

STANDARD TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES



1.0 GENERAL

1.1 Definitions

- (a) **Anti-corruption Breach** means any breach, offence, or prosecution under the Anti-corruption Laws or any conduct that contravenes the obligations in clause 13.0.
 - (b) **Anti-corruption Laws** means Chapter 4, Division 70 of the Criminal Code Act 1995 (Cth) (Australia), the Foreign Corrupt Practices Act 1977 (United States) and the Bribery Act 2010 (United Kingdom).
 - (c) **Delivery Date** means the 'Required by Date' specified on the Purchase Order;
 - (d) **Goods** means the goods, if any, described on the Purchase Order in the 'Item Description';
 - (e) **Modern Slavery Laws** means the Modern Slavery Act 2018 (Cth), the Modern Slavery Act 2018 (NSW), the Modern Slavery Act 2015 (UK), Chapter 4, Division 73 of the Criminal Code Act 1995 (Cth) and any relevant regulations or ancillary legislation published in respect of the above or any similar modern slavery legislation in another jurisdiction of which the Principal is required to comply.
 - (f) **Modern Slavery Offence** means:
 - i. any offence set out in section 1 or section 2 of the Modern Slavery Act 2015 (UK);
 - ii. any conduct which would constitute "modern slavery" under the Modern Slavery Act 2018 (Cth);
 - iii. any offence under Chapter 4, Division 73 of the Criminal Code Act 1995 (Cth);
 - iv. any offence under the Modern Slavery Act 2018 (NSW); and
 - v. any other conduct or practices which amount to an offence under any of the Modern Slavery Laws.
 - (g) **Point of Delivery** means the address described as the address to "Ship To" in the Purchase Order;
 - (h) **PPSA** means the *Personal Property Securities Act 2009* (Cth);
 - (i) **Price** has the meaning given by clause 5;
 - (j) **Purchaser** means NRW Pty Ltd (ABN 69 828 799 317);
 - (k) **Purchase Order** means this Purchase Order form incorporating the Terms and Conditions;
 - (l) **Services** means the services, if any, described on the Purchase Order in the 'Item Description';
 - (m) **Supplier** means the entity to whom the Purchase Order is addressed; and
 - (n) **Terms and Conditions** has the meaning given by clause 1.2.
- 1.2 The Purchase Order (including any attachments listed therein) together with these 'Terms and Conditions for Purchase of Goods and/or Services' (**Terms and Conditions**), constitutes the entire agreement between the Purchaser and Supplier in respect of the Goods and/or Services (**Agreement**), unless a prior separate agreement (**Separate Agreement**) has been entered into between the parties in which case the Separate Agreement will also apply and, to the extent of any inconsistency, the terms and conditions of the Separate Agreement will take precedence to the Terms and Conditions of this Agreement. Except to the extent provided in this clause 1.2, the Supplier agrees that it does not rely on any other document, information or thing given to it, or any representation made, by the Purchaser, its officers, agents, employees or contractors.
- 1.3 If any one or more of the Terms and Conditions of the Agreement are determined to be invalid, illegal or unenforceable in any respect, whether wholly or in part, the validity, legality and enforceability of the remaining Terms and Conditions of the Agreement, to the greatest extent possible, are not affected in any way.
- 1.4 The Purchase Order constitutes the sole description of the Goods and Services and the Purchaser accepts no responsibility for the delivery of any goods or services not specified on the Purchase Order.
- 1.5 Any variation to this Agreement will only be deemed to occur if it is in writing and signed by an authorised officer of the Purchaser.
- 1.6 Any failure by the Purchaser to insist upon strict performance of any term or condition of the Agreement is not to be deemed to be a waiver of any of the Purchaser's rights or remedies under either the Agreement or generally at law, or of any rights arising out of any subsequent act or default of the Supplier. Acceptance of any goods and/or services purported to be supplied pursuant to the Agreement does not imply agreement to any alteration of the Agreement in any respect or waive any of the Purchaser's rights arising out of any prior or subsequent act or default.
- 1.7 The Supplier is not to assign the Purchase Order or any part of the Agreement without the prior written consent of the Purchaser (which consent the Purchaser may give or withhold in its absolute discretion).
- 1.8 These Terms and Conditions are governed by the laws of the State or Territory from which the Purchase Order was issued. The parties agree to submit to the non-exclusive jurisdiction of the courts of the State or Territory from which the Purchase Order was issued.

