

# Standard Purchase Order Terms and Conditions

## 1. Supply of Goods and Services

- 1.1 From time to time ASQ may request Goods and/or Services from the Supplier by issuing a Purchase Order. The Supplier must supply the Goods and/or Services to ASQ in accordance with the Purchase Order and these Terms and Conditions.
- 1.2 The Supplier must ensure that the Goods
  - (a) comply with all laws, Australian standards and any mandatory industry codes;
  - (b) match their description and quantity in the Purchase Order;
  - (c) are fit for their intended purpose;
  - (d) are new, of merchantable quality and free from defects in design, materials and workmanship; and
  - (e) are free from security interests of any kind.
- 1.3 The Supplier must ensure that the Services:
  - (a) comply with all laws, codes of conduct and ethics and any other applicable industry standards;
  - (b) match their description in the Purchase Order;
  - (c) are fit for their intended purpose; and
  - (d) are provided exercising the skill, care and diligence expected of a provider of similar services in Australia and by appropriately qualified and trained Personnel.
- 1.4 Without limiting clauses 1.2 and 1.3, the Supplier acknowledges and agrees that:
  - (a) it has received a copy of the ASQ Supplier Code of Conduct and has read, understood and agrees to comply with that Code;
  - (b) it will supply the Goods and/or Services in a timely manner;
  - (c) it must at its own cost supply all labor, tools, equipment and materials necessary for the supply of the Goods and/or Services;
  - (d) if the specific brands or Goods described in a Purchase Order cannot be supplied, alternative brands or Goods must be pre-approved by ASQ before they are acceptable;
  - (e) it will comply with any laws, regulations, licences, permits, approvals or Australian Standards applicable to the Goods and/or Services or to entry upon the Site;
  - (f) it will obtain and hold at its cost all licences, permits, registrations and insurances as are required under any State, Territory or Commonwealth legislation or regulation to carry out its activities under the Agreement;
  - (g) the Supplier has the resources (including financial), skills, qualifications, certifications and experience to legally, properly and competently perform its obligations under the Agreement;
  - (h) it will leave the Site in a secure, clean and orderly condition, fit for immediate use by ASQ; and
  - (i) all of its Personnel are Australian citizens or, if not Australian citizens, hold a valid and current work visa.

## 2. Delivery

- 2.1 The Supplier must deliver the Goods and/or complete the Services by the Required Date. Time is of the essence of the Agreement.
- 2.2 Delivery of Goods will have occurred only when the Supplier has unloaded the Goods at the Site.
- 2.3 The Supplier must give ASQ a reasonable time to inspect the Goods. The signing of a delivery receipt before inspection does not constitute acceptance of the Goods by ASQ.
- 2.4 The Supplier must ensure that:
  - (a) the Goods are suitably packed to ensure that they are delivered in good condition to the Site;
  - (b) the Goods are delivered with a detailed delivery receipt which quotes the Purchase Order number, description of the Goods and the quantity delivered;
  - (c) an employee of ASQ signs the Supplier's delivery receipt upon delivery. Without a signed delivery receipt the Goods may be considered undelivered, and in that case, ASQ will not be responsible for such Goods;
  - (d) any item of Goods subject to shelf life control will be freshly manufactured and clearly identified on delivery with details of date of manufacture, shelf life conditions, requirements and shelf life period; and
  - (e) in the case of food delivery, delivery is made in appropriately licensed, registered and hygienic food transportation vehicles.
- 2.5 If the Supplier fails to supply the Goods and/or Services by the Required Date, ASQ may:
  - (a) immediately cancel the whole or any part of the Purchase Order and the Supplier will not be entitled to make any claim against ASQ;
  - (b) seek damages as a result of the Supplier's late delivery; and/or
  - (c) order the Goods and/or Services from a third party and seek damages for any loss suffered by ASQ.

## 3. Defective Goods and Services

- 3.1 If ASQ determines that any Goods and/or Services are not in accordance with the Agreement ("Defective"), the Supplier must do any of the following, at its cost, as determined by ASQ in its absolute discretion:
  - (a) re-take possession of the Defective Goods and refund the Price for the Defective Goods to ASQ;
  - (b) deliver replacements of the Defective Goods or re-perform the Defective Services; or
  - (c) repair the Defective Goods or remedy the Defective Services, and reimburse ASQ any damages it has suffered as a direct result of the supply of the Defective Goods and/or Services.
- 3.2 The rights under clause 3.1 are in addition to any other rights of ASQ under the Agreement, at law or in equity.

