitation, all ancillary activities such as design, manufacture, inspection, testing, quality assurance and control, packing and delivery.

GST means the goods and services tax imposed by the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and its associated legislation and regulations.

ISS means ISS Facility Services Australia Limited and all its Related Bodies Corporate (as defined in the *Corporations Act 2001 (Cth)*).

ISS Policies and Procedures means the ISS Supplier Code of Conduct, the ISS Code of Conduct, the ISS Anti-corruption Policy and all other ISS policies and procedures as updated from time to time.

Legislative Requirements means any Australian statute, ordinance, regulation or bylaw and includes necessary licenses, permits and consents.

OHS Laws means all laws relating to the protection of the environment, health and safety.

Purchase Order means the purchase order (with a unique purchase order number) issued by ISS to the Supplier and includes these Terms and Conditions.

Purchase Order Form means the section of the Purchase Order to be completed by ISS which identifies the Supplier and includes a brief description of the Services and/or Goods.

Supplier means the person performing the Services and/or providing the Goods, as identified in the Purchase Order Form.

Services means the works/ services which the Supplier is required to perform and complete under the Purchase Order, as set out in the Purchase Order Form and includes everything necessary for the proper performance of the Supplier's obligations and discharge of its liabilities.

Taxable Supply means a taxable supply under the GST Act.

Terms and Conditions means these terms and conditions which form part of every Purchase Order issued by ISS and which can be downloaded at <http://www.au.issworld.com/>.

Warranty Period means in relation to the:

- Services, the period commencing on the date of completion of the Services, as determined by ISS;
- Goods, the date of the final supply of the Goods to the nominated delivery point, and lasting for a period of one year.

1.2 Interpretations

Words importing the singular are deemed to include the plural and vice versa. Headings and subheadings are inserted for convenience only and must not be used to interpret the text. Words denoting a natural person shall include a corporation and vice versa.

1.3 Supplier to inform itself

The Supplier will be deemed to have carefully examined all documents provided to it by ISS and fully satisfied itself regarding all the conditions, risks, contingencies and other circumstances which might affect the performance of the Services and/or the supply of the Goods. No increase in the Purchase Order price will be allowed for the Supplier's failure to ensure that it is fully informed regarding all the circumstances relating to the Purchase Order.

1.4 Ambiguities

- To the extent of any inconsistency between these Terms and Conditions and the Purchase Order, the Purchaser Order shall prevail.
- To the extent of any inconsistency between these Terms and Conditions and any other applicable ISS contractual agreement (such as an Australian Standard of ISS standard form) executed by ISS, the other ISS contractual agreement shall prevail.
- Subject to clause 1.4(a), if the Supplier discovers any ambiguity in the Purchase Order it shall immediately notify ISS in writing. ISS will then determine the correct interpretation of the Purchase Order, which will be final and binding on the Supplier and have no effect on the Purchase Order price.

1.5 Use of Documentation

Documents prepared in relation, or ancillary, to the Purchase Order, must not be copied or used for any other purpose than the performance of the Services and/or supply of the Goods, without the prior written approval of ISS.

1.6 Confidentiality

- Any information provided by ISS to the Supplier, which is noted as, or which is by its nature, confidential, must not be disclosed to any third party without the prior written consent of ISS. The obligations under this clause shall continue for a period of five years from the completion or termination of the Purchase Order.
- The Supplier must not issue any information which includes details about the Services, the Goods, or the Purchase Order, for publication in any communication media, without the prior written approval of ISS.

1.7 Waiver

No failure or delay on the part of ISS in exercising any of its rights under the Purchase Order shall be construed as constituting a waiver of any such rights.

1.8 Subcontracting and Assignment

The Supplier must not subcontract or assign all, or any part, of the Purchase Order without the prior written approval of ISS. Approval of ISS to any subcontract will in no way relieve the Supplier of any of its obligations under the Purchase Order.

1.9 Entire Agreement

The Purchase Order constitutes the entire agreement between ISS and the Supplier. The parties shall not be bound by, or liable for, any statement, representation, promise or understanding not set out in the Purchase Order.

