



PURCHASE ORDER CONDITIONS

1. DEFINITIONS AND INTERPRETATION

Unless the context otherwise requires:
"SMRC" mean Southern Metropolitan Regional Council (ABN 28 965 675 752);
"Business Day" means a day other than a Saturday, Sunday, or public holiday in Perth, Western Australia;
"Change Order" means a written amendment by SMRC to the Goods and/or Services;
"Conditions" means these terms and conditions;
"Contract" means the agreement between the Supplier and SMRC consisting of the PO, these Conditions and the Statement of Business Principles;
"day" means the period of time commencing at midnight and ending 24 hours later;
"Delivery" or "Delivered" means the delivery of Deliverables by the Supplier to the nominated Delivery Point specified in the PO and the acceptance of the Deliverables by SMRC;
"Delivery Date" means the date for Delivery specified in the PO as being the date by which the Goods and/or Services are "Required By";
"Delivery Point" means the place(s) or site(s) where the Goods and/or Services are to be delivered or Deliverables are to be delivered as specified in the PO;
"Deliverables" means the deliverables to be Delivered as described in the PO (if any);
"GC" means a provision of these Conditions;
"Goods and/or Services" means the goods and/or services described in the PO and, if applicable, the works to be carried out at the Site;
"Intellectual Property Rights" includes patents, inventions, know-how, processes, designs, databases, copyrights, trademarks, brands, logos, domain names, business names, moral rights and any other intellectual property rights;
"PO" means the purchase order form issued by SMRC to the Supplier containing an order for Goods and/or Services to which these Conditions are attached;
"Price" means the total amount payable to the Supplier set out in the PO;
"Site" means any place owned or controlled by SMRC where the Goods and/or Services are to be carried out by the Supplier as instructed by SMRC;
"Site Manager" means any person appointed by the Supplier under clause 9;
"Site Rules and Regulations" means the rules and regulations as advised to the Supplier by SMRC as amended from time to time;
"Statement of Business Principles" means the statement issued to the Supplier from time to time;
"Supplier" means the person, company or corporation to whom the PO is issued, and where two or more persons are referred to in the PO, then the obligations on their part shall bind and be observed and performed by them jointly and severally;

"Taxes" means any and all present and future sales, use, personal, property, real property, value added, goods and services, turnover, stamp, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever imposed (other than taxes on SMRC's net income) by any government, governmental, semi-governmental or other relevant authority, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed or otherwise payable;
"Valid Tax Invoice" means an invoice provided by the Supplier that must include substantiation for the amount invoiced, the PO number and the Supplier's bank account details for payment by electronic bank transfer;
The words "including" and "include" are a reference to "including, but not limited to"; and
Words importing the singular include the plural (and vice versa).
2. FORMATION OF THE CONTRACT
2.1 The Contract constitutes the entire agreement between the Supplier and SMRC. Except as may be specifically provided in the PO, any terms and conditions contained in or relating to any other documents, including any of the Supplier's documents, in respect of the Goods and/or Services are of no effect.
2.2 In the absence of any written acceptance or acknowledgment of the Contract by the Supplier, the commencement of any work by the Supplier in connection with the Goods and/or Services or the provision of any Deliverables will be deemed an acceptance of the Contract.
3. PERFORMANCE AND DELIVERABLES
3.1 The Supplier must perform and supply the Goods and/or Services and provide the Deliverables at the times, dates and Delivery Point(s) specified in the PO.
3.2 Where the Supplier fails to perform or supply the Goods and/or Services (or any part thereof) or fails to provide the Deliverables to the Delivery Point by the relevant Delivery Date, such failure will constitute a material breach of the Contract and SMRC may:
(a) deduct from payments due to the Supplier under the Contract; and/or
(b) immediately terminate the Contract.
3.3 Partial performance or supply of the Goods and/or Services or partial provision of the Deliverables (including the supply of non-compliant Goods and/or Services or Deliverables) by the relevant Delivery Date constitutes a failure to deliver and/or perform and GC 3.2 applies, unless SMRC confirms in writing that partial performance, supply or Delivery is acceptable.
3.4 If a licence, certificate or consent of any government or other authority is required for the performance or supply of the Goods and/or Services, the Supplier must obtain such licence, certificate or consent at the Supplier's expense and produce evidence of it to SMRC on demand.