- 3.3 Unless otherwise stated in the Purchase Order, the Supplier warrants that for the Warranty Period, it will at its cost re-perform any Defective Services or repair or replace any Defective Goods. Such replacements or repairs must be carried out at the times notified by ASQ.
- 3.4 The Supplier must do all things to ensure that ASQ has the benefit of any warranties given by any third parties in respect of the Goods and/or Services and must give ASQ all documentation relating to such warranties. Third party warranties are in addition to the Supplier's warranties.
- 3.5 If the Supplier fails to take action as and when directed under clause 3.1, ASQ may, without further notice to the Supplier, engage another provider to take the required action and all costs and damages suffered by ASQ in connection with the Supplier's failure shall be a debt due and payable to ASQ.

#### 4. Title and Risk

- 4.1 Risk in Goods passes to ASQ upon delivery to the Site in accordance with clauses 2.1 and 2.2.
- 4.2 Title to Goods, free of all encumbrances, passes to ASQ upon delivery or payment, whichever is the earlier.

#### 5. Variation to a Purchase Order

- 5.1 ASQ may direct the Supplier at any time to amend, increase, decrease, omit or change the quality, character or extent of the Goods and/or Services ("Variation").
- 5.2 The parties will act in good faith to negotiate a Price for any Variation.

#### 6. Price

- 6.1 ASQ will, subject to the terms of the Agreement, pay the Supplier the Price specified in the Purchase Order. Unless otherwise specified in a Purchase Order, the Price is Free Into Store, fixed and inclusive of all costs relating to the supply of the Goods and/or Services in accordance with the terms of the Agreement, including insurance, transport, delivery charges, taxes, duties or other charges payable.

#### 7. Invoicing and Payment

- 7.1 ASQ must pay for the Goods and/or Services within thirty (30) days of the end of the month in which ASQ receives a correctly rendered invoice.
- 7.2 An invoice is correctly rendered if it is addressed to ASQ in accordance with the Purchase Order, identifies the Purchase Order number and is a Tax Invoice under the GST Law.
- 7.3 If ASQ disputes the invoice:
- ASQ will pay the Supplier the undisputed part of the invoice (if any);
  - if the resolution of the dispute determines that ASQ is to pay an amount to the Supplier, ASQ will pay that amount upon resolution of that dispute;
  - No interest will be payable by ASQ in respect of any invoice which is due but unpaid.

- 7.4 ASQ may reduce any payment due to the Supplier under the Agreement by any amount for which the Supplier is or may be liable to ASQ, including costs, charges, damages and expenses. This does not limit ASQ's right to recover those amounts in other ways.

#### 8. GST

- 8.1 The Supplier warrants that it has an Australian Business Number and is registered for GST purposes in accordance with the GST Law.
- 8.2 Unless otherwise expressly stated, the consideration for a Supply made under or in connection with the Agreement does not include GST. If a Supply made under or in connection with the Agreement is a Taxable Supply, then at or before the time the consideration for the Supply is payable:
- the Recipient must pay the Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under the Agreement for that Supply); and
  - the Supplier must give the Recipient a Tax Invoice for the Supply.
- 8.3 If either party has the right under the Agreement to be reimbursed or indemnified by another party for a cost incurred in connection with the Agreement, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified.
- 8.4 Capitalised terms in this clause have the meanings given to them in the GST Law.

#### 9. Indemnity

- 9.1 The Supplier indemnifies ASQ and its officers, employees and agents from and against all liabilities, claims, actions, proceedings, costs, expenses, losses, damages and judgments (including legal costs on a solicitor own client basis) ("Loss") incurred in connection with:
- the supply of the Goods and/or Services;
  - any damage to or loss of property or personal injury or death of any person whomsoever arising from or in any way connected with any act or omission of the Supplier or its Personnel or the Goods or Services; or
  - any infringement of the Intellectual Property rights of any third party through the use of the Goods and/or Services.
- 9.2 The Supplier's obligation to indemnify in clause 9.1 is reduced proportionately by the extent that the Loss was caused or contributed to by the willful or negligent act or omission of ASQ or its officers or employees.

#### 10. Liability

ASQ will not be liable to the Supplier for any indirect or consequential loss or damage, loss of profit, loss of revenue, loss of opportunity or costs of finance, whether or not such liability arises in contract, tort (including negligence), equity or statute, or any other cause of action (or by way of indemnity).

## 11. Insurance

- 11.1 The Supplier must take out and maintain for the Term the following insurance policies with a reputable insurer:
- (a) Public and products liability insurance for an amount not less than \$20 million (any one event);
  - (b) Insurance for the full replacement value of the Goods while at the risk of the Supplier; and
  - (c) Worker's compensation insurance.
- 11.2 Where the Services involve the provision of professional services, the Supplier must take out and maintain for the Term and for the period of 6 years following the Term professional indemnity insurance for an amount not less than \$20million (any one event).
- 11.3 The Supplier must give ASQ evidence of the policies referred to in this clause prior to the supply of any Goods and/or Services and at any other time requested by ASQ.

