

# Terms and Conditions of Purchase Order

## 1. General

- (a) These terms and conditions apply to any purchase order issued by the NSW Police Force (NSWPF) to the person or organisation identified in the purchase order (Supplier) for the supply of goods and/or services (Goods and/or Services) by the Supplier, subject to (b) below.
- (b) Where the purchase order is issued under a NSWPF contract, agreement or NSW whole of government contract, the terms and conditions of that contract or agreement apply to the supply of those Goods and/or Services and these terms and conditions will not apply.
- (c) These Terms and Conditions apply to the exclusion of the Supplier's terms and conditions of trade, unless otherwise agreed by the parties in writing.
- (d) The following additional documents may be issued in relation to the purchase order:
  - (i) documents incorporated by reference in or issued by NSWPF under the purchase order (including specifications and work orders), so long as the details have been provided to the Supplier;
  - (ii) Supplier documents, including Supplier quotes, to the extent that it is accepted under the purchase order and that they grant rights or benefits to NSWPF or impose obligations on the Supplier; and
  - (iii) any variation expressly agreed in writing by duly authorised representatives of the parties.

## 2. Acceptance of terms of supply

- (a) The Supplier is taken to accept the purchase order on the terms set out in this clause 2 upon the earlier of it notifying NSWPF that it accepts the purchase order or supplying or part supplying the Goods and/or Services to NSWPF following the issue of the purchase order.
- (b) Subject to clause 1(b) above, when the Supplier accepts a purchase order, a binding agreement is formed between the parties for the supply of the Goods and/or Services stated in the purchase order and the terms of that agreement are made up of the purchase order, these terms and conditions and the documents listed in clause 1(d) above (Agreement).
- (c) To the extent permitted by law, all other terms and conditions in respect of the Goods and/or Services are excluded from and will not be incorporated into the Agreement.
- (d) If there is any ambiguity or inconsistency between the documents constituting the Agreement, the order of priority of these documents will reflect the order of priority in which the documents are listed in clause 2(b) and then clause 1(d) above.

## 3. Price

All prices in the Purchase Order are fixed and exclusive of GST. Unless specified otherwise in writing, all prices in the Purchase Order include insurance, packaging, freight, delivery and all costs associated with the supply.

## 4. Provision of the Supplies

- (a) Provision of the goods and/or services ('Supplies') must be made within the time, in the quantities, at the place and in the manner specified in Purchase Order, and time is of the essence.
- (b) Unless otherwise notified in writing, a Supplier should not supply Supplies without first receiving a relevant Purchase Order.
- (c) *For such Supplies as are goods:*
  - (i) Title in the Supplies vests in NSWPF upon acceptance, and the Supplier assumes all risk in the Supplies until such acceptance by NSWPF.
  - (ii) Acceptance of the Supplies is subject to inspection upon delivery to the satisfaction of NSWPF. NSWPF will not unreasonably withhold or delay acceptance.
  - (iii) Supplies that do not conform in every respect with the description in the Purchase Order may not be accepted by NSWPF and their costs of storage, handling and return will be borne by the Supplier. Substitute Supplies will not be accepted without prior written agreement.
  - (iv) The Supplier must ensure that the Supplies are suitably packed for safe delivery to NSWPF and are accompanied by documentation setting out the Purchase Order number and a description of the Supplies, including their quantities.
- (d) *For such Supplies as are services:*
  - (i) The Supplier must ensure that the Supplies conform in every respect to the description in the Purchase Order.
  - (ii) The Supplies are not accepted by NSWPF until certified by an authorised representative of NSWPF.

## 5. Wrongly supplied and defective Supplies

- (a) In respect of any Supplies that, within the warranty period, are found after acceptance to be defective or wrongly supplied, upon notification by NSWPF, the Supplier must:
  - (i) refund to NSWPF any payments made;
  - (ii) make good the Supplies free of charge; and/or
  - (iii) reimburse NSWPF for any expenses incurred in making good the Supplies, including re-performing services.