3.5 The value of the Goods and/or Services performed and supplied must not be greater than the Price, unless quantity amendments have been made to the Contract by the issue of a Change Order. SMRC may withhold payment to the Supplier for excess quantities of Goods and/or Services performed or supplied at the Supplier's risk and expense.
4. NON-COMPLIANT GOODS AND/OR SERVICES
4.1 The Supplier must, at no additional cost to SMRC, ensure that all Goods and/or Services are performed, supplied, reported and presented in a professional manner consistent with best professional practice.
4.2 Notwithstanding that payment has been made to the Supplier, SMRC will not be deemed to have accepted the Goods and/or Services unless and until SMRC have had a reasonable opportunity to inspect them and have notified the Supplier of SMRC's acceptance.
4.3 If any Goods and/or Services (or any part of them) are defective, or do not comply with the Contract, SMRC may reject such Goods and/or Services. If such Goods and/or Services are not re-performed or re-supplied by the Supplier within a reasonable time, SMRC may re-perform or re-supply such Goods and/or Services and any costs incurred by SMRC arising out of the re-performance or re-supply of such Goods and/or Services shall be to the Supplier's account.
4.4 If SMRC rejects any Goods and/or Services under GC 4.3, the Supplier must re-perform or re-supply such rejected Goods and/or Services within 10 days of being notified (or such other time reasonably directed by SMRC) at the Supplier's cost.
4.5 If such Goods and/or Services are not re-performed or re-supplied by the Supplier within a reasonable time, such Goods and/or Services may be re-performed or re-supplied by SMRC and SMRC may immediately terminate the Contract in whole or part and the Supplier must refund any payments made by SMRC for any Goods and/or Services rejected by SMRC within 14 days. Any additional costs incurred by SMRC arising out of the re-performance or re-supply of such Goods and/or Services shall be to the Supplier's account.
4.6 If SMRC requests the Supplier to remove any person from the performance or supply of the Goods and/or Services on the grounds the person is not complying with the requirements of the Contract or is otherwise not behaving appropriately then the Supplier must comply with such request and promptly replace the person.
5. RISK AND TITLE
5.1 Without prejudice to SMRC's rights under GC 4, unless otherwise specified in the Contract, ownership of the Goods and/or Services or the Deliverables passes to SMRC on the earlier of:
(a) Delivery of the Goods and/or Services or Deliverables; or
(b) payment for any of the Goods and/or Services prior to Delivery of the Deliverables.