## 12. Work Health and Safety and Entry to Site

- 12.1 The Supplier must at all times comply with the WHS Law whilst on the Site.
- 12.2 The Supplier must, so far as reasonably practicable, consult, cooperate and coordinate activities, including the elimination or minimisation of risks to health and safety, with all other persons who have a work health or safety duty in relation to the same matter to ensure there are no gaps in the management of the safety matter.
- 12.3 When accessing the Site, the Supplier must comply with all policies and procedures relating to the Site notified to the Supplier by ASQ, comply with all reasonable directions given by the manager of the Site or ASQ's representative and must use its best endeavours not to interfere with other users of the Site.

## 13. Termination

- 13.1 ASQ may terminate the Agreement for any reason by giving the Supplier at least thirty (30) days' written notice.
- 13.2 Subject to the law, either party may terminate the Agreement immediately by notice to the other party if:
- (a) an Insolvency Event occurs in respect of the other party; or
  - (b) the other party fails to remedy any breach of the Agreement within 14 days of receiving a notice to remedy the breach.
- 13.3 ASQ may terminate the Agreement immediately by notice to the Supplier if:
- (a) the Supplier's conduct, in ASQ's reasonable opinion, could damage ASQ's reputation or bring it into disrepute; or
  - (b) the Supplier assigns or sub-contracts the Agreement in whole or part without the prior written consent of ASQ.

13.4 If the Agreement is terminated, the Supplier will be entitled to payment for the Goods and/or Services supplied to the date of termination provided that ASQ receives title to any Goods or product of Services that are paid for in accordance with this clause. The Supplier will not be entitled to any other form of compensation or damages.

## 14. ASQ's Property

- 14.1 ASQ retains ownership in any Material provided by ASQ to the Supplier for the purposes of the Agreement ("ASQ Property").
- 14.2 ASQ Property may only be used by the Supplier on the condition that:
- (a) the ASQ Property is used solely for the purposes of the Agreement; and
  - (b) at the end of the Agreement (and earlier if requested by ASQ) all ASQ Property (including copies) are immediately returned to ASQ or destroyed (at ASQ's option).
- 14.3 The Supplier grants ASQ a non-exclusive, irrevocable, royalty free, transferable licence, including the right to sub-licence, to use any information and materials furnished by or on behalf of the Supplier in connection with the Agreement for the use and enjoyment of the Goods and/or Services, including any modification, repair or alteration of the Goods and/or Services.
- 14.4 The Supplier warrants that:
- (a) the supply of the Goods and/or Services by it; and
  - (b) the exercise of the rights granted in clause 14.3 to ASQ, will not infringe any Intellectual Property rights of any third party.
- 14.5 The Supplier must not use any logo, trademark, service mark or other Intellectual Property belonging to ASQ without ASQ's prior approval which may be given or withheld in ASQ's absolute discretion.

## 15. Confidential Information

- 15.1 During and after the Term, the Supplier must:
- (a) keep all of ASQ's Confidential Information secret and confidential;
  - (b) comply with all measures established by ASQ to safeguard its Confidential Information from unauthorised use or disclosure;
  - (c) not use or disclose any Confidential Information or make a copy or other record of any Confidential Information except in the proper performance of the Agreement;
  - (d) notify ASQ if it becomes aware of any unauthorised use or disclosure of ASQ's Confidential Information; and
  - (e) take all reasonable steps to ensure that its Personnel comply with this clause.
- 15.2 The Supplier may disclose ASQ's Confidential Information to its professional advisers and any of its Personnel on a strictly need to know basis, provided that the recipient agrees to keep the Confidential Information confidential in accordance with this clause 15.

## 16. Privacy

- 16.1 The Supplier will, and will procure its Personnel to:
- at all times comply with the Privacy Act, even though the Supplier may not otherwise be required to comply with the requirements of that Act;
  - not use any Personal Information collected during the supply of the Goods and/or Services other than for the purpose of supplying those Goods and/or Services; and
  - notify ASQ immediately if the Supplier becomes aware of a breach or possible breach of this clause.

## 17. Modern Slavery

- 17.1 The Supplier will use its reasonable endeavours to identify and reduce the risk of modern slavery in its supply chains.
- 17.2 The Supplier will provide ASQ with all information and documents about the Supplier and its supply chains as ASQ may reasonably request to assist ASQ to comply with its obligations under the Modern Slavery Act 2018 (Cth).

## 18. Conflict of Interest

- 18.1 The Supplier warrants that to the best of its knowledge, neither it nor its Personnel have any actual, perceived or potential conflict of interest in relation to the supply of the Goods and/or Services to ASQ ("Conflict").
- 18.2 If during the Term, a Conflict arises or appears likely to arise, the Supplier must notify ASQ promptly in writing, making full disclosure of all relevant information relating to the Conflict and take any steps ASQ reasonably requires to resolve or otherwise deal with the Conflict which may include terminating the Agreement.