1.10 Communications

Any notice or other communication required under the Purchase Order shall be delivered in writing and shall take effect from the time when it is delivered to, or received at, the nominated address of the relevant party.

1.11 Compliance with Laws

The Supplier must comply with all Legislative Requirements in any way related to the supply of the Goods and/or the performance of Services, including, without limitation, all WHS Laws.

2. INSURANCE

The Supplier must effect and maintain:

- public liability insurance to the value of \$5 million;
- workers compensation insurance as required by law;
- motor vehicle third party damage insurance;

- motor vehicle insurance, including death or injury cover as required by State and Federal legislation; and
- such other insurances required by ISS or required by law, upon terms and conditions acceptable to ISS.

3. ACCEPTANCE

- A Purchase Order is deemed accepted by the Supplier upon any performance by the Supplier under the Purchase Order.
- These Terms and Conditions expressly exclude the Supplier's terms and conditions of sale or any other document issued by the Supplier in connection with the Purchase Order.
- If the Purchase Order is issued under a current Supply and Services Agreement (or other form of contract executed by the Supplier and ISS), in the event of inconsistency between these Terms and Conditions and the terms and conditions of the Supply and Services Agreement (or other form of contract with ISS), the terms and conditions of the Supply and Services Agreement (or other form of contract) prevail.

4. INDEMNIFICATION AND LIABILITY

- The Supplier must indemnify and keep indemnified ISS and its officers, employees and agents against all claims, demands, proceedings, liabilities, costs, charges and expenses suffered by ISS or its officers, employees or agents arising as a result of any act, omission, neglect or default of the Supplier, its employees or agents arising out of, or in any connected with, the Supplier's obligations under the Purchase Order.
- ISS will not be liable to the Supplier for any indirect or consequential loss under the Purchase Order, in tort, in equity or otherwise as law.
- The maximum sum for which ISS may be liable to the Supplier under the Purchase Order, in tort, in equity or otherwise as law, is limited to the price paid by ISS to the Supplier under the Purchase Order.

5. PERFORMANCE AND QUALITY

- The Supplier must use new and undamaged materials, unless otherwise agreed to by ISS. The Goods and/or Services must conform, and comply, with all applicable codes and standards, including relevant Australian standards, the requirements of relevant statutory authorities and all Legislative Requirements, including without limitation all WHS Laws.
- The Supplier represents and warrants to ISS that it has the necessary skills, resources and experience to successfully perform the Services and/or supply the Goods in accordance with the requirements of the Purchase Order.
- The Goods and/or Services must be tested in accordance with ISS' requirements. Unless otherwise agreed by ISS, any tests and the costs of such tests will be the responsibility of the Supplier. The results of tests must be promptly supplied to ISS in writing.
- ISS will have the right to inspect, expedite and monitor performance of the Services and/or the delivery of the Goods and the Supplier must give ISS access to the Supplier's premises for such purpose during its normal working hours. The Services and/or Goods will not be accepted by ISS until inspected and approved by ISS. Any inspection by ISS will not relieve the Supplier from its obligations to comply with the requirements of the Purchase Order and will in no way impair ISS' right to require subsequent correction or re-performance of non-conforming Services and/or Goods.
- The Supplier must comply with the best practice industry standards applicable to the Services and/or Goods.