2.0 PACKAGING AND DELIVERY

- 2.1 Any Delivery Date or time for delivery requirement contained in the Purchase Order is a condition of the Agreement for which time is considered to be 'of the essence'. The parties agree that the Purchaser is entitled to terminate the Purchase Order and/or the Agreement if delivery is not made within the time specified or on or before the date specified.
- 2.2 All Goods delivered are to be packaged as specified in the Purchase Order. Where packaging is not specified, but custom in the trade so requires, Goods are to be properly packaged in accordance with good industry practice.
- 2.3 All Goods and/or Services are to be delivered to the Point of Delivery specified in the Purchase Order, unless otherwise specified in writing by the Purchaser.
- 2.4 Goods will not be considered delivered under the Agreement, and the Purchaser is not obliged to accept any Goods, unless accompanied by a delivery docket or packing slip quoting the Purchase Order number.
- 2.5 All dangerous, hazardous or potentially hazardous Goods and substances must be adequately packaged and clearly labelled and accompanied by all appropriate documentation and instructions for safe use, handling and storage. Such Goods are to be transported in accordance with good and safe industry practice and be provided with a current Material Safety Data Sheet (**MSDS**). A MSDS must be provided prior to and must accompany each delivery and a new or amended MSDS must be immediately re-issued to the Purchaser as it becomes available.

3.0 RISK, TITLE AND PROPERTY

- 3.1 The title to, and property and risk in the Goods and/or Services will not pass to the Purchaser until:
- (a) the Goods and/or Services are delivered to, and accepted (subject to this Agreement) by the Purchaser at the specified point of delivery; or
 - (b) where the Goods are held by the Supplier at a particular place, until the Supplier issues the Goods to the Purchaser from the relevant place and Goods are inspected by and accepted by the Purchaser.
 - (c) Notwithstanding the above, title will pass to the Purchaser upon payment of the Price however risk will remain with the Supplier while the Goods remain in the possession of the Supplier.
- 3.2 If the Purchaser pays any full or part payment of the Price (including any deposit) prior to the delivery of the Goods to the Purchaser, then the Supplier charges the Goods (and any materials purchased for incorporation into the Goods) with the obligations owed or which may be owed by the Supplier to the Purchaser under or in respect of the Purchase Order, including any obligation to repay any sums paid by the Purchaser in the event of non-delivery of the Goods. The Supplier and the Purchaser agree that the Agreement creates, in favour of the Purchaser, a security interest in such Goods to secure supply of the Goods by the Supplier to the Purchaser.
- 3.3 The Supplier shall not grant any other person security interest in the Goods, and shall not part with possession of the Goods, in whole or in part, except by delivery to or at the direction of the Purchaser.
- 3.4 The Supplier must:
- (a) promptly do all things, sign any further documents and provide any information which the Purchaser may reasonably require to enable the Purchaser to perfect and maintain the perfection of any security interest over Goods (including by registration of a financing statement or financing change statement); and

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Custodian
First Approver
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- (b) give the Purchaser not less than 14 days' prior written notice of any proposed change in the Supplier's name or any other change in the Supplier's details (including without limitation changes in the Supplier's address, facsimile number, trading name or business address).
- 3.5 The Supplier waives its right to receive notice of any registration events to which section 157(3)(a) of the PPSA applies.
- 3.6 The Supplier and the Purchaser agree that sections 95, 96, 126, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA do not apply to the Agreement.
- 3.7 This clause 3 does not exclude the operation of any equitable lien over any Goods or other property which may arise in favour of the Purchaser.

4.0 INSPECTION AND ACCEPTANCE

- 4.1 The Purchaser or its representatives are to have all reasonable and unrestricted access to the premises of the Supplier and its contractors and subcontractors, at all reasonable times and without the need to give prior notice. Inspection is not to be deemed acceptance of the Goods and/or Services nor does it detract from the Purchaser's right to reject the Goods and/or Services if they are not in accordance with the Purchase Order.
- 4.2 The Purchaser reserves the right to reject in whole or in part any delivery of the Goods and/or Services ordered on the Purchase Order if it is found that the Goods and/or Services do not comply with the requirements, specifications or description stated in the Purchase Order or if the Supplier has failed to comply with any of its obligations under the Agreement. Any rejected Goods, including oversupply, will be returned at the Supplier's risk and expense (including but not limited to transport and other handling costs), and such expense will immediately become a debt due and payable by the Supplier to the Purchaser upon demand.

5.0 PRICE

- 5.1 The Purchaser agrees to pay the Price specified in the Purchase Order for the full and proper supply of all Goods and/or Services included in the Purchase Order.
- 5.2 Unless otherwise provided in the Purchase Order, the Price is not subject to rise and fall.
- 5.3 The Price is payable in Australian Dollars unless otherwise provided in the Purchase Order.
- 5.4 Payment of the Price by the Purchaser is subject to receipt of the Goods and/or Services in good order and on the basis that the conditions precedent to payment contained in this Agreement have been complied with.
- 5.5 Payment shall not constitute an acceptance by the Purchaser that the Goods and/or Services are not defective and shall not in any way affect the Purchaser's rights under the Purchase Order including but not limited to those rights set out in clause 7.
- 5.6 The Price is deemed to be fully inclusive of all delivery, taxes, insurance, certification, packaging and transport costs unless otherwise specifically stated in the Purchase Order.

6.0 INVOICING/PAYMENT

- 6.1 The Supplier is to submit its tax invoice or credit note in respect of the delivered Goods and/or Services, which shows the quantity of Goods and/or Services supplied, the Price applying to those Goods and/or Services and the Purchase Order Number. The tax invoice must show units of measure and Price consistent with the Purchase Order.
- 6.2 All tax invoices are to be forwarded to the address set out in the Purchase Order.
- 6.3 Unless otherwise stated in the Purchase Order, the Purchaser is to pay the amount properly invoiced by the Supplier (except to the extent that any invoice is in dispute) within forty-five (45) days from receipt of the tax invoice from the Supplier.
- 6.4 In addition to any other rights it may have under these Terms and Conditions or otherwise, the Purchaser may deduct from or set-off against any monies due or that become due to the Supplier:-
 - (a) all costs, damages and expenses which the Purchaser may have paid for or incurred or is likely to pay or incur in connection with the supply of Goods and/or Services for which the Supplier is liable and which remain unpaid by the Supplier; and
 - (b) all debts owed by the Supplier to the Purchaser and which remain unpaid on any account whatsoever.
- 6.5 The Supplier is required to fully comply with all requirements of the A New Tax System (Goods and Services Tax) Act 1999 (**GST Act**). In particular:
 - (a) the Supplier must evidence to the Purchaser in writing its registration for the GST Act and its valid Australian Business Number; and
 - (b) all invoices issued to the Purchaser by the Supplier pursuant to clause 6 of these Terms and Conditions must be in an Australian Taxation Office approved form of tax invoice.
- 6.6 The Purchaser is entitled to return to the Supplier unpaid any tax invoice that fails to fully comply with the Agreement and the Supplier must submit a replacement tax invoice which complies with the Agreement before it is entitled to payment.
- 6.7 Notwithstanding any other term or condition in the Agreement, the Supplier has no entitlement to payment for any claims or amount until such time as the requirements contained in this clause are complied with.