PURCHASE ORDER CONDITIONS

- 5.2 Where ownership of any Goods passes to SMRC before Delivery, the Supplier must ensure that the Goods are properly stored and protected and kept separate from goods of a similar nature and labelled the proposed of SMRC.
- 6. CONTRACT PRICE AND PAYMENT**
- 6.1 The Supplier is deemed to have satisfied itself of the correctness and sufficiency of the Price which covers all the Supplier's obligations under or in connection with the Contract.
- 6.2 SMRC is only liable to pay for Goods and/or Services specified in the PO at the Price stated in the PO.
- 6.3 Subject to the Supplier providing a complete Valid Tax Invoice to SMRC at the address for the submission of invoices to SMRC, SMRC will make payments due to the Supplier within the 30 days after the end of the month in which the Valid Tax Invoice has been provided by the Supplier to SMRC unless otherwise agreed in writing between the Supplier and SMRC.
- 6.4 The Supplier shall not be entitled to any interest or additional charge for any late payment by SMRC unless otherwise agreed in writing between the Supplier and SMRC.
- 6.5 If SMRC is required by any law to deduct an amount in respect of Taxes from a payment under the Contract, SMRC will pay the Supplier the difference between the payment due under the Contract to the Supplier and the amount deducted.
- 6.6 SMRC may set-off any amount owing to SMRC from the Supplier against any amount owed to the Supplier by SMRC. SMRC may separately recover from the Supplier any debt owed by the Supplier to SMRC arising out of or in connection with the Contract.
- 6.7 Unless otherwise notified by SMRC in writing, all payments made by SMRC to the Supplier will be by electronic bank transfer.
- 6.8 Should any Taxes be levied on, in respect of, or in relation to, the Goods and/or Services, these will be to the Supplier's account. The Supplier will be responsible for payment of those Taxes and will immediately provide SMRC with documentary evidence of payment if payment is made by the Supplier on SMRC's behalf.
- 6.9 Where under the PO the Supplier is entitled to any adjustment to the Price, and such adjustment is based on the reasonable or actual cost to the Supplier of performing any work, any input tax credits available to the Supplier, or the Supplier's representative member, in relation to performing such work will be deemed to reduce the cost of such work.
- 6.10 Where the amount payable to the Supplier for a supply of Goods and/or Services under or in connection with the Contract is based on the actual or reasonable costs incurred by the Supplier, the amount which the Supplier is entitled to be paid will be reduced by any input tax credits available to the Supplier, or the Supplier's representative member, in respect of such costs.
- 6.11 The Supplier acknowledges and agrees that if a legislative requirement requires SMRC to deduct an amount in respect of withholding tax from a payment under the Contract such that the Supplier would not actually receive on the due date the full amount provided for under the Contract, then on the due date SMRC must pay:
 - (a) the relevant authority an amount equal to the amount deducted in accordance with applicable law and give the original receipt to the Supplier; and
 - (b) the Supplier an amount equal to the deducted amount.
- 7. INTELLECTUAL PROPERTY RIGHTS**
- 7.1 The Supplier agrees that all Intellectual Property Rights created or produced by providing the Goods and/or Services will be owned by SMRC.
- 7.2 The ownership of all Intellectual Property Rights owned by the Supplier and SMRC prior to commencing the Goods and/or Services will remain with the owner and the owner grants an irrevocable royalty free and perpetual licence to the other party to use those rights for the purpose of performing the Goods and/or Services or using, copying or modifying the Deliverables.
- 7.3 The Supplier must do everything necessary to ensure that the use, copying or modifying of the Deliverables by SMRC does not infringe any rights, including Intellectual Property Rights, of another person or entity.
- 8. OBLIGATIONS**
