

ADVANCED PROCUREMENTS AND SUPPLIES – SUPPLIER TERMS AND CONDITIONS (2021)

1. DEFINITIONS

- 1.1. **APS** means Warbrook Enterprises Pty Ltd (ACN 159 673 015) as trustee for Warnock Family Trust trading as Advanced Procurement and Supplies (ABN 37 951 450 470).
- 1.2. **Business Day** means a day other than a Saturday, Sunday or gazetted public holiday in Western Australia.
- 1.3. **Contract** means the agreement between APS and the Supplier, which consists of these Terms and the Purchase Order.
- 1.4. **Customer Enquiry** means a written initial enquiry from APS regarding the potential purchase of Products, which sets out any Product Specifications and the Supply Timeframe that is required by APS.
- 1.5. **Delivery Costs** means the end to end costs incurred by the Supplier to deliver the Products from the Supplier to APS.
- 1.6. **GST** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 1.7. **Invoice** means a tax invoice issued by the Supplier to APS, which is compliant with *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 1.8. **Loss** means any claim, action, damage, loss, liability, cost, charge or expense.
- 1.9. **Products** means any and all products requested to be supplied by or supplied by the Supplier to APS, including any drawings, plans, manuals, instructions or fabrication reports, as required by APS.
- 1.10. **Product Specifications** means any physical, data, safety, technical, material or other characteristics or specifications of the Products which are required by APS.
- 1.11. **Purchase Order** means a purchase order for the Products, which shall include all Product Specifications and QA Documentation, at the Purchase Price.
- 1.12. **Purchase Price** means the net price payable by APS for the Products, which is inclusive of all Delivery Costs, taxes, duties, levies and all other expenses.
- 1.13. **QA Documentation** means any and all quality assurance document required by APS for the Products, including (but not limited to) any material certificates or approvals.
- 1.14. **Quote** means a quote issued by the Supplier which sets out the Purchase Price for the provision of the Products to APS in accordance with a Customer Enquiry or Variation Request and the Product Specifications contained therein, including the Supply Timeframe, and shall be inclusive of all Delivery Costs.
- 1.15. **Supplier** means the legal entity, as described in the Quote, which is providing the Products to APS.
- 1.16. **Supply Timeframe** means the timeframe in which the Products are to be supplied by the Supplier to APS.
- 1.17. **Terms** means these terms and conditions.
- 1.18. **Variation** means any variation or deviation from the Product Specifications or the Supply Timeframe which were set out in the Purchase Order.
- 1.19. **Variation Request** means a written request from APS which sets out the specifications of the Variation required by APS.
- 1.20. **Website** means <https://www.aps-group.com.au/> and any other website which APS may operate for its business from time to time.

2. ORDERS

- 2.1 Upon the receipt of a Customer Enquiry, the Supplier will issue APS with a compliant Quote within 5 Business Days.
- 2.2 Any Quote received by APS shall not be binding on APS.
- 2.3 APS may issue a Purchase Order to the Supplier.

- 2.4 APS may reject any Products received where no Purchase Order has been issued.
- 2.5 APS may issue further Purchase Orders for the purchase of additional Products.
- 2.6 If the Supplier does not expressly reject a Purchase Order in writing within 3 Business Days of receipt, then they are deemed to be bound by the Contract.
- 2.7 The Supplier acknowledges that APS' reference to a Quote, Invoice or other document which includes reference to the Supplier's terms and conditions, shall not be taken as acceptance of those terms and conditions.

3. PAYMENT

- 3.1 Subject to clause 7, all Invoices will be paid within 30 days of APS receiving and accepting the relevant Products and any and all QA Documentation.
- 3.2 Unless expressly excluded, the Purchase Price includes all GST which may be payable.
- 3.3 APS may at any time require the Supplier to provide additional records or information to verify the amount stated in an Invoice, and APS' payment obligation with respect to that Invoice shall be suspended until those records or information is received.
- 3.4 No interest shall be payable by APS for an Invoice which remains unpaid after the due date of payment for that Invoice.

4. INSPECTIONS AND SITE ACCESS

- 4.1 Subject to clause 4.2, if APS wishes to inspect, test or witness any test of the Products prior to their delivery, then APS may provide the Supplier with notice of their intention.
- 4.2 The Supplier may only refuse to provide APS with access to inspect, test or witness any test of the Products in the circumstances of an emergency, or if the inspection would occur outside the hours of 8am and 5pm (WST) on a Business Day.

