

CONDITIONS OF CONTRACT (GOODS & SERVICES)

1. Definitions

In these Terms and Conditions unless the context otherwise requires:

"Buyer" means SOUTH EAST WATER CORPORATION (A.B.N. 89 066 902 547).

"Claims" means any claim, action, proceeding or demand made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

"Environmental Law" means a law regulating or otherwise relating to the environment, including without limitation any law relating to land use, planning, pollution of air or water, soil or groundwater, chemicals, waste, the use, transport, storage and handling of dangerous goods, the health or safety of any person, or to any other aspects of protection of the environment, health or property.

"Goods" where applicable means the goods the subject of and described on the Purchase Order.

"Intellectual Property Right" includes all present and future copyright and neighbouring rights, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, confidential information (including trade secrets and know how), registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

"Law" means:

(a) the applicable laws in force in Victoria, the Commonwealth of Australia and internationally, including common law, legislation and regulations; and

(b) ordinances, regulations and by-laws of relevant government, semi-government or local authorities.

"Loss" means any loss, damage, cost, expense or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

"Other Incidents" means all incidents including accidents, near misses and external regulator visits which are not Notifiable Incidents.

"Purchase Order" means the Purchase Order to which these terms and conditions apply and which is described on the reverse or preceding side. These Terms and Conditions apply in the absence of any other written agreement executed by the parties regarding the Goods and/or Services being provided by the Supplier to the Buyer. In the event, and to the extent, of any inconsistency between these Terms and Conditions and the Purchase Order, the order of precedence is as follows (except to the extent these Terms and Conditions expressly state otherwise):

1. these Terms and Conditions; and
2. any terms specified on the Purchase Order.

If the inconsistency remains incapable of resolution by reading down, the inconsistent provision will be severed without otherwise diminishing the enforceability of the remaining provisions.

"Supplier" means the person, company or other legal entity to whom the Purchase Order is issued to provide the Goods or perform the Services as the case may be and includes its officers, servants, agents and sub-contractors.

"Services" means the services and includes any deliverables provided as part of the Services, specified in the Purchase Order and as provided under this Agreement.

2. Authority

2.1 The Buyer is only bound by these terms and conditions and the Purchase Order if it is signed on its behalf by its duly authorised officer.

3. Price

3.1 The Supplier must furnish all necessary goods, labour, materials, tools, equipment and supervision required for the fixed price on the Purchase Order, which price includes (unless specified in the Purchase Order) all applicable taxes, insurance, supervision, costs and other direct and indirect costs of whatever character and description (Goods are provided free in store), subject to Clause 3.2.

3.2 All prices are exclusive of G.S.T.

4. Performance of the Services

4.1 Where the presence of the Supplier is required on the Buyer's premises:

- a) the Supplier must not impede or interfere with other work in progress on the Buyer's premises and must protect people and property;
- b) the Supplier enters the Buyer's premises at its own risk and is liable for and indemnifies the Buyer against any loss, damages, claim or liability arising directly or indirectly out of the performance of the Services or presence of the Supplier on the Buyer's premises except to the extent caused directly as a result of the Buyer's proven negligence;
- c) the Supplier must comply with the standards, policies and procedures and reasonable directions of the Buyer.

4.2 All materials and workmanship must be as specified in the Purchase Order, or if not specified, must be in accordance with the relevant standard of the Standards Association of Australia or such other standards as are agreed by the Buyer.

5. Goods Delivered

If quantities of Goods delivered or Services completed are in excess of those specified on the Purchase Order, the excess will not be accepted or paid for by the Buyer.

6. Completion and Delivery

6.1 The Services must be completed by the time specified (if any) on the Purchase Order.

6.2 The Goods must be delivered to the place and on the date specified on the Purchaser Order unless otherwise agreed between the Buyer and the Supplier.

6.3 Time is of the essence so far as it applies to the obligations of the Supplier. If any Goods are not delivered or Services are not completed within the time specified (if any) on the Purchaser Order (or as otherwise agreed by the parties), the Buyer may either (where appropriate):

- a) refuse to accept the Goods and immediately terminate the Purchase Order (and if the Buyer acquires the Goods from a different supplier at a cost greater than the amount which would have been paid to the Supplier by the Buyer, such cost is a debt due and owing to the Buyer by the Supplier);
- b) cause the Supplier to deliver the Goods by the most expeditious means and any additional delivery charges shall be borne by the Supplier; or
- c) obtain a reduction in the price paid for the Services specified in the Purchase Order.