7.0 QUALITY & WARRANTY

- 7.1 Supplier represents and warrants to the Purchaser that where the Purchase Order relates to Goods:
 - (a) the Goods delivered to the Purchaser will correspond in all respects with the specifications and all representations made by the Supplier, including any sample provided by or on behalf of the Supplier;
 - (b) the Purchaser has the full benefit of any manufacturer's warranties that may be applicable to the Goods or any part of the Goods;
 - (c) the Goods will be free from defects in design and workmanship;
 - (d) the Goods will be fit and safe for the purpose for which goods of the same kind are commonly supplied or bought and for any other purpose the Purchaser specifies;
 - (e) the Goods are of merchantable quality, unencumbered and, unless otherwise specified in the Purchase Order, new;
 - (f) the Goods will meet any other standards specified by the Purchaser in the Purchase Order together with good industry practice; and
 - (g) the Goods will comply with all laws, by-laws, statutes, regulations and standards in force in the jurisdiction in which they are supplied.
- 7.2 The Supplier represents and warrants to the Purchaser that where the Purchase Order relates to Services, that the Services:
 - (a) will correspond in all respects with the specifications and all representations made by the Supplier;
 - (b) will be performed with due diligence and care;
 - (c) will be fit and safe for the purpose for which services of the same kind are commonly provided and for any other purpose the Purchaser specifies;
 - (d) will meet any other standards specified by the Purchaser in the Purchase Order together with good industry practice;
 - (e) will be undertaken by persons who are appropriately licensed, qualified and/or trained to provide those Services; and
 - (f) will comply with all laws, by-laws, statutes, regulations and standards in force in the jurisdiction in which they are supplied.
- 7.3 Where the Supplier repairs or replaces any Goods pursuant to any warranty, the Supplier is responsible for all costs that arise thereby, including all removal and transportation costs of the Goods from and to the Purchaser's premises, labour costs and the costs of replacing or providing new parts for the Goods.
- 7.4 If the Supplier fails to repair or replace any Goods and/or Services pursuant to any warranty within a reasonable time the Purchaser may carry out or have carried out any replacement or repair, in which case all costs arising thereof will immediately become a debt due and payable by the Supplier to the Purchaser upon demand.
- 7.5 The Supplier warrants that the Goods and/or Services are free from defects for a period of not less than the period so specified in the Purchase Order, or if no period is specified, twelve (12) months from the date of delivery. The Supplier agrees that where any Goods and/or Services are found to be defective during that period and are re-supplied, this warranty will also apply to the re-supplied Goods and/or Services, with the 12-month period commencing on the date of completion of the re-supply..
- 7.6 If the provision of Goods does not comply with this clause 7, the Purchaser may terminate the Agreement at no cost to the Purchaser. The Goods will be returned at the Supplier's cost

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- 7.7 If the provision of Services does not comply with this clause 7, the Purchaser may direct the Supplier to re-perform the Services at the Supplier's cost, and/or the Purchaser may terminate the Agreement at no cost to the Purchaser.
- 7.8 The Supplier warrants that it has the necessary skills, experience and expertise to supply the Goods and/or Services and will exercise those skills and expertise in supplying the Goods and/or Services.
- 7.9 The Supplier warrants that it maintains all insurances (and with appropriate coverage) which a prudent and responsible supplier of the Goods and/or Services the subject of the Agreement would maintain.

8.0 INDEMNITY

- 8.1 In addition to any insurance which the Supplier is by law required to effect, the Supplier is to procure and maintain at its own expense such policies of insurance as the Purchaser may reasonably require, having regard to the nature of the Goods and/or Services which are to be supplied.
- 8.2 To the fullest extent permitted by law, if the Supplier, its employees, servants or agents, enter onto any premises pursuant to or in relation to the Agreement, they do so at their own risk.
- 8.3 The Supplier indemnifies and will keep indemnified the Purchaser against all:
 - (a) loss or damage to property arising out of, or related to, in any way the work under the Agreement;
 - (b) loss or damage resulting from death or personal injury arising out of or resulting from any act, error, omission, default or neglect of the Supplier, its employees, agents or contractors, including any breach of any one or more warranties under this Agreement;
 - (c) third party claims arising out of, or related to, in any way, the work performed under this Agreement; and
 - (d) failure by the Supplier to comply with any law and the payment of taxes required by law in accordance with the Agreement.

9.0 TERMINATION

- 9.1 The Purchaser may terminate the Agreement by notice in writing to the Supplier if:
 - (a) judgment is entered against the Supplier;
 - (b) any administrator, receiver, receiver and manager, liquidator, mortgagee or other external administrator is appointed to the Supplier or over any of its assets or undertakings;
 - (c) the Supplier is wound up or dissolved, or resolves to wind itself up or dissolve itself or
 - (d) the Supplier:
 - i commits an act of bankruptcy or becomes insolvent; or
 - ii enters into or endeavours to enter into any scheme or arrangement with creditors (except to reconstruct or amalgamate while solvent).
- 9.2 If the Goods covered by the Purchase Order are standard stock, the Purchaser is entitled to terminate the Agreement at any time by notice in writing to the Supplier, in which case the Purchaser will only be liable for those Goods already supplied prior to the termination;
- 9.3 If the Goods covered by the Purchase Order are Goods manufactured or fabricated to the specifications of the Purchaser then at any time prior to completion of the work to be performed, the Purchaser may (in its sole discretion):
 - (a) where the Supplier is not in breach of the Agreement, terminate the Agreement by giving seven (7) days' written notice to the Supplier; or
 - (b) where the Supplier is in breach of the Agreement, terminate the Agreement by notice in writing to the Supplier.
- 9.4 Where the Agreement is terminated:
 - (a) in accordance with subclause 9.3a, the Purchaser will reimburse the Supplier's reasonable out of pocket costs and expenses to the date of termination including its expenses in connection with the cancellation of any subcontracts; or
 - (b) in accordance with subclause 9.3b, the Purchaser will not be liable for any costs incurred by the Supplier as a result of the termination.
- 9.5 Upon payment in accordance with clause 9.4a, any Goods or partially completed Services become the property of the Purchaser and subject to its disposition.
- 9.6 Notwithstanding anything else contained in the Agreement, the total amount payable under subclause 9.4a is not to exceed the Price specified on the Purchase Order.
- 9.7 The Purchaser's rights to terminate the Agreement under this clause are in addition to any rights or remedies which the Purchaser may have generally at law.
- 9.8 Notwithstanding anything else contained in the Agreement, the Purchaser is not liable to the Supplier for any indirect loss or damage, consequential loss or damage, special loss or damage, loss of profits, loss of revenue, failure to realise expected profits or savings, or other commercial or economic loss of any kind.
- 9.9 The Agreement may also be terminated by the Purchaser at any time immediately upon written notice in the event of the Supplier's material breach of any term or provision of the Agreement. If the Agreement is terminated for the Supplier's default, the Purchaser may have the Supplier's obligations performed by another party. The Supplier shall be responsible for, and shall indemnify and hold indemnified the Purchaser from and against, any damages, costs (including, without limitation, legal fees on a solicitor own client indemnity basis), losses and expenses, incurred by the Purchaser as a result of the breach.

10.0 DISPUTE RESOLUTION

- 10.1 If a dispute or difference arises between the Purchaser and the Supplier in respect of any fact, act, matter or thing arising out of, or in any way connected with the Agreement, the Purchase Order or any matter the subject thereof and either the Purchaser or the Supplier requires the dispute or difference to be resolved, then that party shall promptly give the other party a written notice giving details of the dispute.
- 10.2 Within 14 days of the party receiving a notice referred to in clause 10.1, the Purchaser and the Supplier and/or their delegates must meet and attempt to resolve the dispute in good faith.
- 10.3 If, within 14 days of the meeting referred to in clause 10.2, the dispute is still not resolved, then, either the Purchaser or the Supplier may proceed to litigation, unless an alternative dispute resolution process is mutually agreed between the parties.