- 8.1 The Supplier must ensure that:
 - (a) the Goods and/or Services will comply with the specifications in the Contract and any other specifications, requirements or instructions made known to the Supplier by SMRC;
 - (b) the Goods and/or Services are of high quality, fit for purpose, and free from defects or computer viruses;
 - (c) the Goods and/or Services are, and at the time that title passes to SMRC will be, free and clear of all liens and encumbrances;
 - (d) the Goods and/or Services comply with all laws, rules or regulations in force at the time of performance;
 - (e) the use, copying or modification of the Deliverables does not infringe any rights, including Intellectual Property Rights, of another person or entity;
 - (f) in providing the Goods and/or Services, the Supplier:
 - i. informs itself of and complies with all applicable health, safety and environmental laws and regulations, as may be amended from time to time; and
 - ii. complies with any safety, environmental or other policies, guidelines, procedures and requirements provided to the Supplier by SMRC; and
 - (g) the Supplier provide the Goods and/or Services exercising the care, skill and diligence reasonably expected of a competent, professional supplier of goods and/or services similar to the Goods and/or Services.
- 8.2 The Supplier must ensure that SMRC receives the benefit of all warranties provided by the Supplier's subcontractors or subsuppliers.
- 8.3 SMRC's rights and remedies in this Contract are cumulative and are not exclusive of any rights or remedies provided at law or otherwise.
- 8.4 SMRC's acceptance of the Goods and/or Services and Deliverables does not relieve the Supplier from any of the Supplier's warranties, obligations or liabilities under or in connection with this GC 8.
- 9. SITE**
- 9.1 This GC 9 applies in the event that any Goods and/or Services are to be performed on the Site.
- 9.2 SMRC must provide the Supplier with access to the Site as reasonably required for the proper performance of any Goods and/or Services. The Supplier acknowledges and agrees that it will not be given exclusive access to the Site.
- 9.3 Whilst on Site the Supplier and any of its employees, agents or subcontractors must:
 - (a) adhere to all applicable Site Rules and Regulations; and
 - (b) not enter any area on the Site for which it does not have express permission or authorisation to enter; and
 - (c) keep the Site free from all unnecessary obstructions and must at regular intervals remove any surplus materials, wreckage, rubbish or temporary works.
- 9.4 From the commencement of any Goods and/or Services on Site until completion of demobilisation at the Site, the Supplier must appoint a suitable person to act as the Site Manager. The Site Manager must personally supervise the performance of all Goods and/or Services and be present at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Goods and/or Services. Whenever the Site Manager is absent from the Site, a suitable person must be appointed to act as its deputy.
- 9.5 In respect of any Site visit, or prior to the performance of Goods and/or Services at the Site, the Supplier, its employees, agents and subcontractors must, in addition to the Supplier's own Site induction covering safety and other aspects of the Goods and/or Services, attend an SMRC Site induction covering safety and other aspects of the Site. The Supplier shall not be entitled to any additional costs above the Price for attending such safety inductions, unless otherwise agreed by SMRC in writing.
- 9.6 The Supplier must ensure that the working environment at the Site where the Goods and/or Services are to be performed is safe, without risks to the safety or health or exposure to hazards of its employees, subcontractors, suppliers, SMRC, any employee or other contractor of SMRC or any member of the public.
- 9.7 The Supplier must ensure that safe work practices are in place in relation to the performance of its (and its employees') duties at the Site where the Goods and/or Services are to be performed. The Supplier must record those work practices in documented