7. Quality

7.1 The Supplier warrants that the Goods:

- a) conform with the description model number and sample (if any), provided by the Supplier;
- b) conform to any applicable specifications agreed by the Buyer and the Supplier;
- c) are of merchantable quality and are fit for the purpose for which they are sold;
- d) are fit for the specific purpose (if any) of which the Buyer has advised the Supplier in writing;

e) are free of defects in material, workmanship and design and capable of safe and reliable operation without risks to health;

f) are new (unless otherwise specified); and

g) are free from all liens and encumbrances and the Supplier has good title to them.

7.2 The Supplier warrants that the Services:

a) will be rendered in a timely and efficient manner with the standard of due care and skill expected by experienced, competent and trained personnel;

b) any materials supplied in connection with the Services will be fit for the purposes for which they are supplied and are fit for the specific purpose (if any) of which the Buyer has advised the Supplier in writing; and

c) the Services will not infringe the Intellectual Property Rights or other rights of any person or any Laws.

7.3 The warranties contained in these Terms and Conditions are in addition to any other warranties or guarantees applied by law or provided by the Supplier or any third party.

8. Testing and Inspection

The Supplier agrees that the Buyer and its officers, servants and agents have the right to test and inspect all Services performed pursuant to the Purchase Order while in any stage of engineering, manufacture or installation (even if being engineered, manufactured or installed by a third party) and the Goods prior to dispatch. Any such test or inspection does not relieve the Supplier of any obligations contained in the Purchase Order or required by law.

9. Rejection

Notwithstanding Clause 8 the Buyer or its officers, servants or agents may reject any Goods or Services performed or being performed that do not conform to the Purchaser Order and any Services or Goods rejected shall be re-performed or re-delivered in a timely manner (as the case may be) at no additional cost to the Buyer. Any payment by the Buyer for the Goods or the Services shall not prejudice its right of rejection set out in this Clause. The Supplier must reimburse the Buyer for:

9.1 any purchase price paid by the Buyer with respect to rejected Goods or Services; and

9.2 any costs reasonable incurred by the Buyer in connection with the rejection of the Goods or Services.

10. Alterations/Additions

No alterations or additions to the Services or the character or description of the Goods may be made by the Supplier unless the Supplier has first obtained written approval from the Buyer's authorised officer.

11. Terms of Payment

11.1 The Supplier must promptly render tax invoices for the Goods and Services in accordance with the Buyer's instructions.

11.2 In the absence of any special arrangement, the Buyer must effect payment thirty (30) days from the later of the date:

- a) the Buyer is satisfied that an issued invoice has been correctly calculated; or
- b) the date the Goods were received or the Services rendered.

11.3 Payment of an invoice is not to be taken as evidence that the Goods or Services have been supplied or completed in accordance with this Agreement, but must be taken only as payment on account.

12. Sub-Contracting And Assignment

12.1 The Supplier must not assign its rights or obligations under these Terms and Conditions or sub-contract the Services or the provision of the Goods pursuant to the Purchase Order without the prior written consent of the Buyer (which may be given or withheld by the Buyer in its absolute discretion) and any such consent shall not relieve the Supplier of its responsibility for the Services or the Goods pursuant to the Purchase Order or of any other obligations contained in the Purchase Order.

12.2 The Buyer may, by notice in writing to the Supplier, assign its rights, transfer its obligations or novate the Agreement.

13. Packaging

13.1 The Supplier must ensure that the Goods are properly packed to avoid being damaged during delivery, loading and unloading. All packages must be clearly marked with the Purchase Order number and location of delivery.

13.2 The Supplier must comply with all applicable Australian and International laws, regulations and other relevant requirements relating to the transport, packaging, storage, handling and use of the Goods.

14. Applicable Law

The Purchase Order and these Terms and Conditions are governed in accordance with the laws of Victoria and the parties hereto submit to the exclusive jurisdiction of the Courts of Victoria.