- (b) Any repaired, re-performed or replacement Supplies will be:
  - (i) granted a three (3) month warranty from their date of repair, re-performance, or replacement; or
  - (ii) will continue to be covered by the balance of warranty period, whichever is the greater of the two.
- (c) The rights and remedies under this clause are in addition to and do not limit any other rights of NSWPF at law.

## 6. Service Orders

With respect to a Purchase Order line item expressed to be a Service, the Supplier acknowledges that:

- (a) The price in the Purchase Order is an estimation of the total cost of the Supplies and NSWPF is not obliged to order Supplies amounting to the total price;
- (b) Any payments made to the Supplier for a line item expressed to be a Service will be subject to these Terms and Conditions, whether or not a separate Purchase Order is issued with respect to such payments; and
- (c) In relation to the provision of the Supplies, clause 4(a) does not apply and Supplies must be provided within the time, at the place, and in the manner agreed by the Parties in writing.

## 7. Payment

- (a) Payment will be made within thirty (30) days (except for small businesses please refer to: [www.smallbusiness.nsw.gov.au/regqo](http://www.smallbusiness.nsw.gov.au/regqo)) of receipt by NSWPF of a correctly rendered tax invoice, provided that:
  - (i) NSWPF has accepted the Supplies; and
  - (ii) any further details reasonably requested by NSWPF, including an itemised account, have been provided.
- (b) The Supplier's invoice must:
  - (i) include the Supplier's full trading name and ABN;
  - (ii) include the relevant Purchase Order number;
  - (iii) refer to one Purchase Order only;
  - (iv) be sent to NSWPF in the manner and address set out in the Purchase Order; and
  - (v) be a valid tax invoice under GST law.
- (c) Payment is not an acknowledgment that the Supplies have been provided in accordance with this Agreement but will be taken to be on account only until acceptance of the Supplies by NSWPF.

## 8. Warranties

- (a) In relation to Goods, the Supplier represents and warrants that the Goods:
  - (i) conform with their specifications and meet the requirements of the Agreement;
  - (ii) are newly manufactured, free from material defects (including defects in any installation or commissioning work required) and fit for purpose;
  - (iii) will be free from any charge or liability;
  - (iv) if they include software, will be free from any code or software that will damage or infect any products, services or programs or permit unauthorised access to or disabling of software or data; and
  - (v) will include the full benefit of any applicable warranties and guarantees given by the Supplier or third parties (which the Supplier must pursue on NSWPF's behalf if requested).
- (b) In relation to Services, the Supplier represents and warrants that:
  - (i) the Supplier and all its personnel and subcontractors engaged to supply services are appropriately qualified, competent and experienced and hold all necessary licenses, permits and authorities; and
  - (ii) the Services will be performed with due care and skill and in accordance with best industry practice.
- (c) The Supplier also warrants, and it is a condition of the Agreement, that the supply of any Goods and/or Services, and the use of those Goods and/or Services:
  - (i) complies with all law, codes and any applicable Australian (or equivalent) standards, including standards laid down by any standards association; and
  - (ii) do not infringe any Intellectual Property Rights and it has the necessary rights to grant the licences as provided in clause 10.
- (d) The Supplier acknowledges and agrees that NSWPF will rely (and will continue to rely) on the Supplier, as the Supplier of the Goods and/or Services, to know all applicable laws, codes and Australian (or equivalent) standards and best industry practice.
- (e) The Goods and/or Services must be supplied with a minimum of 12 months warranty from the date of delivery or the completion of the project to which the Goods and/or Services relate, whichever is later.
- (f) During any applicable warranty period, the Supplier must, without charge and without prejudice to any other rights or remedies of NSWPF, repair, collect and replace or resupply any Goods and/or Services that do not comply with any applicable warranties.