6. DEFECTS AND WARRANTY

- The Supplier warrants that the Goods and Services (to the extent relevant):
 - are free from liens, charges, encumbrances, mortgages or other defects in title;
 - are manufactured in a good and workmanlike manner;
 - are free from defects, of merchantable quality and fit for purpose;
 - conform to the Purchase Order and any specifications specified by ISS to the Supplier;
 - conform to all Legal Requirements and other warranties or guarantees provided by the Supplier or the manufacturer; and
 - perform in accordance with any performance standard specified by ISS to the Supplier.
- The Supplier warrants that it will comply with ISS' Policies and Procedures.
- The warranties noted in clause 6(a) and (b) above are in addition to any statutory warranties applicable to the Services and/or Goods.
- During the Warranty Period, ISS may give written notice to the Supplier of any failure or defect in the Services and/or Goods. The Supplier must, without delay and at no cost to ISS, correct any defect or failure:
 - in the Services covered by the warranty, by way of re-performance of the Services in a manner acceptable to ISS; or
 - in the Goods covered by the warranty, by way of repair, replacement, modification or other means acceptable to ISS.
- If the Supplier fails to correct any defects and failures of which it has been notified by ISS, within the time specified in the notice, ISS will have the right to rectify the Services and/or Goods itself or have the rectification undertaken by a third party. All costs incurred by ISS will be a debt due and payable by the Supplier to ISS which may be deducted from moneys otherwise owing to the Supplier by ISS.
- Any Services re-performed or rectified and/or any Goods repaired under warranty will be subject to a further full Warranty Period, if required by ISS, commencing on the date of completion of any such re-performance, rectification or repair.

7. DELIVERY AND DELAY

- Unless otherwise specified in writing by ISS, Goods must be delivered free on truck (or other transport) which includes the responsibility (and associated costs) for packing, loading, transportation and insurance (for the full replacement value of the Goods) to the nominated delivery point for the Goods. The Goods must be appropriately packaged and protected to ensure safe delivery, to the delivery point and by the delivery date(s) specified in writing by ISS.
- The Goods will become the property of ISS upon delivery of the Goods to ISS, as evidenced by the signature on the delivery docket of a duly authorised representative of ISS. Such signature is, and will, not be deemed to be an acknowledgement of the acceptability of the Goods. Notwithstanding that ISS has taken delivery of the Goods, the Supplier will remain responsible for any loss or damage to the Goods which may have occurred prior to delivery and for any non-compliance of the Goods with the requirements of the Purchase Order.
- The Supplier must take all reasonable steps to minimise or prevent any delay in the performance of the Services or the delivery of the Goods. ISS may grant an extension of time to the nominated delivery date or in the performance of the Services provided the:
 - delay is caused by any reason completely beyond the control of the Supplier, including any Statewide or National industrial disputes, acts of God, war, riot, fire, storm or flood; and
 - the Supplier has notified ISS in writing within seven days of the delay occurring (or such other time agreed by ISS) of its claim for an extension of time. ISS shall not be liable for any extension of time claim that is not lodged in writing with ISS within seven days of the delay occurring.

- If the Supplier fails to perform the Services in a timely fashion or fails to deliver the Goods by the specified delivery date(s), ISS may terminate the Purchase Order either in whole or in part for default in accordance with the provisions of clause 9.2 and deduct from monies due to the Supplier as liquidated damages, representing a genuine pre-estimate of ISS' damages and not as a penalty, the amount specified in the Purchase Order Form, for each week or part thereof in which the non-performance continues or delivery exceeds the specified delivery date.

8. VARIATIONS

- ISS may vary the work under the Purchase Order and the Supplier must carry out any such variation as directed by ISS. The Supplier's price (addition or reduction) for any variation and any effect on the delivery date(s) of the Services and/or Goods will be agreed between ISS and Supplier prior to the Supplier carrying out any such variation. If agreement cannot be reached, ISS will determine the price for the variation and its effect on the date of performance of the Services and/or the delivery date(s) of the Goods.
- The Supplier must not vary the work under the Purchase Order except as directed and approved by ISS in writing. No variation will invalidate the Purchase Order.

9. SUSPENSION AND TERMINATION

9.1 Suspension

ISS may, at any time by written notice, suspend all, or part, of the Purchase Order for any reason whatsoever. Upon receipt of a notice of suspension, the Supplier will cease work in accordance with the directions in the notice. The Supplier must recommence the work under the Purchase Order within 48 hours of being directed to do so by ISS.

9.2 Termination for Default

ISS may immediately terminate the Purchase Order in whole or in part: in the event of a substantial breach by the Supplier of any of these Terms and Conditions, which in the opinion of ISS may significantly delay the completion of the Purchase Order and which is not remedied within seven days of ISS notifying the Supplier in writing of any such breach; or

- if the Supplier is in breach of the ISS Policies and Procedures.