11.0 WAIVER

- 11.1 A provision of this Agreement can only be waived by the Purchaser if the waiver is in writing signed by the Purchaser or its delegated representative.

12.0 RELATIONSHIP

- 12.1 The Purchaser and the Supplier acknowledge that they contract with one another on an arms-length commercial basis. The Agreement does not create a partnership, employment, agency or joint venture relationship between the Purchaser and the Supplier.

13.0 ANTI-CORRUPTION AND CONFLICT OF INTEREST

- 13.1 The Supplier must not give or offer to give (directly or indirectly) to any person any bribe, gift, gratuity or other thing of value, which would or could be construed as a corrupt practice, as an inducement or reward including but not limited to the Anti-corruption Laws:
 - (a) for doing or forbearing to do any action in relation to this Agreement; or
 - (b) for showing or for forbearing to show any favour or disfavour to any person in relation to this Agreement.
- 13.2 However, nothing in this clause 13.0 is intended to limit or affect any lawful inducements or rewards to the Supplier's employees, agents and Sub-suppliers that could not reasonably be construed as involving corrupt practices.

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- 13.3 If the Supplier breaches this clause 13.0 an event of default is deemed to occur and to continue until the breach is remedied (if capable of being remedied) or this Agreement is terminated, whichever is the sooner.
- 13.4 The Supplier must maintain records relating to the performance of its obligations under this Agreement to enable the Purchaser to determine the Supplier's compliance with this clause 13.0 and if required by the Purchaser at any time, sign a statutory declaration confirming its compliance with this clause 13.0.
- 13.5 The Supplier will notify the Purchaser in writing as soon as practicable and no later than 2 Business Days upon becoming aware of any Anti-Corruption Breach in any way connected to the Agreement and must provide all reasonable assistance to the Purchaser in connection with any requirement for the Purchaser or a related entity to comply with its reporting obligations in relation to such Anti-Corruption Breach.
- 13.6 The Supplier warrants that it, and the Supplier's directors and employees have not and will not undertake any obligation which may interfere or conflict with the performance of the Supplier's obligations under this Agreement.
- 13.7 The Supplier must ensure that all of its Sub-supply agreements contain provisions substantially similar to this clause 13.0.

14.0 MODERN SLAVERY

- 14.1 The Supplier acknowledges that the Purchaser has obligations to comply with Modern Slavery Laws, and represents and warrants to the Purchaser that, at the date of this Agreement, the Supplier:
 - (a) has no knowledge of any Modern Slavery Offence currently occurring within its organisation or supply chain; and
 - (b) takes and will continue to take reasonable steps to identify the risk of, and prevent the occurrence of, Modern Slavery Offences within its organisation or supply chains.
- 14.2 Without limiting clause 14.1, the Supplier represents and warrants to the Purchaser that in relation to any services or goods procured from, or subcontracted or outsourced to, third parties for the provision of the services or goods under this Agreement, the Supplier has taken, or will, prior to procuring, subcontracting or outsourcing any such services or goods from or to a third party, take, and will continue through the term to take all reasonable steps to confirm that such third party is not engaging in Modern Slavery Offences.
- 14.3 The Supplier will notify the Purchaser in writing as soon as practicable and no later than 2 Business Days upon becoming aware of any Modern Slavery Offence (or of any charges laid or orders made in relation to a Modern Slavery Offence) within its organisation or supply chain.
- 14.4 If requested by the Purchaser, the Supplier will, subject to any existing confidentiality requirements and any relevant law:
 - (a) take all reasonable steps to provide the Purchaser with any information, policies, reports or documents in relation to any Modern Slavery Offence or any risk of a Modern Slavery Offence within the Supplier's organisation or supply chain, including if required the completion of a self-assessment questionnaire;
 - (b) take all steps to remedy or remove any part of the Supplier's organisation or supply chain in which a Modern Slavery Offence has been committed (or any charges laid or orders made in relation to a Modern Slavery Offence).
- 14.5 The Supplier must ensure that all of its Sub-supply agreements contain provisions substantially similar to this clause 14.0.

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