## 19. General

- 19.1 The Supplier is an independent contractor. The Supplier and its Personnel are not agents or employees of ASQ.
- 19.2 Where the Supplier comprises more than one person or entity, each of them shall be jointly and severally liable for the full performance of the Supplier's obligations under the Agreement.
- 19.3 The terms of the Agreement are severable. If any term or provision is declared invalid or unenforceable it shall be severed from the Agreement and shall not affect the interpretation or operation of the remaining terms or provisions, which shall remain in full force and effect.
- 19.4 The Agreement is governed by the Laws of the State of Queensland.
- 19.5 Any failure by any party to exercise any rights under the Agreement does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party. No obligation in the Agreement is waived unless it is waived in writing and signed by the parties.

- 19.6 The Agreement may only be varied in writing by agreement between the parties.
- 19.7 The Supplier must not assign or subcontract its rights or obligation under the Agreement without ASQ's prior written consent, which may be given or withheld in ASQ's absolute discretion.
- 19.8 The Agreement is not to be interpreted against the interests of a party merely because it proposed the Agreement or some provision in it.
- 19.9 Clauses 9, 10, 11.2, 13.4, 14.3, 15, 16 and 19, and any other clauses in this Agreement that expressly or by their nature are capable of surviving, survive the termination or expiry of this Agreement.

## 20. Interpretation

- 20.1 In these Terms and Conditions unless the contrary intention appears:

**Agreement** means the agreement constituted by the Purchase Order and these Terms and Conditions.

**ASQ** means The Corporation of The Synod of The Diocese of Brisbane trading as Anglicare Southern Queensland ABN 39 906 010 979.

**Commencement Date** means the commencement date specified in the Purchase Order.

**Confidential Information** means any information of ASQ that

- is by its nature confidential;
- is communicated to the Supplier as being confidential;
- the Supplier knows or ought to know is confidential,

and includes information about the business and affairs of ASQ, its clients and suppliers, but excludes information that:

- is required by law to be disclosed;
- is in the public domain other than as a result of breach of this Agreement;
- becomes available to the Supplier from a third party lawfully in possession of such information and who has the lawful power to disclose such information; or
- was acquired by the Supplier before receiving such information from ASQ.

**GST Law** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and all regulations under that Act.

**Insolvency Event** means

- a trustee in bankruptcy, a liquidator, receiver, administrator, official manager or other controller or similar official is appointed over any of the property or undertaking of the party;
- the party is, or becomes unable to, pay its debts when they are due;
- an application or order is made for the bankruptcy or liquidation of the party or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the party, other than for the purposes of amalgamation or reconstruction;
- execution is levied against the party by a creditor.

**Intellectual Property** means all copyright, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered and unregistered designs, circuit layout rights, know-how and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic field.

**Material** means documents, records, software (including source code and object code), goods, images, information and data stored by any means including copies and extracts of the same.

**Personal Information** has the meaning given to that term in the Privacy Act.

**Personnel** means the Supplier's officers, employees, secondees, agents, consultants, contractors and subcontractors.

**Purchase Order** means a document prepared by ASQ containing details of the Goods and/or Services to be provided by the Supplier and which identifies at a minimum the quantity, the Price (unit and total) and the Required Date.

**Privacy Act** means the Privacy Act 1988 (Cth).

**Required Date** means the date that the Goods and/or Services are needed by ASQ and which is specified in the Purchase Order. If no date is specified in the Purchase Order, it will be date advised by ASQ to the Supplier at or around the time of placing the Purchase Order;

**Services** means the services, if any, described in the Purchase Order.

**Site** means the particular ASQ site specified in the Purchase Order.

**Supplier** has the meaning specified in the Purchase Order.

**Term** has the meaning specified in the Purchase Order.

**Warranty Period** means:

- (a) in relation to Goods, the warranty period offered by the Supplier or any manufacturer of the Goods, or a period of 12 months, whichever is longer, from the delivery of Goods; or
- (b) in relation to Services, a period of 12 months from the supply of the Services,

unless the law provides for a longer period, then that longer period.

**WHS Law** means the Work Health and Safety Act 2011 (Qld) and the Work Health and Safety Regulation 2011 (Qld).

20.2 In these Terms and Conditions headings are for convenience only and do not affect the interpretation of these Terms and Conditions and, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in these Terms and Conditions have a corresponding meaning;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and vice versa;
- (e) a reference to a party to a document includes that party's successors and permitted assigns;
- (f) a reference to legislation is to that legislation as amended, consolidated or replaced and includes subordinate legislation; and
- (g) a reference to a document or agreement includes all amendments or supplements to, or replacements or novations of, that document or agreement.