



# Purchase Order Terms and Conditions

(1) **APPLICATION OF TERMS AND CONDITIONS.** These terms and conditions form the Purchase Order governing the rights and obligations of the Supplier and McConnell Dowell and constitute the entire agreement between the parties in respect of the Goods and this Purchase Order supersedes all previous agreements, undertakings and communications, whether written or oral, relating to the subject matter of the Purchase Order. For the avoidance of doubt, this Purchase Order applies to the supply of the Goods to the exclusion of any other terms and conditions including any qualification or exclusion made in the Supplier's quotation, and in the event of any inconsistency, ambiguity or discrepancy the General Terms and Conditions of this Purchase Order shall take precedence. Any acknowledgement, work, shipment, delivery or execution by the Supplier following the issue of this Purchase Order shall constitute complete acceptance by the Supplier of the entire Purchase Order.

(2) **PRICE.** The unit prices and values indicated on the Purchase Order include: the cost of delivery to the address or Site stated in the Delivery Instructions in this Purchase Order and any insurance, duty, taxes and packing costs and any other cost or expense associated with the manufacturing, storage, delivering and/or transporting, loading and unloading and any other thing necessary, inherent or incidental to the supply of the Goods. Unless otherwise expressly provided in the Purchase Order, the price of the Goods is fixed and firm and is not subject to any escalation or adjustment whatsoever.

(3) **TIME.** Time is of the essence, so if the Supplier fails to supply the Goods by the Delivery Date (which date may be extended at the absolute discretion of McConnell Dowell acting reasonably) or, if no Delivery Date or other time is specified, supply the Goods within a reasonable time, McConnell Dowell may terminate this Purchase Order forthwith without incurring cancellation or any other charges. Alternatively, McConnell Dowell may elect to accept late supply and deduct from the Price the amount or estimated amount of any costs, losses or liabilities reasonably incurred or likely to be incurred by McConnell Dowell as a result of late supply or delivery.

(4) **RISK AND TITLE.** Title in any of the Goods passes to McConnell Dowell upon delivery to or payment by McConnell Dowell, whichever is earlier. Risk in the Goods transfers upon delivery to Site but McConnell Dowell may at any time reject and/or return any Goods which are not in accordance with the Purchase Order. The Supplier undertakes not to create any security interest or lien over any of McConnell Dowell personal property whatsoever (other than security interests granted in favour of McConnell Dowell).

(5) **SUPPLIER'S WARRANTIES.** The Supplier warrants to McConnell Dowell that all Goods will:

- (save where otherwise expressly stated in the Purchase Order) be the best of their described kinds;
- be in exact conformity with any relevant Specifications, Vendor Data, sample or other contractual description;
- be new, complete, in full working order and free from defects, errors and omissions in design, materials and workmanship;
- be of acceptable quality and fit for any purpose held out by the Supplier or made known to the Supplier at the time the Purchase Order is placed (including that they will function and operate satisfactorily in the environmental and climatic conditions to which they are to be exposed (including altitude and operational conditions such as exposure to dust, atmospheric corrosion, corrosive chemicals and fluids and rough handling)); and
- comply with all statutory requirements, codes, standards and regulations of the countries in which the Goods are to be manufactured, installed, executed, packaged, packed, delivered, sold, used or operated.

(6) **INSURANCE.** The Supplier shall at its own expense, keep in force during the entire period of performance of the Purchase Order, the following insurances:

- unless otherwise agreed, comprehensive public and products liability insurance for an aggregate amount not less than AUD\$10million (or equivalent), to cover bodily injury or death and damage to property in respect of claims by third parties (with no limit on the number of claims during the period of insurance) with a combined single limit of liability to a value acceptable to McConnell Dowell per occurrence;
- (AUST ONLY) - worker's compensation insurance in accordance with the provisions of any applicable laws and employer's liability insurance at general law providing coverage to cover all workmen from time to time engaged by it and where permitted by law, the workers compensation shall contain an indemnity section in favour of McConnell Dowell;
- (where a motor vehicle is used in providing the Goods) statutory Third Party insurance covering Supplier's motor vehicles; and
- transit insurance.

The Supplier must provide to McConnell Dowell a certificate of currency confirming insurance cover in accordance with this Purchase Order whenever requested to do so by McConnell Dowell.

