

Purchase Order Terms and Conditions

1 Definitions

In these terms and conditions:

- (a) **'Cromwell'** means the entity specified in the top left corner of the front page of this Purchase Order.
- (b) **'Contractor'** means the person, company or entity named as addressee in this Purchase Order who is bound to supply or deliver the Services the subject of the Purchase Order.
- (c) **'Maximum Amount'** means the maximum amount the Contractor is authorised to incur under this Purchase Order, as shown on the form comprising the front page of the Purchase Order.
- (d) **'Purchase Order'** means the order for supply of Services to Cromwell by the Contractor to the Maximum Amount.
- (e) **'Services'** means the goods or services to be supplied, delivered or performed by the Contractor under this Purchase Order.
- (f) **'Site'** means the site at the address shown on the front page of this Purchase Order to which the Services must be supplied, delivered or performed.

2 Purchase order

- (a) These terms and conditions apply to, and form part of, the Purchase Order. If there is any inconsistency between the front page of the Purchase Order and these terms and conditions, the front page prevails to the extent of the inconsistency.
- (b) This Purchase Order is subject to any existing contract between Cromwell and the Contractor for the procurement of the Services, and to the extent of any inconsistency the existing contract prevails. The Purchase Order (including these terms and conditions) otherwise constitutes the entire agreement between Cromwell and the Contractor in respect of the Services, and any warranty, representation or statements by any employee or agent of Cromwell that is not expressly set out in this Purchase Order will not be binding on Cromwell.
- (c) Any reference by the Contractor to the Contractor's own or any other terms and conditions presented by the Contractor in connection with the Purchase Order or the Services will have no effect on the Purchase Order.

3 Revisions

- (a) The Contractor must promptly notify Cromwell if it becomes aware of any errors, omissions or discrepancies in this Purchase Order.
- (b) Cromwell reserves the right at any time to correct any errors, omissions or discrepancies in the Purchase Order, or make any changes to it (including in respect of specifications, quantity and delivery). Cromwell must notify the Contractor of any such changes.

4 Delivery, title and risk

- (a) The Contractor must supply, deliver or perform the Services:
 - (i) using the mode, on the date and at the place specified in the Purchase Order or, if no such mode, date or place is specified, in the manner reasonably directed in writing by Cromwell, its employees or agents; and
 - (ii) in accordance with all laws and regulations, the requirements of all authorities and in accordance with industry best practice.
- (b) The Contractor must comply with Cromwell's reasonable requirements prior to and when attending the Site, including:
 - (i) completing the online induction through *myBuildings*
 - (ii) checking in and checking out via the *myBuildings* app; and
 - (iii) completing permits and JSAs / safe work method statements where applicable.
 - (iv) ensuring any keys required are signed out and returned prior to leaving site
- (c) Title to and property in the Services will pass to Cromwell on the first to occur of:
 - (i) payment of any part of the Purchase Order price, fees, expenses or costs; or
 - (ii) delivery to the place referred to in clause 4(a).The Contractor must not claim or effect any charge, security or retention of title over Cromwell or its Affiliates (as defined in the *Corporations Act 2001* (Cth)) or any of their assets.
- (d) Any Services comprising goods which are not yet delivered to Cromwell must be appropriately marked and identified as the property of Cromwell.
- (e) Risk in any Services comprising goods will remain with the Contractor until Cromwell has inspected, accepted and taken delivery of them, unless otherwise expressly stated in the Purchase Order. The Contractor must take out appropriate insurance to cover the Services (and Cromwell's interest in them), and provide Cromwell with evidence of that insurance on request.
- (f) Any loss or damage to any Services comprising goods when under the Contractor's risk will be rectified at the Contractor's own cost.
- (g) Any loss or damage to any Services comprising goods after risk in the goods has transferred to Cromwell will be rectified at the Contractor's own cost to the extent caused by the Contractor's negligence, wilful act, misconduct, fault, breach of duty or breach of the Purchase Order.

5 Fees and payment

- (a) Unless otherwise stated, the Maximum Amount includes GST and is not subject to variation or escalation except as otherwise provided for in this Purchase Order.
- (b) To request payment, the Contractor must submit a valid GST invoice to Cromwell which contains:
 - (i) Cromwell's ABN and address (as shown on the front page of the Purchase Order);
 - (ii) the number of this Purchase Order;
 - (iii) description of the Services;
 - (iv) details the amount for payment, which, when taken with all previous invoices issued under the Purchase Order, must not exceed the Maximum Amount; and

(v) otherwise includes all documents and meets the requirements of Cromwell as notified to the Contractor.