PURCHASE ORDER CONDITIONS

- occupational health and safety policies and procedures that include:
- (a) organisation structure and responsibilities;
 - (b) safe work practices; and
 - (c) OSH training and induction, performance monitoring and auditing and inspection procedures.
- 9.8 Within 10 Business Days of an actual health and safety occurrence or incident, the Supplier must notify SMRC of any accident, injury, loss or damage of any kind which occurs whilst Goods and/or Services are performed under this Contract.
- 9.9 When requested to do so by SMRC, the Supplier must give all other documents relevant to any health and safety incident and also authorise SMRC and its representatives or agents to conduct interviews with the Supplier's employees and contractors regarding all matters relevant to the incident.
- 9.10 The Supplier is responsible for industrial relations matters of its own workforce. SMRC must not interfere in the industrial and personnel matters of the Supplier but may give guidance and assistance where SMRC considers it necessary.
- 9.11 As between SMRC and the Supplier, valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the Site will be and remain the property of SMRC. Immediately upon the discovery of these items the Supplier must:
- (a) take precautions to prevent their loss, removal or damage; and
 - (b) give SMRC written notice of the discovery.
- 9.12 The Supplier's extra costs necessarily incurred in connection with GC 9.11, which may include an allowance for off-site overheads and profit, will be added to the Price.
- 10. INDEMNITY AND INSURANCE**
- 10.1 Subject to GC 10.2, the Supplier must indemnify and keep SMRC, SMRC's directors, employees and agents indemnified from and against all losses, claims, liabilities and expenses (including legal and other professional fees and expenses) arising out of injury or death to any person or damage to or destruction of any of SMRC's property, whether caused directly or indirectly out of performance of work under the Contract by the Supplier or the Supplier's presence on or about the Site.
- 10.2 The indemnity provided in GC 10.1 does not apply to the extent that the injury, death, damage, destruction or loss is the result of SMRC's negligence or actions.
- 10.3 Without limiting its obligations and responsibilities, the Supplier shall take out insurance for the entire Contract period as follows:
- (a) a public liability policy with an insurer approved by the Australian Prudential Regulation Authority (APRA) as per their list of Insurers Authorised to Conduct New or Renew Insurance Business in Australia. The policy of public liability insurance taken out by the
- Supplier is to provide a minimum limit of liability of \$20 million (AU\$20,000,000) in respect of death, property damage and bodily injury;
- (b) the Supplier shall effect and keep in effect during the Contract period such insurance as may be necessary to adequately protect the Supplier and SMRC in respect of liability for payment of compensation to any employee of the Supplier or of a subcontractor of the Supplier under the *Workers' Compensation and Injury Act 1981* or at common law;
 - (c) where the Contract involves the provision of professional services and/or advice, the Supplier is to take out a professional indemnity insurance policy with an insurer approved by the Australian Prudential Regulation Authority (APRA) as per their list of Insurers Authorised to Conduct New or Renew Insurance Business in Australia. The policy of professional indemnity insurance taken out by the Supplier will have a limit of liability not be less than \$5 million (AU\$5,000,000) unless otherwise instructed by SMRC in writing; and
 - (d) a product liability insurance taken out by the Supplier is to provide a minimum limit of liability of \$20 million (AU\$20,000,000) in respect of any one occurrence and for an unlimited number of claims.
- 10.4 The Supplier is to provide SMRC with certificates of currency and/or a copy of the policy wording confirming that the above insurance policies required under this Contract are in place for the entire Contract period.
- 10.5 The Supplier at the discretion of SMRC may be required to detail SMRC as a joint named insured under some or all of the insurances detailed under this GC 10.3 and/or detail the SMRC's interest by way of notation on certificates of currency.
- 11. TERMINATION OR EXPIRY**
- 11.1 SMRC may immediately terminate the Contract by written notice to the Supplier:
- (a) where these Conditions expressly permit SMRC to do so;
 - (b) for convenience; or
 - (c) if the Supplier breaches any obligation under the Contract.
- 12. CONFIDENTIALITY**
- 12.1 The Supplier must treat all information, data and materials provided by SMRC as confidential and must not disclose it to any third party without SMRC's prior written consent or use it for any purpose other than for provision of the Goods and/or Services.
- 12.2 Upon termination or expiry of the Contract and/or upon SMRC's request, the Supplier must return or, at SMRC's option, destroy all such information and provide evidence of such destruction.
- 13. GENERAL**
- 13.1 The Supplier must not assign or novate the Contract or subcontract the performance of all or part of the Goods and/or Services without SMRC's prior written consent.
- 13.2 Subject to GC 6.3, all notices must be in writing, addressed to SMRC or the Supplier as appropriate, and delivered to the address and/or sent to the facsimile number of the recipient as shown on the PO, or any other address notified in writing by one party to the other and delivered personally or by facsimile transmission.
- 13.3 All Valid Tax Invoices must be delivered to SMRC at the address set out in the PO
- 13.4 A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.
- 13.5 A letter or facsimile is deemed to be received:
- (a) in the case of a posted letter, 3 days after posting (5 days in the case of a letter sent by airmail); and
 - (b) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.
- 13.6 If any provision in these Conditions is invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions.
- 13.7 To the extent of any inconsistency between the documents forming the Contract, then the order of precedence is:
- (a) the PO;
 - (b) the Conditions; and
 - (c) the Statement of Business Ethics.
- 13.8 The Contract may not be varied except in writing signed by a duly authorised representative of each of the parties.
- 13.9 If SMRC does not exercise a right, remedy or power at any time, this does not mean SMRC cannot exercise it later.
- 13.10 The parties are not entitled to recover any amount representing any kind of indirect or consequential loss or damage including loss of profit, loss of use, loss of contracts, loss of revenue or contribution to head office overheads arising out of or in connection with this Contract.
- 13.11 The Supplier is an independent contractor in relation to the Contract and the Goods and/or Services and not SMRC's employee. This Contract does not create a partnership, joint venture or agency relationship between the parties.
- 13.12 GCs 6.6, 7, 8, 12 and 13 will survive any termination or expiry of the Contract.
- 13.13 The Contract is governed by the laws of Western Australia and the parties agree to submit to the exclusive jurisdiction of the courts of Western Australia.