(7) **INDEMNITY.** The Supplier hereby indemnifies and keeps indemnified McConnell Dowell from and against all claims, liabilities, loss, damages, costs, expenses (including legal expenses on an indemnity basis), fines and penalties awarded against or paid, suffered or incurred by McConnell Dowell as a result of:

- loss of or damage to the property of any person, and any existing property in upon or adjacent to the Site;
- if applicable, claims by any person, including workers compensation claims in respect of personal injury or death of any person;
- any breach of contract or negligent or wilful act or omission of the Supplier, its employees, agents or subcontractors; or
- infringement of any intellectual property rights of any third party, arising out of or in connection with the supply of the Goods and this Purchase Order provided always that the Supplier will not be liable for any such claims, liabilities, loss, damages, costs and expenses to the extent that they are caused or contributed to by the negligent act or omission, or breach of contract by McConnell Dowell.

(8) **SUSPENSION.** McConnell Dowell shall be entitled at any time to suspend wholly or in part performance of the supply of the Goods by giving notice in writing to the Supplier. Upon receipt of such a notice, the Supplier must immediately cease to incur expenses in respect of this Purchase Order or the part of it in relation to which performance has been suspended.

The Supplier must take all steps to mitigate the costs of such suspension and must immediately resume performance of the Purchase Order upon notice in writing from McConnell Dowell to the Supplier to do so.

The Delivery Date may be extended by the period of the delay that McConnell Dowell acting reasonably considers that, notwithstanding due diligence and the taking of all reasonable steps in mitigation by the Supplier, is the unavoidable result of the suspension. The Supplier shall not be entitled to any additional payment or any adjustment to the Price arising from any such

suspension unless such suspension was caused by the negligence or wilful misconduct of McConnell Dowell, in which case the Supplier shall be entitled to be reimbursed its reasonable costs directly attributable to the suspension.

(9) **TERMINATION** McConnell Dowell shall be entitled, at any time prior to the date when all Goods have been supplied to terminate forthwith the Purchase Order in respect of all or any part of the Goods by giving notice in writing to the Supplier. The Supplier shall within 7 days of receiving a termination notice advise McConnell Dowell in writing of its direct costs incurred by the Supplier as a result of the termination. Provided the Supplier has complied with this clause 9, it will be entitled to its reasonable direct costs incurred as a result of the termination, unless and to the extent the termination was caused or contributed to by an act or omission of the Supplier or its personnel.

McConnell Dowell's sole liability, subject to McConnell Dowell's right to set off, will be to make payment (or allow as credit) to the Supplier the unpaid value of the Goods delivered to McConnell Dowell to the date of the notice and any other amounts due to the Supplier in accordance with the terms of this Purchase Order. On payment by McConnell Dowell for any Goods, any property in any Goods that has not already passed to McConnell Dowell, shall then pass to McConnell Dowell. The Supplier shall not be entitled to any payment for any Goods unless they are in all respects in accordance with the Purchase Order and the Supplier can demonstrate that they are in a position to pass good title to McConnell Dowell. The Supplier shall not be entitled to any loss of profit or any other compensation whatsoever in respect of termination of the whole or part of the Purchase Order under this clause. Nothing in this clause 9 derogates from either party's right to terminate the Purchase Order at common law.

(10) **ASSIGNMENT OR SUBLETTING.** The Supplier may not assign or sub-let the performance of the Purchase Order (or any part thereof) without McConnell Dowell's prior written consent. McConnell Dowell may freely assign or novate all its rights and obligations under the Purchase Order at any time upon written notice to the Supplier. The Supplier hereby irrevocably consents to any such assignment or novation in the form required by McConnell Dowell.

(11) **AMENDMENTS.** Except as provided at law or in equity or elsewhere in the Purchase Order, none of the terms of the Purchase Order shall be varied, waived, discharged or released except with the written consent of the parties.

(12) **LIEN.** The Supplier hereby waives any and all rights of lien against any of the Goods or any work of which the Goods form part or the Site (or part thereof) to the fullest extent consistent with the law. The Supplier shall indemnify McConnell Dowell against costs, losses or damages whatsoever, that McConnell Dowell may suffer as a result of the registration or proposed registration, of such lien including in respect of any action McConnell Dowell may take to have a lien removed.