- (c) The due date for payment of the Contractor's invoice is 30 days from its receipt by Cromwell, and if that day is a Saturday, Sunday or public holiday in Queensland, payment will be made on the next business day.

6 Warranties

- (a) To the extent the Services comprise goods, the Contractor warrants such goods are new (unless otherwise specified), free from defects, conform to all legally applicable standards, are installed correctly and are of merchantable quality and fit for purpose.
- (b) To the extent the Services comprise the provision of services, the Contractor warrants that the services will be provided by suitably trained employees with due care, skill and attention and in accordance with current industry standards, will be performed in a manner to achieve the purpose for which the Services are required, and will conform to all legally applicable standards.
- (c) The Contractor warrants and represents that it has valid policies of insurance appropriate to the Services being delivered to Cromwell which covers public liability, workers' compensation and (if appropriate) professional indemnity, motor vehicle and construction plant insurance.
- (d) The Contractor warrants that it has had genuine opportunity to negotiate these terms and conditions and obtain legal advice.
- (e) The parties warrant that each has the power and authority to enter into this Purchase Order, and that it constitutes legally binding obligations between them.
- (f) The Contractor warrants that it will comply with Cromwell's supplier code of conduct as amended from time to time.
- (g) Where Cromwell acts as trustee/responsible entity (as specified on the front page of this Purchase Order), the Contractor acknowledges and accepts that Cromwell's liability is limited to the extent the trustee/responsible entity is able to recover from the property of the relevant Trust, and Contractor may not claim against Cromwell in its personal capacity.

7 Termination and suspension

- (a) Subject to clause 7(b), Cromwell may cancel the Purchase Order (or any part of it) at any time, but must pay for any Services already supplied to Cromwell, or materials manufactured and supplied in accordance with the Purchase Order up to the date of termination and for costs of materials and other items ordered in connection with the Services for which the Contractor is legally bound to pay.
- (b) If the Contractor fails to deliver the Services, or perform them in the time specified in the Purchase Order, delivers non-conforming Services, is in breach of any other material term of this Purchase Order or becomes bankrupt (if the Contractor is an individual) or has a receiver, manager, administrator or liquidator appointed (if the Contractor is a corporation), Cromwell can terminate this Purchase Order in whole or part on written notice to the Contractor, and without prejudice to any other rights and remedies it has under the Purchase Order or under general law.
- (c) Cromwell may suspend all or part of the Services at any time for any period by notice in writing to the Contractor. The Contractor must comply with the notice and recommence supply when notified by Cromwell. Other than as specified in this Purchase Order, the Contractor will not be entitled to any additional payment arising as a result of the suspension.

8 Indemnity and consequential loss

- (a) Neither party will be liable to the other for any consequential loss (including economic loss, loss of contract, business opportunity, profit or anticipated profit) under any circumstances.
- (b) Subject to law, the aggregate liability of Cromwell arising out of or in connection with this Purchase Order will not exceed the fees actually paid by Cromwell during the 24 months prior to the time such loss, cost, claim or damage arose.
- (c) The Contractor indemnifies Cromwell against all loss, damage or expense arising in respect of any action or claim or alleged infringement of any patent, copyright, registered design, trademark or any other intellectual property rights, by reason of use or delivery of the Services.

9 General

- (a) Each party will retain in confidence the existence and terms of this Purchase Order, and neither may use the name/logo of the other party in publicity or on its website, unless the other party consents in writing.
- (b) No amendment or variation will be effective unless it is in writing and signed by each party.
- (c) Any waiver of any provision herein shall not be effective unless given in writing.
- (d) The Contractor must not assign or sub-contract any rights or obligations under this Purchase Order without the prior written consent of Cromwell, which can be given or withheld at its sole discretion.
- (e) This Purchase Order is governed by the laws of Queensland, or if the Site is not located in Queensland then the laws of the State/ Territory in which the Site is located. Each party submits to the non-exclusive jurisdiction of the courts of that State/Territory.
- (f) Any provision of this Purchase Order that is unenforceable will be deemed ineffective to the extent of such unenforceability, and will not invalidate the remaining provisions.
- (g) Any notices required to be given under or in connection with this Purchase Order must be delivered and addressed to the party at the address shown on the front page of this Purchase Order, specifying a contact name where possible.