

Wyloo Purchase Order Terms & Conditions

Binding terms

1 The Purchase Order and these Terms (collectively the **Agreement**) constitute the entire agreement between us and you for the supply of the goods or services specified in the Purchase Order. In the event of any conflict between the Purchase Order and these Terms, the Purchase Order will take precedence.

2 This Agreement may not be varied except in writing signed by us. Any variation will only be applicable to the specific Purchase Order for which the terms and conditions are varied and will not apply to past or future Purchase Orders or oblige us to agree to such a variation for any other Purchase Orders.

3 To the extent your terms and conditions are supplied with goods or services (including as printed on consignment notes, invoices or other documents) or are otherwise provided to us, those terms and conditions will be of no legal effect and will not constitute part of this Agreement (even if any of our representatives sign those terms and conditions or annexes the terms and conditions to the Purchase Order).

4 These Terms apply only to the extent that they are relevant to the supply of the goods or services specified in the Purchase Order.

Warranties and representations

5 You warrant and represent to us that you are duly incorporated and have obtained all necessary approvals to execute and perform your obligations under this Agreement.

6 If you are contracting in the capacity of a trustee of a trust, you warrant and represent to us that:

- (a) you are duly and validly appointed as trustee for the trust;
- (b) you have the lawful authority to enter into this Agreement for and on behalf of the trust; and
- (c) you have a right of indemnity over the trust assets in respect of meeting any expense or debt incurred by you in connection with this Agreement.

7 You warrant and represent to us that all goods supplied and services performed by you will:

- (a) be the best of their respective kinds and subject to our reasonable satisfaction;
- (b) meet any specifications which are set out in the Purchase Order or were specified (or agreed to) by us;
- (c) be consistent with any samples given, or demonstrations provided, to us;
- (d) comply with any applicable legislation and relevant standards of the Standards Association of Australia; and
- (e) be supplied with copies of all relevant instructions, user manuals, safety data sheets (if applicable) and other documentation.

8 You warrant and represent to us that all goods supplied by you will:

- (a) be of first class workmanship, of merchantable quality and fit for the purpose as represented by you to us or any purpose which could reasonably be inferred by a professional supplying similar goods; and

- (b) be properly and safely packed and delivered to the place, and within the applicable time period, specified in the Purchase Order;

9 You warrant and represent to us that we will obtain full title to any goods supplied by you, free and clear of any liens, charges or encumbrances, at the time specified in clause 19.

10 You warrant and represent to us that any services performed by you will be performed:

- (a) by appropriately qualified, competent, skilled, experienced and professional personnel;
- (b) with the degree of skill, care and diligence expected of a competent professional with experience in performing similar services; and
- (c) at the place, and within the applicable time period, specified in the Purchase Order.

11 You warrant and represent that any goods supplied or services performed under this Agreement, and the use or enjoyment of those goods or services, does not and will not infringe any Intellectual Property (or other rights) of, or confidentiality obligations owed to, any other person.

12 You warrant and represent to us that you will perform all of your obligations under this Agreement in accordance with all applicable laws.

13 The warranties and representations under clauses 5 to 12 are made on a continuing basis and remain unaffected notwithstanding any variation, suspension, termination or expiry of this Agreement.

Inspection and acceptance

14 You must give us the opportunity to:

- (a) inspect any goods, whether prior to or after delivery; and
- (b) undertake or witness tests in relation to any goods or services (or their performance) at any time.

15 Without limiting any other rights or remedies we may have, we may (as applicable):

- (a) reject any defective goods or services by written notice;
- (b) require you to repair, resupply or make good any defective goods or services;
- (c) repair, make good or resupply any defective goods or services ourselves; or
- (d) appoint a third party to repair, make good or resupply any defective goods or services.

16 You must:

- (a) with respect to a decision made by us under clause 15(a), provide a full refund of any purchase price paid in respect to any rejected goods or services and we may procure such goods or services elsewhere; and
- (b) with respect to a decision made by us under clause 15(b), promptly repair, resupply or make good the defective goods or services at your own cost.