15. Termination

15.1 Without prejudice to any other rights the Buyer may have against the Supplier, the Buyer may terminate this Purchase Order in whole, or in part, in writing with immediate effect for convenience or in the event of any of the following:

- a) the Supplier goes into liquidation or a receiver and manager or mortgagee's or chargee's agent is appointed or becomes subject to any form of insolvency, administration or arrangements, or in the case of an individual, becomes bankrupt or enters into a scheme or arrangement with creditors;
- b) the Supplier's conduct in the Buyer's opinion is prejudicial to the interests and operation of the Buyer;
- c) the Supplier breaches any of the terms or conditions of this Purchase Order;
- (d) or any of its Personnel involved in the supply of the Goods or provision of the Services, commits fraud, dishonesty or any other serious misconduct;
- (e) commits any act or does anything that may be prejudicial or otherwise detrimental to the reputation, interests and operation of the Buyer or the Crown in right of the State of Victoria;
- f) the Supplier assigns or subcontracts the Purchase Order in whole or part without the prior written consent of the Buyer; or
- g) the Supplier ceases or threatens to cease to carry on its business.

15.2 Waiver of the Buyer of any specific default by the Supplier or failure by the Buyer to cancel this Purchase Order or any part thereof, when right of cancellation arises, does not constitute waiver by the Buyer of any of the rights pursuant to this Purchase Order or the Terms and Conditions.

15.3 The Purchase Order may be cancelled by the Buyer if the Buyer has ordered the Goods in order to satisfy a contract it has entered into with a third party, and that contract is cancelled or amended. In this event the Supplier is only entitled to claim actual damage suffered (excluding loss of profit and consequential damages).

15.4 All provisions of this Agreement which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Agreement will survive the rescission, termination or expiration of this Agreement, including any provision in connection with the Buyer's rights to set-off and

recover money, intellectual property, confidentiality and privacy, insurance, any indemnity, release or financial security given under this Agreement, any limitation of liability and any right or obligation arising on termination of this Agreement.

16. Independent Contractor

The relationship between the Buyer and the Supplier is that of principal and independent contractor and nothing in these Terms and Conditions shall be taken as constituting the Buyer and the Supplier or any of the contractors, directors or employees as being in the relationship of joint venture, master and servant, employer and employee, or partners, nor shall anything in these Terms and Conditions constitute the Supplier or any of its directors or employees as being agent of the Buyer.

17. Compliance with Laws

The Supplier must, in performing its obligations under this Agreement, comply with all relevant and applicable statutes, ordinances, by-laws, codes of practice, regulations, code of conduct and with the Victorian Industry Participation Policy (if applicable).

18. Indemnity and Release

18.1 The Supplier must indemnify the Buyer and its officers, employees and agents (Indemnified Party) against any loss, damage, claim, action or expense (including legal expense) which any Indemnified Party suffers as a direct or indirect result of any of the following:

- a breach of this Purchase Order or the law by the Supplier, including any failure to deliver the Goods or complete the Services in accordance with the Purchase Order;
- any representation or warranty given by the Supplier under this Purchase Order being incorrect or misleading in any way;
- any personal injury or property damage claim;
- any negligent or fraudulent act or omission or failure to act by the Supplier or any of the Supplier's employees, agents, officers or sub-contractors; or
- any infringement of the Intellectual Property Rights of the Buyer or a third party.

18.2 The Supplier, to the full extent permitted by law, releases and forever discharges the Buyer from all Claims and Losses which the Supplier has, or at any future time may have or may bring, or but for this Agreement might have had or brought, against the Buyer in relation to:

- anything permitted by or done in accordance with these terms and conditions;
- the Supplier breaching these terms and conditions (including a breach arising from the act, omission or negligence of the Supplier); or
- a breach of the Intellectual Property Rights of the Supplier,

except to the extent caused or contributed to by a breach of these terms and conditions by the Buyer, or the Buyer's wilful or negligent act or omission.

19. Buyer's Property, Confidentiality and Privacy

19.1 All designs, data, samples, plans, drawings, specifications etc ("Buyer's property") furnished by the Buyer to the Supplier whether or not the Supplier has been charged for the same and any of such as has been manufactured or purchased by the Supplier and for which the Buyer shall have paid shall be the sole property of the Buyer. Any such Buyer property or any substantial portion or description thereof must not be produced or reproduced in any material form without the written authority of the Buyer.

19.2 Upon conclusion, termination or cancellation of this Purchase Order the Supplier must hand to the Buyer any finished or unfinished work relevant to this Purchase Order and any Buyer property.

19.3 The Supplier must not at any time use the Buyer's property to manufacture any Goods other than for the Buyer pursuant to a Purchase Order.

19.4 The Buyer's property is confidential information. The Supplier must not use (otherwise than is necessary for this Purchase Order), nor disclose any of the Buyer's property or other information relating to the Buyer and its business and customers, to any third party without the Buyer's prior written consent.

19.5 Without limiting any other obligation of the Supplier at law, the Supplier must comply with the Information Privacy Act 2000 (Vic) and any code or guidelines relating to the handling of personal information, as binding on the Buyer, and will keep confidential personal information supplied to it or collected by it in relation to this Purchase Order.

19.6 The Supplier acknowledges that the Buyer is bound by the Protective Data Security Standards. The Supplier will not do any act or engage in any practice that would contravene or give rise to a breach of a Protective Data Security Standard in respect of any Buyer's Property collected, held, used, managed, disclosed or transferred by the Supplier, on behalf of the State of Victoria, under or in connection with the Agreement.

19.7 The Supplier irrevocably and unconditionally grants to the Buyer a non-exclusive, perpetual, royalty free, worldwide and transferable licence (including the right to sub-license) to use any Intellectual Property Rights in relation to any:

- Goods supplied;
- materials (including any Intellectual Property Rights) which the Supplier creates (whether alone or jointly with any other person) in providing the Services ("Contract Materials"); and
- of the Supplier's pre-existing Intellectual Property Rights incorporated in or otherwise required to use the Contract Materials or the Services,

to the extent necessary to allow the Buyer the full use and enjoyment of the Goods and the Services. The Supplier must, upon request by the Buyer, do all things as may be necessary (including executing any documents) to give full effect to this clause 19.7.

20. Notices

Any notices required pursuant to these Terms and Conditions shall be in writing and shall be validly given only if signed by a duly authorised person on behalf of either party and addressed to the parties at the address specified on the Purchase Order and shall be deemed to be duly given or made:

- in the case of letter, the expiration of seventy-two (72) hours after the time of posting by pre-paid ordinary post or at the time of actual receipt by the addressee, whichever occurs first;
- in the case of a facsimile, when sent; and
- in the case of a personal delivery, when delivered.

21. Acceptance

If written acceptance of these Terms and Conditions is not communicated by the Supplier to the Buyer the supply of the Goods by the Supplier to the Buyer or the commencement of Services by the Supplier shall constitute acceptance of these Terms and Conditions by the Supplier.

22. Advertising

The Supplier must not, without first obtaining the written consent of the Buyer, in any manner advertise or publish the fact that the Supplier has contracted with the Buyer for the supply of Goods or Services.

23. Environmental Requirements

23.1 The Supplier must demonstrate to the Buyer to its satisfaction sustainability of its production and operation processes which comply with all relevant Environmental Laws.

23.2 Without limiting clause 17, the Supplier must comply with Environmental Law and the Corporation's environmental policies as notified by the Corporation to the Supplier.

24. Title and Risk

Title in the Goods will pass to the Buyer upon payment for the Goods. Risk in the Goods shall pass to the Buyer when delivered to the Buyer in accordance with the Purchase Order. The Supplier acknowledges and agrees that the Buyer may on-sell the Goods to third parties.

25. Recall

If the Supplier identifies a need to recall any of the Goods, it will promptly advise the Buyer in writing, make arrangements to retrieve the Goods at its expense and provide the Buyer with a replacement or refund in accordance with clause 9.

26. Material Safety Data Sheets

Without limiting clause 17, if the Goods include hazardous substances (as defined in the Occupational Health and Safety Regulations 2007 (Vic)) or dangerous goods (as defined in the Dangerous Goods Act 1985 (Vic)), the Supplier must provide to the Buyer, at the time the Goods are delivered to the Buyer in accordance with the Purchase Order, an accurate and up-to-date material safety data sheet for the Goods that complies with the Dangerous Goods (Storage and Handling) Regulations 2012 (Vic) or the Occupational Health and Safety Regulations 2007 (Vic) (as applicable).

27. Dispute Resolution

If any dispute arises under or in connection with these Terms and Conditions or the Purchase Order (Dispute) the nominated senior executive officer (or equivalent) of each of the Buyer and the Supplier must promptly meet and discuss in good faith with a view to resolving the Dispute. If any Dispute is unable to be resolved by the senior executive officers, the parties agree to endeavour in good faith to settle the Dispute by mediation administered by the Australian Commercial Dispute Centre (in accordance with its mediation guidelines) before having recourse to arbitration or litigation. The parties to a Dispute must continue to perform their obligations under the Terms and Conditions and Purchase Order, pending the resolution of a Dispute. Nothing in this clause is to be taken as preventing any party to a Dispute from seeking urgent interlocutory relief in respect of such Dispute.

28. Insurance

The Supplier must (and must ensure that any sub-supplier appointed by it under clause 12) obtain and maintain for the duration of the Purchase Order the following insurances for the amounts specified (unless another amount is agreed between the Supplier and the Buyer):

- public liability insurance \$20 million;
- product liability insurance \$10 million;
- professional indemnity insurance \$10 million; and
- any other insurance required by the Buyer.

Professional indemnity insurance must be maintained for 6 years after the expiry or termination of the Purchase Order.

The Supplier must provide the Buyer with evidence of the currency of any required insurances upon request by the Buyer.

All insurances required must be taken out with an insurer acceptable to the Buyer, and on terms (including any excess) which are acceptable to the Buyer.

29. Occupational Health and Safety

29.1 Without limiting clause 17, the Supplier must:

- comply with all laws (including codes of practice and compliance codes), and the requirements of all Government agencies (including issuing all notices to Government agencies, if required, under applicable health and safety laws), applicable to health and safety; and
- implement and comply with safety requirements (including safety management systems and plans) as reasonably required or approved by the Corporation.

29.2 The Supplier must do all that is required to enable the Corporation to satisfy the Corporation's obligations regarding occupational health and safety under any law.

29.3 The Supplier acknowledges the Corporation's right to undertake safety audits at reasonable times, and the Supplier must provide reasonable assistance to the auditors as required.

29.4 The Supplier must (whether involving officers, employees, agents or sub-contractors of the Supplier or the Corporation or members of the public):

- report all Notifiable Incidents and all Workplace Injuries (each as defined in the relevant laws) to the Corporation immediately after becoming aware of the Notifiable Incident or Workplace Injuries;
- manage all Notifiable Incidents and Workplace Injuries in accordance with the applicable laws;
- conduct a debrief for all Notifiable Incidents and invite the Corporation, in writing, to attend such debrief;
- notify the Corporation immediately upon receipt of any "Prohibition Notices" or "Improvement Notices" issued to the Supplier, or any person performing any part of the Services, by the Victorian Workcover Authority or any person authorised under the relevant occupational health and safety law, and must give the Corporation such information as may be requested by the Corporation in relation to such notices;
- report all Other Incidents to the Corporation within 24 hours after becoming aware of the Other Incident;
- provide the Corporation with contact details for personnel responsible for 24 hour emergency assistance in the event of any incident; and
- maintain a register of Notifiable Incidents, Other Incidents, Workplace Injuries and near misses for inspection by the Corporation upon request, in a format required by the Corporation. The updated register must be provided to the Corporation if requested by the Corporation.

29.5 The Supplier must ensure that its personnel carry Corporation approved identification at all times when undertaking the Services on behalf of the Corporation.

29.6 In the event of any disagreement between the Corporation and the Supplier in relation to occupational health and safety issues, the view of the Corporation will prevail.

29.7 The Supplier must only access specific locations at which the Services are being performed in accordance with the Corporation's policies and procedures as advised to the Supplier from time to time. The Supplier must ensure that all approvals and permits required to access such sites are obtained prior to accessing the site.