## 9. Insurances

- (a) The Supplier must hold and maintain adequate insurance (including, where appropriate, public indemnity, product liability, workers' compensation and professional indemnity insurance) to cover the risk for the Supplies.
- (b) The Supplier must, upon request by NSWPF, provide documentary evidence of its insurances.

## 10. Intellectual Property

Unless otherwise specified in the Contract or in a NSW whole of government contract:

- (a) Title to and Intellectual Property Rights in materials that are:
  - (i) created for NSWPF in the course of performing the obligations under this Agreement; and
  - (ii) developed and designed exclusively for NSWPF as a term and object of this Agreement,  
(‘Work Product’) will vest in NSWPF.
- (b) The Supplier absolutely and unconditionally assigns, and must procure that any third-party who has any rights in the Work Product assign, to NSWPF all rights, including all Intellectual Property Rights, in and to the Work Product immediately upon creation, free of all encumbrances and third party rights.
- (c) The Supplier must at its own cost do all things necessary to give effect to the assignment in clause 10(b), including executing any required documents or effecting any required registrations.
- (d) The Supplier must obtain in writing from all individual authors and performers involved in the creation of any Work Product, an irrevocable, unconditional and legally enforceable moral rights consent in relation to the relevant Work Product, and provide it on request by and in a form acceptable to NSWPF.
- (e) All Intellectual Property Rights of the parties existing before the date of the Agreement will be retained by the relevant party.
- (f) The Supplier must notify NSWPF in writing of any pre-existing Intellectual Property Rights relating to the Supplies.
- (g) The Supplier grants, and must procure the grant to NSWPF a, perpetual, royalty-free, non-exclusive, irrevocable licence:
  - (i) to use any Intellectual Property Rights to the extent necessary to receive the full use and benefit of the Goods and/or Services; and
  - (ii) to sub-license this to any person.
- (h) Intellectual Property Rights means all registered and unregistered rights in respect of copyright (including future copyright), designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other proprietary rights anywhere in the world whether created before or after the commencement of the Agreement.

## 11. Indemnity

- (a) The Supplier will indemnify and hold harmless NSWPF, its employees, and agents from and against any loss, damage, or liability arising from any suit, action, or proceeding where such loss, damage, or liability was caused by any wilful, unlawful, or negligent act or omission of the Supplier, its employees, agents, or subcontractors in the performance of the obligations under the Purchase Order.
- (b) The indemnity in this clause 11 will be reduced to the extent that the loss, damage or liability is caused by the wilful, unlawful or negligent act or omission of NSWPF or any of its staff.

## 12. Termination

- (a) Where the Supplier:
  - (i) commits a breach of the Agreement which is capable of remedy, and fails to remedy that breach within 7 days from receiving notice of the breach from NSWPF;
  - (ii) commits a breach which is not capable of remedy;
  - (iii) is a corporation and goes into liquidation, has a receiver or manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors, or suffers any other form of external administration; or
  - (iv) is an individual and becomes bankrupt or enters into a scheme of arrangement with creditors,NSWPF may, by notice to the Supplier, terminate the Agreement either in whole or for part of the Supplies, and recover from the Supplier any damages, losses, costs and expenses incurred.

## 13. Miscellaneous

- (a) Any notice or other communication under the Agreement must be in writing.
- (b) The Supplier must comply with the requirements of all applicable legislation, including modern slavery, privacy and work health and safety.
- (c) The Supplier must comply with relevant policies including the NSW Cyber Security Policy.
- (d) The Agreement is governed by, and is to be construed in accordance with, the laws in force in New South Wales.
- (e) Waiver by either party of a breach of a term of the Agreement, including these General Conditions, will not be deemed to be a waiver in respect of any other breach, and the failure by either party to enforce a term of the Agreement will not be interpreted as a waiver of that term.
- (f) The Supplier acknowledges that the Agreement constitutes the entire agreement between the parties in connection with the relevant subject matter and supersedes all previous agreements or understandings between the parties in connection with the relevant subject matter.