9.3 Termination for Insolvency

If, in the opinion of ISS, the Supplier is unable to effectively perform its obligations under the Purchase Order due to insolvency, bankruptcy or related reasons, ISS will be entitled to immediately terminate the Purchase Order.

9.4 Termination for Convenience

Notwithstanding any other provisions of the Purchase Order, ISS may terminate the Purchase Order by giving fourteen days written notice to the Supplier.

9.5 Supplier's Rights and Obligations on Suspension or Termination

- In the event of suspension of the Purchase Order, the Supplier will not be entitled to payment by ISS for any costs it may incur as a result of any such suspension.
- In the event of insolvency or bankruptcy of the Supplier or its default under clause 9.2, ISS may immediately suspend any further payment to the Supplier. Any additional monies required by ISS to complete the Purchase Order in excess of what ISS would have paid under the Purchase Order shall be a debt due and payable by the Supplier to ISS.
- In the event of termination by ISS under clause 9.4, and provided the Supplier is not in default, ISS shall pay the Supplier for work carried out prior to termination and all reasonable costs associated with the cancellation of any orders placed by ISS prior to termination. ISS will not otherwise be liable for any other costs of the Supplier in respect of the termination.

10. PRICE AND PAYMENT

- Unless otherwise agreed by ISS, prices are fixed and not subject to any variation, including, but not limited to, variations in the cost of labour, material or exchange rates.
- The Supplier is responsible for the payment of all relevant Australian and overseas taxes, GST taxes, PAYG taxes, duties and charges payable with respect to the Goods and/or Services.
- Unless otherwise specified in writing by ISS, invoices for payment must be submitted to ISS for payment following delivery of the Goods or performance of the Services, and payment of the approved amount will be made by ISS no later than thirty days from the first day of the month after the month in which the invoice was received. It is a pre-condition for payment that the Purchase Order reference number is quoted on all invoices.

11. GOODS AND SERVICES TAX

To the extent that any Taxable Supply occurs under the Purchase Order, then:

- the party who is the supplier will be entitled to increase the consideration for the Taxable Supply identified in the Purchase Order by the amount of any applicable GST calculated in accordance with the GST Act; and
- the recipient shall pay such increased consideration. The supplier must in any such case issue to the recipient at the time of claiming payment a valid tax invoice (in accordance with GST Act) for the purpose of obtaining an input tax credit for any GST so paid.

12. RELATIONSHIP

The Supplier provides the Goods and/or Services as an independent contractor and nothing in the Purchase Order will be construed so as to constitute the Supplier as an employee of ISS or constitute a partnership between the parties or so as to constitute either party as the agent or legal representative of the other party.

13. INTELLECTUAL PROPERTY

Any intellectual property in any sketches, plans, drawings, designs, reports or documents prepared by the Supplier in the provision of the Services under the Purchase Order, will upon its creation vest in ISS. Any intellectual property owned by the Supplier prior to the execution of the Services under the Purchase Order will remain the property of the Supplier, although such intellectual property may be used by ISS pursuant to a royalty-free licence whilst the Services are being performed.

14. DISPUTES

- In the event of any unresolved dispute between ISS and the Supplier, the Supplier must ensure that the progress of the work under the Purchase Order is continued without any effect on the specified delivery date.
- The preferred method of determination of unresolved disputes will be by amicable agreement at the senior management level of ISS and the Supplier.
- If the parties cannot resolve a dispute within 21 days the dispute is first raised between the parties, the parties agree that the dispute must then be referred to the Australian Commercial Disputes Centre for mediation. The dispute must be heard within 30 days after referral.
- Except to enforce this clause or seek an urgent interim determination, neither party may litigate until the procedures in clause 14 have been complied with.

15. APPLICABLE LAW

Unless otherwise specified, the Purchase Order will be governed and construed in accordance with the laws in place in the State or Territory in which the Purchase Order is issued. ISS and the Supplier submit to the non-exclusive jurisdiction of the courts of this State or Territory.