17 For clarity, any acknowledgement of receipt, inspection or payment by us in respect of goods or services does not relieve you of any responsibility or liability (including any express or implied warranties or guarantees) and does not constitute acceptance by us.

Wyloo Purchase Order Terms & Conditions

Risk and title

18 The responsibility for care and custody of the goods, together with the risk of loss or damage to the goods, remains with you and does not pass to us until we have:

- (a) taken delivery of the goods; and
- (b) given notice that we accept the goods, following any applicable inspections and/or tests.

19 Title to any goods passes to us upon our payment to you of that part of the price that relates to those goods (as specified in the Purchase Order) or, if no price is specified in respect of those goods in the Purchase Order, on delivery of those goods to us.

Risk and title

20 You must not subcontract any of your obligations under this Agreement without our prior written consent (such consent not to be unreasonably withheld).

Records, audit and information

21 You must keep and maintain accurate and detailed books and records in connection with the supply of the goods and the performance of the services. You must permit us to audit and examine such books and records at any time. You must promptly provide any information to us in relation to the goods and services which we request (acting reasonably).

Site

22 Prior to performing any services at one of our sites, you must ensure:

- (a) that all of your personnel who will work on the site have attended the appropriate inductions (as specified by us); and
- (b) if required by us, submit a safety and/or environmental management plan to us for approval.

23 You acknowledge that you enter our sites at your own risk. During the performance of any services at one of our sites, you must:

- (a) comply (and ensure your personnel comply) with all of our site specific rules, procedures and requirements and with all directions from our representatives (including in respect of safety and the environment); and
- (b) use your best endeavours not to interfere with any of our activities, or the activities of any other person at our site and must ensure that our site is left secure, clean, orderly and fit for immediate use.

Price and payment

24 Subject to clauses 25 to 29, we will pay you the price specified in the Purchase Order once you have supplied the relevant goods and performed the relevant services in accordance with this Agreement.

25 The price is inclusive of all costs incurred by you in the supply of the goods or the performance of the services including all charges for packaging, packing, insurance and delivery of the goods in accordance with this Agreement and the cost of any items used or supplied in conjunction with the services. Unless otherwise specified in the Purchase Order, the price is also inclusive of all duties and taxes (except GST). Unless authorised in writing by us, no additional costs (including government duties and taxes) will be payable by us.

26 You must submit a tax invoice for the price which fully complies with all State or Federal legislative requirements. Subject to receipt of a valid tax invoice, if any supply made under this Agreement is or becomes subject to GST, we will pay you the amount of GST in addition to the other consideration which is payable by us. If any party is required to reimburse or indemnify the other party for a cost, expense or liability incurred by the other party, the amount of that cost, expense or liability for the purpose of this Agreement is the amount of the cost, expense or liability incurred less the amount of any credit or refund of GST to which the party incurring the cost, liability or expense is entitled to claim.

27 We reserve the right to delay payment of the invoice until:

- (a) we are able to independently verify your bank account details;
- (b) you have provided all required information to us so we can comply with all applicable laws and regulations in relation to the goods and services; and
- (c) we have resolved any disputes which we have raised with you in relation to the invoice.

28 We will pay any valid invoice as soon as reasonably practicable after all of the matters specified in clause 27 have been completed, addressed or resolved (as applicable).

29 We may set off any amount which you genuinely owe to us against any amount which is payable by us to you under this Agreement.

Liability

30 Neither party will be liable to the other for any loss of opportunity, loss of earnings, loss of profits, loss of anticipated savings, loss of revenue or business, loss of goodwill or damage to reputation arising in connection with this Agreement

Indemnity

31 You must indemnify us and our related entities, along with our (and their) personnel, in respect of any claim, action, damage, loss, liability, cost, charge, expense or payment which we (or they) suffer, incur or are liable for in connection with:

- (a) any personal injury, sickness or death which is caused or contributed to by an act or omission of you or your personnel;
- (b) any property damage which is caused or contributed to by an act or omission of you or your personnel;
- (c) any infringement of Intellectual Property which is caused or contributed to by you or your personnel;
- (d) a breach of confidence or privacy by you or your personnel;
- (e) a failure to comply with your obligations under this Agreement to effect and maintain insurance; and
- (f) any criminal act, fraudulent act or omission or wilful default by you or your personnel.

Insurance

32 You must (at your own cost) procure and maintain:

- (a) public liability insurance which provides an appropriate level of coverage based on the nature of the goods and services;
- (b) workers' compensation insurance in accordance with all applicable laws; and

Wyloo Purchase Order Terms & Conditions

(c) any other insurances specified in the Purchase Order or otherwise agreed by the parties from time to time.

33 If you are performing professional services, you must also procure and maintain professional indemnity insurance of not less than \$5 million for each claim and in the aggregate for all claims arising in the same insurance period, covering your liability for any professional services performed by you under this Agreement. The professional indemnity insurance must be maintained for 6 years after the end of this Agreement.

34 You must ensure that each subcontractor you engage in relation to the goods and services procures and maintains insurance policies in accordance with your obligations under clause 32 and (as applicable) clause 33.

35 Before supplying any goods or performing any services, you must provide us with certificates of currency to evidence the existence of the policies required to be arranged by you and your subcontractors. All costs incurred by us as a consequence of you (or your subcontractors) not being insured to the appropriate extent, will immediately become a debt due from you to us.

36 We may withhold payment to you of any tax invoice until the certificates of currency required under clause 35 have been received and confirmed in writing by us.

Suspension

37 We may suspend the supply of goods or the performance of services by giving written notice to you if such suspension is appropriate, as determined by us (acting reasonably), as a result of circumstances which are beyond our reasonable control. If any suspension continues for a period longer than 6 weeks, either party may terminate this Agreement by notice in writing to the other party without liability except for any rights or obligations which may have accrued prior to that date.

Termination

38 Either party may immediately terminate this Agreement by giving written notice to the other party if the other party: (a) breaches any term under this Agreement and such breach is not remedied within 7 days of written notice being given which requires the breach to be remedied; (b) becomes insolvent; or (c) has given a representation or warranty under this Agreement which is or has become untrue.

39 We may terminate this Agreement by giving 14 days' written notice to you without cause. If we exercise this right, we will reimburse you for all work in progress as at the date of termination, to the extent such work cannot be reassigned for the benefit of another customer and the costs associated with that work cannot be mitigated despite you using your best efforts to do so.

40 Unless expressly stated otherwise, termination for any reason does not affect the rights of a party that arise before termination, or as a consequence of the event or occurrence giving rise to the termination, and does not affect the rights a party may have under common law.

Intellectual Property

41 Nothing in this Agreement affects the ownership of a party's Intellectual Property which was created independently of this Agreement and are provided to the other party in relation to this Agreement (**Background IP**).

42 We own any Intellectual Property which is created under, as a result of or in connection with this Agreement (**New IP**).

43 You grant us a perpetual, worldwide, non-exclusive, royalty-free licence to use your Background IP for any purpose in connection with our business.

44 We grant you a worldwide, non-exclusive, royalty-free licence to us our Background IP and the New IP for the sole purpose of supplying the goods and performing the services pursuant to this Agreement.

Confidentiality

45 You must keep all of our Confidential Information strictly confidential and, unless required to do so by law, must not disclose such information to any third party.

46 Without limiting clause 45, you must not make any press release or announcement, or release any publication, which refers to us without our prior written approval.

47 If we request in writing (acting reasonably), you must promptly sign a confidentiality and non-disclosure agreement for our benefit in relation to our Confidential Information.

Modern slavery

48 You undertake and agree that:

(a) you have taken reasonable steps to identify, assess and address risks of Modern Slavery Practices in your operations and supply chains; and

(b) you are not aware of the use of any form of Modern Slavery Practices (either directly or through a third party supplier) in your operations and supply chains, or if you are aware of the use of Modern Slavery Practices, you have disclosed this to us in writing.

49 At our request, you must promptly provide information to us in relation to:

(a) the steps you have taken to identify and assess risks of Modern Slavery Practices in your operations and supply;

(b) your processes for addressing any Modern Slavery Practices of which you become aware in your operations and supply chains;

(c) the content and timing of training for any of your officers, employees, contractors (including subcontractors) or agents (**Personnel**) about Modern Slavery Practices; and

(d) your processes for handling complaints and grievances about Modern Slavery Practices which must be consistent with the criteria set out in the United Nations' *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy Framework (Guiding Principles on Business and Human Rights)* and be available to the Personnel (**Grievance Mechanism**).

50 If at any time you suspect or become aware of Modern Slavery Practices in your operations or supply chains, you must as soon as reasonably practicable:

(a) take all reasonable action to address or prevent these practices, including (where relevant) by addressing any practices of other entities in your supply chains;

(b) take all reasonable steps to remediate any adverse effects caused or contributed to by these Modern Slavery Practices, ensuring at all times that the welfare

Wyloo Purchase Order Terms & Conditions

of victims is prioritised in accordance with the Guiding Principles on Business and Human Rights; and

(c) immediately disclose to us the Modern Slavery Practices and the response taken in accordance with clauses 50(a) and 50(b).

- 51 Without limiting any other part of clauses 48 to 50, you must:
- (a) not require Personnel to pay fees, charges, expenses or financial obligations incurred in order for the Personnel to secure their employment or placement (**Recruitment Fees**), regardless of the manner, timing or location of the imposition or collection of these Recruitment Fees;
- (b) not destroy or exclusively possess, whether permanently or otherwise, the travel or identity documents of Personnel; and
- (c) ensure Personnel can access a Grievance Mechanism to safely report any instances of Modern Slavery in your operations and supply chains.

Anti-bribery and corruption

- 52 You must comply with all applicable laws relating to anti-bribery and corruption. You must maintain throughout the term of this Agreement policies and procedures to ensure compliance with such anti-bribery and corruption laws (which policies and procedures must be disclosed to us promptly on request) and must comply with such policies and procedures at all times.

Import duties

- 53 We may make applications for import duty concessions relating to items procured under this Agreement. You must provide whatever assistance and/or information (including import details) in a timely manner to assist in such applications as requested by us. If we succeed in applications, you may obtain duty funds as requested by us and must remit the proceeds to us. If concessions are obtained prior to the importation of goods, and you are able to import the goods duty free, including under an AusIndustry Determination, you must pay an amount equal to the customs duty savings to us.

Australian suppliers

- 54 We prefer (wherever possible) to provide local Australian suppliers with a full, fair and reasonable opportunity to supply equipment and materials. If equipment or materials are to be supplied by one of your suppliers or subcontractors, then you must satisfy the terms of this clause 54 in respect of the supply of such equipment or materials.

General

- 55 (**Entire agreement**) This Agreement constitutes the entire agreement between the parties.
- 56 (**Survival**) Clauses 21, 30 to 32, 41 to 43, 45 to 47 and 55 to 58, along with any other clauses which are expressed to (or which by their nature are intended to) survive the expiry or termination of this Agreement, survive the expiry or termination of this Agreement.
- 57 (**Governing law**) This Agreement is governed by the laws of Western Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.

(**Further assurances**) Each party must do all things and execute all documents necessary to give full effect to this Agreement.

Definitions

For the purposes of these Terms:

- (a) **Confidential Information** means all information, in any medium or form, which relates to a party and to which the other party gains access, and includes: (1) the existence and terms of this Agreement, (2) any information relating to that party's past, existing or future business, operations, plans, finances, personnel, counterparties or customers; and (3) in our case, any information relating to any of our related entities, shareholders or unitholders.
- (b) **Intellectual Property** means any and all present and future intellectual property rights of any nature anywhere in the world whether registered, registrable or otherwise, including copyright, trade marks, rights in relation to inventions (including patent rights), registered designs and circuit layouts.
- (c) **Modern Slavery Practices** means child labour, bonded labour, human trafficking, forced labour and other forms of modern slavery and slavery-like practices.
- (d) **Purchase Order** means the purchase order which sets out the goods or services (or both) which are to be supplied or performed by you.
- (e) **Terms** means these Purchase Order Terms & Conditions.
- (f) **We, us** and **our** refer to the party specified as the purchaser, customer or similar in the Purchase Order.
- (g) **You** and **your** refer to the party specified as the contractor, supplier, vendor or similar in the Purchase Order.