5. VARIATIONS AND CANCELLATIONS

- 5.1 If APS requires a Variation to the Purchase Order, they may issue a Variation Request to the Supplier.
- 5.2 The Supplier must not commence any work towards the Variation or the fulfilment of the Variation Request, until APS has issued a Purchase Order for the Variation Request.
- 5.3 The Supplier must not complete any Variation, except in accordance with this clause 5.
- 5.4 If APS terminates the Contract, then APS is liable to pay the Supplier only its reasonable costs incurred in complying with the Contract up until the date APS issues written notice of the termination, which shall not exceed the Purchase Price.
- 5.5 Within 30 days of receipt of the written notice in clause 5.4, the Supplier must issue APS with an Invoice for the costs incurred under clause 5.4. Any Invoice issued outside of this time may not be accepted by APS for payment.

6. DELIVERY AND COLLECTION

- 6.1 Subject to clause 6.2, the Supplier will deliver the Products to APS at the address stated in the Purchase Order within the Supply Timeframe.
- 6.2 If APS gives the Supplier written notice that APS will collect the Products at APS' sole cost, then APS will not be liable to pay any amount towards the Delivery Cost and the Purchase Price will be adjusted accordingly.
- 6.3 At the time of delivery under clause 6.1 or collection of the Products under clause 6.2, the Supplier must provide APS with all

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- of the QA Documentation required by APS, with respect to the Products.
- 6.4 The Supplier shall be liable for any and all Loss suffered by APS as a result of any act or omission of the Supplier or any freight carrier used to deliver the Products to APS under clause 6.1, or any damage to the Products prior to their collection by APS in clause 6.2.
- 7. ACCEPTANCE, RISK AND TITLE**
- 7.1 The Supplier acknowledges and agrees that all risk in the Products remains with the Supplier until the Products have been received and accepted by APS under this clause 7.
- 7.2 All Products will be subject to a final inspection by APS prior to their acceptance.
- 7.3 APS reserves the right to reject any Products which do not meet the Product Specifications or are not fit for use, within 20 Business Days of the Products being delivered to or collected by APS.
- 7.4 Title in the Products shall pass to APS if not rejected within the timeframe contemplated in clause 7.3.
- 8. REJECTED PRODUCTS, REFUNDS AND REPAIRS**
- 8.1 If APS rejects a Product under clause 7, the Supplier must, at APS' sole discretion:
- provide APS with a full refund of the Purchase Price of the relevant Product, without any setoff or deduction, within 5 Business Days of receiving notice of the rejection;
 - replace or repair the Product within a timeframe set by APS, at no further cost to APS; or
 - provide APS with a credit for the sum of the Purchase Price of the relevant Product.
- 8.2 For the avoidance of doubt, the Supplier shall be solely liable in any costs incurred in returning a rejected Product from APS to the Supplier.
- 8.3 The Supplier agrees to provide APS with a full refund of the Purchase Price, without set-off or deduction, if a Product is returned within 10 Business Days of delivery to or collection by APS under clause 6, irrespective of if it meets the Product Specifications or not.
- 8.4 APS' right to obtain a refund or repairs is not limited to its rights under the *Competition and Consumer Act 2010* (Cth).
- 8.5 If the Supplier fails to repair the Product within the timeframe under clause 8.1.b., then APS may undertake the repairs and then issue the Supplier with the relevant invoice for the repairs, which shall be immediately due and payable to APS.
- 8.6 If a Product is identified as being defective outside of the period contemplated in clause 7, then the Supplier agrees to indemnify and will keep indemnified APS against any Loss suffered as a result of that defect or its rectification.
- 9. TERMINATION**
- 9.1 APS reserves the right to terminate the Contract on the occurrence of any of the following events:
- the Supplier breaching any term of the Contract;
 - the Supplier becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors, or becomes a bankrupt;
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Supplier or any asset of the Supplier; or
- the Products are not supplied to APS within 3 Business Days after the expiry of the Supply Timeframe.
- 9.2 APS will not be liable to the Supplier for any Loss suffered as a result of APS exercising its rights under this clause.
- 10. WARRANTIES AND LIABILITY**
- 10.1 The Supplier warrants and represents that the Products will:
- be supplied in accordance with all applicable laws, regulations, codes and standards;
 - comply with the Product Specifications;
 - be free from any defects;
 - be fit for purpose;
 - comply with any samples that the Supplier may have previously provided to APS;
 - be of new and merchantable quality;
 - be provided to APS free of any interests, liens, charges, encumbrances or any interests under the *Personal Property Securities Act 2009* (Cth)
- 10.2 The Supplier will be liable for, and indemnifies (and will keep indemnified) APS against, any and all Loss suffered:
- by APS for Products which are not supplied in accordance with the Product Specifications contained in the Purchase Order;
 - by APS or APS's customers, for any injury or death caused by a defective Product;
 - by APS' customers as a result of the delivery of the Products outside of the Supply Timeframe, where the delay is not caused by APS, either directly or indirectly;
 - any Variations which are performed by the Supplier, without APS' express written consent; or
 - a breach of any warranty, including those in this clause 10.
- 10.3 The rights and obligations under clause 8.6 and this clause 10 survive termination of the Contract.
- 11. INTELLECTUAL PROPERTY**
- 11.1 The Supplier acknowledges and agrees that it does not acquire any rights, including registered and unregistered intellectual property rights, in any of the Products which are designed or enhanced by or on behalf of APS.
- 11.2 With respect to the Products referred to in clause 11.1, the Supplier must not:
- register or apply to register any rights in respect of the intellectual property related to the Products; or
 - seek to reproduce the Products in any way.
- 11.3 The Supplier warrants that the provision of the Products to APS will not infringe on any intellectual property rights that any third party may have.
- 11.4 This clause 11 shall survive the expiry or termination of this Contract.
- 12. PRIVACY POLICY**
- 12.1 This clause 12 is a privacy policy for the purposes of the Australian Privacy Principles contained in Schedule 1 of the *Privacy Act 1988* (Cth) (Act). A full version of the Australian Privacy Principles can be found at the Office of the Australian Information Commissioner website – <http://www.oaic.gov.au/>.
- 12.2 With respect to the collection and use of information:
- APS only collects personal information that is necessary or directly related to its business functions or activities with its Suppliers;
 - examples of the personal information which APS collects may include, where applicable, the Supplier's:

- i. name;
 - ii. contact details (including mail, electronic mail and telephone details);
 - iii. date of birth;
 - iv. Australian Company Number and Australian Business Number;
 - v. payment information, including credit card or bank details; and
 - vi. any other information required by APS' business;
 - c. if APS receives personal information from the Supplier that it did not ask for, and that personal information is sensitive information or is not reasonably necessary for APS' functions or activities, APS will destroy or de-identify the information;
 - d. it is unlikely that APS will use the services of an overseas data centre, however if APS does store a Supplier's information in an overseas data centre, APS will inform its Suppliers prior to any storage of data overseas;
 - e. APS may disclose a Supplier's information to third parties outside of APS with express permission from the relevant Supplier, or if APS is required to do so by law;
 - f. APS may disclose the Supplier's information to third parties who work directly with APS, which for the avoidance of doubt, includes both customers and employees of APS;
 - g. APS will only use a Supplier's personal information for the purposes of:
 - i. obtaining the Products from the Supplier;
 - ii. the payment of monies;
 - iii. improving the services offered by APS;
 - iv. compliance with this Contract;
 - v. marketing the Products; and
 - vi. meeting legal requirements, including complying with court orders and valid subpoenas;
 - h. APS will store all emails, invoices, statements and correspondence, and endeavour to keep records of all verbal and written communications with Suppliers in order to have a history of all interactions between APS and each Supplier; and
 - i. in the event the Supplier wishes to amend the personal information held by APS, the Supplier may contact APS and advise of the requested amendment. APS will amend the information it holds within 10 Business Days.
- 12.3 The Supplier acknowledges that:
- a. the use of cookies and tracking technology on the Website:
 - i. may record information such as domain and host names, Internet protocol addresses, browser software and operating system types, click-stream patterns, and dates and times that they are accessed; and
 - ii. allows APS to improve its Website and the Supplier's browsing experiences;
 - b. APS may evaluate information that does not contain personal information for trend analysis;
 - c. it may be able to access other sites by clicking on links that APS has provided on any part of its Website. APS shall not be responsible for the privacy practices or the content of any of those linked websites;
 - d. every effort will be made by APS to ensure the security of Supplier's personal information to protect it from misuse, interference, loss or unauthorised access, and to ensure that Suppliers' personal information is complete and accurate. If a Supplier's data changes, then the Supplier is responsible for notifying APS of those changes so that Suppliers' information is up-to-date and accurate;
- e. when personal information is no longer needed, APS will take reasonable steps to ensure that the relevant Supplier's personal information is destroyed, de-identified, or both; and
- f. unless an exemption under the Act applies, APS will, at a Supplier's written request, provide that Supplier with a copy of any personal information APS holds regarding that Supplier. APS will advise the Supplier of any costs which may apply for this and obtain the Supplier's agreement to those costs before providing any information.
- 12.4 Any changes to this privacy policy will be posted to APS' Website, and will become effective as of the date APS posts those changes to its Website.
- 12.5 In order to access, correct or update its personal information, or to raise a question or concern or complaint regarding APS' collection and use of personal information, the Supplier may email APS at admin@aps-group.com.au.
- 12.6 For the purposes of any complaints regarding APS' collection or use of a Supplier's personal information (**Privacy Complaint**), the following applies:
- a. a Privacy Complaint must be made in writing, and sent in accordance with clause 12.5 above;
 - b. a Privacy Complaint should set out the type of personal information that is the subject of the Privacy Complaint, and details of the alleged improper collection or use;
 - c. within 5 Business Days of receiving a Privacy Complaint, APS shall respond to the Supplier acknowledging receipt of the Privacy Complaint, and advise of the contact details of the person responsible for reviewing the Privacy Complaint and an estimated substantive response time, which shall be no more than 20 business days of receipt of the Privacy Complaint;
 - d. the substantive response shall include information regarding how the Supplier may make a complaint to the Australian Information Commissioner, should the Supplier not be satisfied with APS' substantive response;
 - e. more information on complaints may be found at the website for the Office of the Australian Information Commissioner website – <http://www.oaic.gov.au/>.
- 12.7 If APS identifies reasonable grounds to believe that unauthorised access or disclosure of any Suppliers' personal information has occurred, or that Supplier's personal information has been lost and is at risk of being subject to unauthorised access or disclosure, then APS will notify the relevant Supplier in writing and provide a copy of its written statement to the Australian Information Commissioner. The following information shall be included in the written statement:
- a. a description of the possible data breach that may have occurred;
 - b. what kind of personal information has potentially been affected;
 - c. recommended steps the Supplier should take in order to protect themselves; and
 - d. if applicable, the details of the source of the data breach if APS has reasonable grounds to believe the data breach was constituted by a third party.