(13) **SURVIVAL OF TERMS.** The termination or cessation otherwise of the Purchase Order howsoever caused shall be without prejudice to any obligations or rights of either party which have accrued prior to such termination or cessation and shall not affect any provision of the Purchase Order which is expressly or by implication provided to come into effect on or to continue in effect after such termination or cessation including but not limited to all indemnities given in this Purchase Order.

(14) **TERMS OF PAYMENT.** Subject to the terms of the Purchase Order, the Supplier may invoice McConnell Dowell for the Goods after the Goods are delivered to the Site or other location identified on the Purchase Order and McConnell Dowell will pay the amount it reasonably considers to be due, less any set off or deduction for any sum due from the Supplier to McConnell Dowell forty-five (45) days from the end of the month in which a valid tax invoice for the Goods is received from the Supplier by McConnell Dowell, provided that all other terms of the Purchase Order have been complied with.

(15) **VARIATIONS.** The Supplier may not vary the Goods to be supplied except upon McConnell Dowell's written direction, including by the issuance of a new Purchase Order. McConnell Dowell may at any time direct variations, including omissions or additions to the Goods, and the Supplier shall promptly comply with such direction. The Supplier will be entitled to its reasonable direct costs of complying with a direction, unless and to the extent, the variation was directed due to (wholly or in part) an act or omission of the Supplier or its personnel.

The Supplier may at any time before the Delivery Date submit a request in writing to McConnell Dowell for a variation, supported by full particulars of the impact (if any) of the requested variation on the Delivery Date and price. McConnell Dowell must respond in writing to the Supplier's variation request within a reasonable time by either:

- declining the request, with reasons; or
- directing a variation.

No variation shall vitiate the Purchase Order.

(16) **OCCUPATIONAL HEALTH AND SAFETY.** The Supplier must place the highest importance and priority on safety, occupational health and protection of the environment during the performance of the Purchase Order. To the extent possible, the Supplier must prevent any hazardous, unsafe, unhealthy or environmentally unsound condition or activity ("**Prohibited Activity**") from taking place. If the Supplier becomes aware of any Prohibited Activity, it must promptly take all necessary steps (including engaging a competent person) to abate or eliminate that Prohibited Activity. Where any Prohibited Activity occurs, McConnell Dowell may serve a notice on the Supplier requiring the Supplier to stop work and to take whatever steps are necessary to abate or eliminate such condition or activity within the time stipulated in the notice. If the Supplier does not comply with such notice, McConnell Dowell may itself or by its contractors or agents do the same at the cost of the Supplier.

(17) **CONFIDENTIALITY AND MEDIA.** In this Clause, "**Confidential Information**" shall mean this Purchase Order and any information disclosed to or obtained by the Supplier at any time prior to the issue of the Purchase Order, including information which relates to McConnell Dowell's past, present or future business and activities, or those of McConnell Dowell's Client. This clause 17 shall not apply to Confidential Information that is or becomes publicly available without breach of the Purchase Order or other legal obligations by the Supplier or is released for disclosure with the prior written consent of McConnell Dowell.

The Supplier undertakes not to divulge or communicate to any person, firm or company any Confidential Information (including but not limited to in any marketing, advertising or social media) without the prior written consent of McConnell Dowell except to employees, agents or subcontractors or Suppliers who are engaged in the performance of the Purchase Order. The Supplier shall take all reasonable precautions in dealing with any Confidential Information so as to prevent any unauthorised person from having access to such Confidential Information. If so required by McConnell Dowell, the Supplier shall simultaneously with delivery of the Goods, at its own expense, deliver up to McConnell Dowell all documents, papers and property containing any Confidential Information which may be in the possession or under the control of the Supplier, its



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employees, agents or Sub-Suppliers. The Supplier shall refer to McConnell Dowell any enquiries from any media concerning the project.

**(18) APPLICABLE LAW.** The Supplier and McConnell Dowell agree to comply with the provisions of all statutes, regulations and by laws of government, local and other public authorities that may be applicable to the supply of the Goods.

**(19) MODERN SLAVERY** The Supplier must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Goods and/or Services. If at any time the Supplier becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of the Contract, the Supplier must as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains.