

IPG CONTRACTOR PURCHASE ORDER TERMS & CONDITIONS



Date – As per Purchase Order

1. Definitions

IPG means the IPG entity named in the Purchaser Order its authorised agents, employees, heirs and successors.

Consequential Loss means loss or damage arising from a breach of contract, in tort (including negligence), in law, in equity or under statute, including without limitation; loss of use, loss of profit, loss of production, loss of business, loss of opportunity, loss of chance, loss of goodwill, loss of business reputation, loss of access to markets or market share and liabilities to third parties.

Defective means Services [or any aspect of them] which are not in accordance with the Purchase Order or which are not to the standard required by these terms and conditions.

Delivery Address means the address described on the Purchase Order.

Delivery Date means the delivery date specified on the Purchase Order.

Goods means the goods, if any, described on the Purchase Order in the Item Description.

"GST", "GST law" and other terms used in clause 15 have the meanings given to them by the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time).

Law means:

- (a) Commonwealth, State and local government legislation including regulations, bylaws, orders, awards and proclamations;
- (b) common law and equity;
- (c) Authority requirements and consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals); and
- (d) guidelines of Authorities with which the Contractor is legally required to comply.

Purchase Order means the purchase order for the Services issued by IPG to the Contractor.

Price means the price set out in the Purchase Order for the services and includes all of the Contractor's tools and equipment required to provide the Services.

Contractor means the party named and described as the Contractor in the Purchase Order.

Services means the services, described in the Purchase Order.

Site means the Delivery Address, IPG's premises or any other location where IPG requires the Contractor to provide the Services.

Warranty Period means 12 months from the date on which the Services are performed.

2. Supply of Services

2.1 In consideration of payment of the Price by IPG, the Contractor must perform the Services in accordance with the Purchase Order, Project Specifications, Working Drawings and all applicable Australian Standards.

2.2 To the extent the Contractor's terms and conditions are supplied with the Services (including as printed on consignment notes or other documents), those terms and conditions will be of no legal effect and will not constitute part of this Purchase Order (even if any representative of IPG signs those terms and conditions or annexes the terms and conditions to this Purchase Order).

2.3 The parties' relationship is one of principal and independent contractor and:

- not employer and employee;
- not principal and agent or partnership;
- no contractual relations will arise between any of the Contractor's employees, agents or subcontractors and IPG as a result of IPG engaging the Contractor pursuant to the Purchase Order;
- and the Contractor does not have the right or authority to act on behalf of or bind IPG unless the Contractor has been expressly authorised by IPG in writing;
- By agreeing to provide the Services, the Contractor will remain at liberty to carry out work for other parties

2.4 The Services are provided for the work specified in the Purchase Order and are limited to the particular job mentioned therein. Subject to these terms and conditions, IPG has no liability to pay for the Services until the particular task described in the Purchase Order has been completed.

2.5 The Contractor agrees to use due care, skill and attention to detail in the provision of the Services and to carry out all of the work in a workmanlike manner in accordance with industry standards for the trade applicable to the services.

3. Delivery

3.1 The Contractor must perform the Services at the Delivery Address and carry out all of the Services by the Delivery Date.

3.2 If the Contractor fails to deliver the Services IPG may terminate the Contract at any time by notice in writing.

4. Time for Performance

4.1 The Contractor must carry out all of the Services in accordance with the terms of this Purchase Order by the Delivery Date. If the Contractor does not supply all of the Services by the Delivery Date, IPG, in addition to all other rights and remedies available to IPG, may set off against the Price, any additional costs incurred by IPG (with the exception of those costs excluded under clause 11) as a consequence of the Contractor's failure to carry out the Services by the Delivery Date or in accordance with terms of the Purchase Order.

5. Confidential Information

5.1 The Contractor must keep all IPG's intellectual property relating to its business, confidential and use such information only for the purposes of providing the Services pursuant to the Purchase Order.

5.2 This confidentiality obligation, continues in effect after the Services have been provided and/or termination of the Purchase Order.

6. Price

6.1 IPG must pay the Contractor the Price for the Services.

6.2 The Price is inclusive of all costs incurred by the Contractor in the performance of the Services including all tools of trade, equipment, charges for taxes, packing, insurance and delivery of any goods and the cost of any items used or supplied in the performance of the Services.

6.3 The Price is inclusive of all taxes and duties, except GST.

6.4 IPG will pay for the Services when the whole of the Services have been provided in accordance with the Purchase Order and these terms and conditions.

6.5 Payment shall not constitute an acceptance by IPG that the Services are not Defective and shall not in any way effect IPG's rights under the Purchase Order and these terms and conditions.

7. Quality Control

7.1 The Services provided must be as specified in the Purchase Order.

7.2 The Contractor agrees to use due care, skill and attention to detail in the provision of the Services and to carry out all of the work in a workmanlike manner in accordance with industry standards for the trade applicable to the services.

7.3 All Services provided by the Contractor must be undertaken by persons who are appropriately licensed, qualified and/or trained to provide those Services.

7.4 If the Services are Defective or otherwise do not comply with the Purchase order and these terms and conditions, the Contractor must, if requested by IPG, re-perform the Services at the Contractor's cost and IPG may terminate the Purchase Order at no cost to IPG.

7.5 **ITPO (Inspection, Test & Quality Control Plans):** IPG requires the Contractor to complete ITPO's at the completion of all work at any location including outside of IPG premises. Completed ITPO forms must be submitted to IPG before any payments required under Clause 6 can be processed.

8. Warranty Period & Defects

8.1 If, during the Warranty Period, any of the Services are found to be Defective, IPG may:

- (a) decline to accept the Services at the Contractor's cost;
- (b) reject the Services;
- (c) repair or make good the Services; or
- (d) re-perform or make good the Services.

8.2 The Contractor must:

- (a) repair or replace any defective goods provided as part of the Services;
- (b) re-perform or make good the Services; or
- (c) reimburse IPG for any expenses incurred in repairing, re-performing or making good (as the case may be);
- (d) undertake any part of the Services at the Contractor's cost, if requested to do so by IPG.

8.3 The Contractor must pay for any damages caused by any act or omission of the Contractor to property on or near the company sites and any personal injury to any person in the course of or arising out of the Contractor's performance of the Services

8.4 The Contractor must assign the benefits of any warranties provided by manufacturers of any goods and materials and other components which are used in the performance of the Services where IPG will ultimately take ownership of those goods, materials or components.

8. IPG will attempt at all times to provide a single punch list of defects for the Contractor's attention and rectification.

9. Indemnities

9.1 The Contractor must indemnify IPG and agrees to hold IPG harmless from all claims for:

- (a) injury to or death of any of the Contractor's employees, agents, suppliers or subcontractors, except to the extent that the injury or death was caused solely as a result of the negligence of IPG or a breach of the Purchase Order by IPG;
- (b) damage to or destruction of any property belonging to the Contractor or in the Contractor's possession or under the Contractor's control except to the extent the claim for such damage or destruction arises solely as a result of IPG's negligence or breach of the Purchase Order by IPG;
- (c) injury to or death of any person (including employees, agents, suppliers or subcontractors of IPG) or damage to or destruction of any property (including property of IPG, its agents, employees, suppliers or subcontractors) caused by any act or omission by the Contractor or the Contractor's employees, agents, suppliers or subcontractors; and
- (d) failure by the Contractor to comply with any Law and the payment of any taxes required at Law or in accordance with these Purchase Order or these terms and conditions.

10. Insurance

10.1 The Contractor must obtain and maintain the following insurances:

- (a) Materials, plant and equipment insurance, including all constructional plant and equipment, the Goods to be supplied for not less than full replacement value;
- (b) Transit (all risk) insurance covering transit, loading and unloading of Goods for not less than full replacement value;
- (c) If the Contractor is a company or if the Contractor is a sole trader and employs others to carry out the Services or any part of the Services, workers compensation and employer's liability insurance, covering all claims and liabilities in respect of any statutory or common law liability for the death, injury or illness of or to any person employed by (or deemed to be employed by), the Contractor;
- (d) Public and products liability insurance for an amount not less than \$5,000,000 any one occurrence (and in the annual aggregate in respect of products liability insurance) if the Contractor is supplying Goods; and
- (e) any other insurance which is required by law for the time being in force in the State of Western Australia.

11. Consequential Loss

11.1 Despite any other provision in this Purchase Order, neither party is liable for any Consequential Loss suffered by the other party unless otherwise stated in a contract or agreement.

12. Jurisdiction

12.1 The Purchase Order shall be governed by and construed with reference to the laws of the State of Western Australia.

12.2 The parties submit to the exclusive jurisdiction of the Western Australian Courts.

13. Dispute Resolution

13.1 If a dispute or difference arises between IPG and the Contractor in respect of any fact, act, matter or thing arising out of or in any way connected with the Purchase Order and one party 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.

13.2 Within 14 days of a party receiving a notice referred to in clause 13.1, IPG and the Contractor and/or their delegates must meet and attempt to resolve the dispute in good faith.

13.3 If, within 14 days of the meeting referred to in clause 13.2, the dispute is still not resolved, then, either party may proceed to litigation.

14. Cancellation/Termination

14.1 IPG may cancel all or any portion of a Purchase Order at any time by giving notice to the Contractor. In the event of cancellation, IPG will only be liable for the cancellation of any custom-made goods for which IPG does not take delivery.

14.2 IPG's liability for such goods shall be the lesser of:

- (a) the Contractor's actual price for raw materials, components, work in progress and any finished units on hand at the time of such cancellation that are attributable to the cancelled portion of the Purchase Order; or
- (b) the Price per finished unit, after giving effect to any discount IPG would otherwise be entitled to, for the cancelled portion of the Purchase Order.

14.3 IPG's liability for cancellation of services shall be the lesser of:

- (a) the Contractor's actual cost of the Services rendered prior to termination; or
- (b) the Price for the Services cancelled. If any hourly or other time-based rate for the Services is specified in the Purchase Order, such rate will be used in determining the Contractor's actual costs. In no case shall IPG be liable for the Contractor's lost profits as a result of such cancellation.

14.4 Upon receipt of a cancellation notice, the Contractor will, unless otherwise directed, cease work and follow IPG's directions as to disposal of work in progress and finished goods.

14.5 The rights set out in this clause comprise the Contractor's sole entitlements upon cancellation of the Purchase Order. The Contractor releases IPG from any and all other claims.

14.6 The Purchase Order may also be terminated by IPG at any time immediately upon written notice in the event of the Contractor's material breach of any term or provision of the Purchase Order. If the Purchase Order is terminated for the Contractor's default, IPG may have the Contractor's obligations performed by another party. The Contractor shall be responsible for, and shall indemnify IPG against, any damages, costs (including, without limitation, legal fees on a solicitor own client basis), losses and expenses, incurred by IPG as a result of the breach.

15. Goods and Services Tax (GST)

15.1 Unless otherwise stated, the Price or any other amounts payable by IPG to the Contractor, is exclusive of GST.

15.2 If a Supply under this agreement is subject to GST, IPG will pay to the Contractor an additional amount equal to the amount of the Price multiplied by the prevailing GST rate.

15.3 The additional amount under clause 15.2 is payable at the same time as the amount payable for the Supply is to be paid. However, the GST need not be paid until the Contractor provides a Tax Invoice to IPG.

15.4 If the amount of GST payable in accordance with clause 15.3 is found to differ from the amount paid in relation to a Supply:

- (a) the amount of GST paid is more than is required under the GST law the Contractor shall refund the excess amount to IPG;
- (b) the amount of GST paid is less than is required under the GST law, IPG shall pay the Contractor the difference.

15.5 For the purposes of calculating further variations under clause 15.4, any additional amount referred to in clause 15.2 is taken to be amended by the amount of any earlier variation made under clause 15.4.

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- 15.6 If either IPG or the Contractor is entitled to be reimbursed or indemnified under this Purchase Order, the amount to be reimbursed or indemnified by either party is to be the GST exclusive amount. For the avoidance of doubt, the amount of any reimbursement does not include any amount attributable to GST for which either IPG or the Contractor is entitled to an Input Tax Credit.
- 16. Health & Safety, Environment & Quality Management Systems**
- 16.1 The Contractor agrees to abide by the requirements of IPG's HSEQ systems throughout the course of the supply of goods or services to IPG. IPG will manage the Contractor in accordance with our IPG-2000-G01-203-0002 Managing Vendors in Syrinx and Tall Emu Procedure.
- 16.2 The Contractor agrees to complete Inductions as required by the HSEQ Management System. The contractor agrees to complete Customer inductions as required from time to time.
- 16.3 The Contractor agrees to comply with all requirements of the HSEQ Management System along with any updates or amendments to the system which may occur from time to time. The cost of compliance with IPG's HSEQ requirements shall be borne by the Contractor.
- 16.4 Yearly evaluation of Contractor's suitability for supply of services to IPG shall be based on a number of factors including the Contractor's compliance with our HSEQ systems.
- 16.5 The Contractor agrees to advise IPG at the earliest possible time of any changes to details held by IPG for the Contractor including insurance policies and basic contractor information.
- 16.6 The Contractor shall not allow onto any site owned or in the control of IPG any employee, contractor or sub-contractor that has not complied with the requirements of IPG's HSEQ Management System.
- 16.7 **TAKE 5's** - The Contractor will complete Take 5 reports on a regular basis as is required under IPG's HSEQ Management Systems.
- 16.8 **INCIDENT REPORTS** - The Contractor will complete an Incident Report when required, as set out in IPG's HSEQ Management System.
- 16.9 **PRE-START CHECKS** - The Contractor will complete Pre-Start safety checks on all company plant before use, as is required under IPG's HSEQ Management Systems.
- 16.10 **TOOL BOX MEETINGS** - The Contractor will attend Tool Box meetings on a regular basis as is required under IPG's HSEQ Management System.
- 17. Production Yard**
- 17.1 The Contractor is required to comply with the directions of the Managing Director, Project Manager or Production Manager at all times
- 17.2 The Contractor shall maintain a clean, safe work environment at all times whilst working within IPG's premises.
- 18. Customer Premises (onsite works)**
- 18.1 The Contractor will comply with all requirements of Customers HSEQ systems whilst working on a customer's site. The Contractor will ensure that all rubbish from the immediate work site, created or caused to be created during the works shall be removed from site on a daily basis or immediately upon completion of the works under this contract. The Contractor is responsible for the removal of rubbish unless otherwise agreed in writing before commencement of the works.
- 19. Notice of Completion**
- 19.1 IPG requires that any work performed outside of IPG premises by the Contractor be authorised as completed by the customer. IPG will make available to the Contractor for download a Notice of Completion/Notice of Compliance form that the Contractor will have the customer sign and return to IPG at the earliest possible opportunity. Electronic scanned copies or fax copies will be accepted.
- 19.2 Failure to return a Notice of Completion signed and dated by the customer or the customer's authorised representative will delay any payments to the Contractor due under Clause 6.