13 GENERAL

- 13.1 If any provision of this Contract shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 13.2 A party to this Contract includes the party's executors, administrators, successors and permitted transferees and assigns.
- 13.3 This Contract shall be governed by the laws of Western Australia and APS and the Supplier agree to submit to the exclusive jurisdiction of the courts of Western Australia.
- 13.4 The Supplier agrees that APS in its sole discretion may review these Terms at any time. If, following any such review, there is to be any change to these Terms, then that change will take effect 14 days from the date on which APS notifies the Supplier of such change. Should the Supplier not wish to accept any changes made by APS to these Terms, then they can terminate the Contract by notice in writing, upon which any amount paid towards the Purchase Price for Products that have not been received by APS shall be refunded to APS.
- 13.5 APS will have full right to set-off any amount owed by the Supplier against any amount that APS may from time to time owe the Supplier.
- 13.6 The failure by APS to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect APS' right to subsequently enforce that provision.
- 13.7 If the Supplier enters into this Contract as a trustee, then:
- a. the Supplier is liable under this Contract both in its capacity as trustee and in its personal capacity; and
 - b. the Supplier warrants that it has the authority, right and power to enter into this Contract.
- 13.8 The Supplier must not subcontract or assign any of its obligations or rights under this Contract, except with APS' written consent.
- 13.9 This Contract is the entire agreement between the parties in respect of its subject matter and supersedes all prior and contemporaneous understandings and agreements relating to its subject matter.