

PURCHASE ORDER TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

1. PURCHASE ORDER TERMS

- 1.1 Subject to clause 1.2, these terms and conditions apply to the Institute and the Contractor.
- 1.2 To the extent permitted by Law and unless expressly agreed to in writing by the Institute and referenced in the Contract, no other terms or conditions, including any terms and conditions provided by the Contractor to the Institute in respect of the Goods or Services will apply or have any legal effect (even if the Contractor's terms and conditions have been signed by a representative of the Institute or attached to the Purchase Order).
- 1.3 If the Purchase Order is issued under the terms of an existing contract or standing offer, these terms and conditions do not apply and will have no effect.

2. SUPPLY OF GOODS AND SERVICES

- 2.1 The Contractor must supply the Goods to the Delivery Address and perform the Services by the Date for Delivery in accordance with the Contract.

3. CONTRACTOR'S OBLIGATIONS

- 3.1 The Contractor must ensure that it and the Contractor's Personnel, in performing the Contractor's obligations under the Contract:
- (a) complies with all applicable Laws, any standards and procedures made available by the Institute to the Contractor (including the Institute's "Contractor Code of Conduct" available [online](#) or by request from the Institute), and any reasonable instructions given by the Institute;
 - (b) does not interfere with the Institute's activities or the activities of any other person at the Delivery Address or any place the Contractor provides the Services;
 - (c) carries out and performs the Contractor's obligations in a safe manner in a way which does not prejudice safe working practices, safety and care of property or continuity of work;
 - (d) unless otherwise set out in the Contract, supplies all plant, resources and equipment necessary to supply the Goods and perform the Services; and
 - (e) provides all such information and assistance as the Institute reasonably requires.
- 3.2 The Contractor must:
- (a) ensure that current National Police Checks are in place before any of the Contractor's Personnel visit any Institutes' premises to carry out activities in relation to this Contract; and
 - (b) provide the results of any National Police Checks to the Institute for inspection within 24 hours of a request by the Institute.
- 3.3 The Contractor must not subcontract the whole or any part of the supply of the Goods or Services unless it first obtains the Institute's written consent, which consent will not be unreasonably withheld. Subcontracting does not relieve the Contractor from any of its obligations under this Contract

4. RECEIPT, INSPECTION AND ACCEPTANCE OF GOODS AND SERVICES

- 4.1 The Contractor must deliver the Goods to the Delivery Address and perform the Services at the times stated in the Contract.
- 4.2 Acceptance of the Goods or Services by the Institute does not constitute approval of the Goods or Services or prejudice any claim the Institute may have in connection with the Goods or Services.
- 4.3 Acceptance of the Goods or Services occurs on the earlier of:
- (a) a representative of the Institute notifying the Contractor in writing that the Goods or Services have been accepted; or
 - (b) the expiry of 10 Business Days after delivery of the Goods to the Delivery Address without the Institute notifying the Contractor in writing that the Goods have been rejected.
- 4.4 The Contractor must allow the Institute or a representative of the Institute, upon 2 Business Days' written notice from the Institute and during standard business hours, to inspect, examine, review and witness tests of the Goods or Services, or the performance of the Goods or Services and to carry out site inspections at the Contractor's premises.

5. **TITLE AND RISK**

5.1 Title in the Goods will pass from the Contractor to the Institute upon the earlier of delivery to the Delivery Address and payment of the Contract Price.

5.2 Risk in the Goods will pass to the Institute on acceptance of the Goods in accordance with clause 4.2.

6. **VARIATIONS**

6.1 The Contractor must not change the Goods or Services except in accordance with a written direction of the Institute.

6.2 If the Institute directs a change to the Goods or Services:

- (a) the Contract Price will be adjusted by an amount agreed in writing by the parties;
- (b) subject to the parties agreeing the adjustment to the Contract Price under clause 6.2(a), the Contractor must comply with the direction; and
- (c) the Contractor must continue to deliver the Goods or Services other than those the subject of the direction (unless the Institute directs otherwise).

7. **INVOICING AND PAYMENT**

7.1 The Institute must pay the Contract Price to the Contractor for the Goods delivered and the Services performed in accordance with this Contract.

7.2 The Contract Price is inclusive of all costs and expenses including packaging, freight, delivery compliance with the Contract and Taxes and, subject to clause 6, no additional amounts will be payable by the Institute.

7.3 Subject to clause 7.3, on or promptly after the Date of Delivery, the Contractor must submit an Invoice to the Institute for the amount due to the Contractor.

7.4 If agreed in writing by the Institute, the Contractor may submit an Invoice to the Institute at the end of each month for any Services performed during that or previous months provided those Services have not already been included in a previous Invoice issued to the Institute.

7.5 An Invoice must include:

- (a) the Purchase Order number;
- (b) a description of the Goods delivered, including the quantity of Goods and the Date of Delivery and / or a description of the Services performed;
- (c) the amount being claimed for the Goods and / or the Services;
- (d) the amount of any applicable GST; and
- (e) any further information reasonably requested by the Institute.

7.6 If an Invoice does not contain the information required in clause 7.4, the Institute may, at its option, complete the missing details or return the incomplete Invoice to the Contractor.

7.7 Subject to the Contractor submitting an Invoice in accordance with clause 7.4 the Institute must pay the undisputed portion of the Invoice within 30 days.

7.8 Payment under this clause 7 will not be taken as evidence that all, or any part of, the Goods or the Services have been delivered or performed (as the case may be) to the satisfaction of the Institute, but will be taken to be payment on account only.

7.9 The Contractor agrees that the Institute may:

- (a) deduct from moneys due to the Contractor any money due or which may become due from the Contractor to the Institute under, or in connection with, the Contract; and
- (b) withhold payment of any disputed portion of the Invoice pending resolution of the dispute.

8. **GOODS AND SERVICES TAX**

8.1 The consideration for any supply made in relation to this Contract does not include an amount on account of GST in relation to the supply (**GST Exclusive Consideration**).

8.2 To the extent that GST is payable in relation to any supply made by a party (**GST Supplier**) under or in connection with this Contract, the consideration to be provided under this Contract for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST payable on the supply (**GST Amount**). The recipient must pay the GST Amount to the GST Supplier at the same time as the GST Exclusive Consideration is required to be paid.

8.3 If a payment to a party under this Contract is a reimbursement or indemnification or otherwise calculated by reference to a Loss incurred by that party, then the payment will be reduced by the amount on any input tax credit to which that party, or the representative member of the GST group that party is a member of (as the case may be), is entitled in respect of that Loss.

8.4 If an adjustment event occurs in relation to any taxable supply, the GST Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under clause 8.2, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.

8.5 Any reference in this clause 8 to a term defined or used in the GST Law is a reference to that term as defined in the GST Law.

9. QUALITY OF GOODS AND SERVICES

9.1 The Contractor must ensure that:

- (a) all Goods or Services conform to the descriptions set out in the Contract;
- (b) all Goods and Services are fit for their intended purpose and to the extent Services performed are design Services, the works being designed will be fit for their intended purpose;
- (c) if the Contractor provided the Institute with a demonstration of the Services or represented that a result could be achieved by the Services before the Institute issues the Purchase Order, the Services correspond in nature and quality with the services demonstrated or the services that achieved that result (as the case may be); and
- (d) any Goods are new and of merchantable quality.

9.2 The Contractor warrants that the Contractor's Personnel engaged to perform the Services have all the necessary skills, training and qualifications to carry out the Services in accordance with the Contract.

9.3 The Contractor must ensure that the Institute has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Contractor must, at its cost, pursue any manufacturer's warranties on the Institute's behalf).

9.4 Where any Defect has been rectified under the Contract, the rectification work will be the subject of an additional Defects Liability Period commencing on the date the relevant rectification works are completed.

10. CONSUMER LAWS

10.1 The Australian Consumer Law requires that certain guarantees must be given by the Contractor to the Institute in relation to the supply by the Contractor of certain goods or services to the Institute (**Consumer Guarantees**).

10.2 To the extent that the Consumer Guarantees apply to the Contractor's supply of Goods or Services to the Institute, nothing in this Contract is intended to exclude, modify or limit the Institute's rights pursuant to the Consumer Guarantees.

11. DEFECTS

11.1 At any time prior to the expiry of the Defects Liability Period, the Contractor must, at its cost and at the Institute's direction, promptly rectify all Defects other than a Defect caused by the negligence of the Institute.

11.2 Nothing in this clause 11 prejudices any other right that the Institute may have against the Contractor arising out of the failure of the Contractor to supply the Goods or perform the Services in accordance with the Contract.

11.3 If the Institute directs the Contractor to rectify a Defect and the Contractor fails to rectify that Defect within a reasonable time specified by the Institute:

- (a) the Institute may, without prejudice to any other rights the Institute may have against the Contractor, rectify the Defect itself; and
- (b) the rectification costs incurred by the Institute will be a debt due and payable on demand from the Contractor to the Institute.

11.4 Where any Defect has been rectified under the Contract, the rectification work will be the subject of an additional Defects Liability Period commencing on the date the relevant rectification works are completed.

12. CONFIDENTIAL INFORMATION

The Contractor must not use any Confidential Information or disclose any Confidential Information other than to the Contractor's Personnel who need the information to perform the Services or deliver the Goods, to the Contractor's legal advisers or to the extent required by Law.

13. INTELLECTUAL PROPERTY

13.1 Subject to clause 13.2, the Contractor IP remains vested in the Contractor and the Institute's IP remains vested in the Institute.

13.2 Unless otherwise agreed in writing, the Institute will own all Intellectual Property Rights that the Contractor creates in the performance of the Services and the supply of the Goods (**Project IP**). The Project IP will vest in the Institute immediately on creation. To the extent that the Contractor may at any time acquire any right, title or interest in any Project IP, the Contractor, by this Contract, assigns to the Institute all such right, title and interest.

13.3 The Contractor grants to the Institute a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable licence (with the right to grant sub-licenses on the same terms) to use the Contractor IP to the extent necessary to use the Goods and the Services.

13.4 The Contractor warrants to the Institute that it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the supply of the Goods or which is incorporated in any Goods or Services supplied or provided.

13.5 The Contractor indemnifies the Institute from and against all claims and loss resulting from any alleged or actual infringement of the Contractor IP rights.

14. **INSURANCE**

- 14.1 Where the Contract is for Goods, the Contractor must effect and maintain goods insurance covering insurance of the Goods against all risks to the point of delivery at the Delivery Address and, if the Goods are rejected by the Institute, from the time the Contractor collects the Goods from the Institute, for an amount not less than the full replacement costs of the Goods.
- 14.2 Where the Contract is for Services, the Contractor must effect and maintain with a reputable insurer the following insurance policies for the entirety of the term of the Contract:
- (a) public and products liability insurance covering liability for damage to property and the death of or injury to any person (other than as covered under a workers compensation policy) in an amount of not less than \$10 million in respect of each and every claim, unlimited as to the number of occurrences for public liability;
 - (b) workers compensation insurance as required by Law, including cover for common law liability for an amount of not less than \$50 million for any one occurrence;
 - (c) motor vehicle insurance covering all vehicles, plant and equipment (whether owned, hired or leased) used in connection with the Contract for loss or damage of not less than the market value and third party liability of not less than \$20 million in respect of each and every claim;
 - (d) insurance covering the Contractor's own property, goods, materials owned, hired, leased or used by the Contractor, for an amount not less than the market value of those insured items; and
 - (e) any additional insurance required by an applicable Law or reasonably requested by the Institute; and
 - (f) where the Contractor is providing professional services, professional indemnity insurance of not less than \$2 million for each claim and in the aggregate for all claims arising in the same insurance period, covering the liability of the Contractor for any professional services provided by the Contractor and the Contractor's Personnel under the Contract. Where this insurance is effected on a 'claims made' basis, the policy must be maintained for a period of at least 6 years after the Services are delivered or the earlier termination of the Contract.
- 14.3 If the Contractor subcontracts any part of the Contractor's obligations, then the Contractor must ensure that every subcontractor effects and maintains all of the insurances required under clause 14.1 or 14.2 (or both, as applicable), as appropriate for the work being performed by that subcontractor, before the subcontractor commences any of the Contractor's obligations under this Contract.
- 14.4 If requested by the Institute, the Contractor must provide the Institute copies of certificates of currency and such other proof of compliance with the provisions of this clause 14 as the Institute may reasonably require.

15. **INDEMNITY AND LIMITS OF LIABILITY**

- 15.1 The Contractor indemnifies the Institute and the Institute's officers, employees, agents and contractors from and against any claims (including third party claims) and losses suffered or incurred by any of them arising out of, or in connection with, any wrongful act or omission of the Contractor or any of the Contractor's Personnel. This indemnity will be reduced to the extent that the claim or loss is caused by the negligence of the Institute or the Institute's personnel, and any amount to which this indemnity relates is a debt due on demand.
- 15.2 Neither party is liable to the other for Consequential Loss.
- 15.3 Part 1F of the Civil Liability Act 2002 (WA) does not apply to the Contract.

16. **TERMINATION**

- 16.1 The Institute may terminate the Contract by notice to the Contractor:
- (a) at any time and in its absolute discretion by giving not less than 5 Business Days' notice to the Contractor;
 - (b) if the Contractor commits a breach of the Contract and fails to remedy that default within 10 Business Days of the Institute giving notice of the breach; or
 - (c) immediately if an Insolvency Event occurs.
- 16.2 On termination of the Contract, the Contractor must promptly return to the Institute any of the Institute's Confidential Information, property and documents which the Institute owns or in which the Institute has an interest.
- 16.3 If the Contract is terminated under clause 16.1(a):
- (a) the Institute must pay the Contractor that part of the Contract Price for any Goods delivered or Services performed prior to termination and that have not already been paid by the Institute; and
 - (b) the Contractor is not entitled to, and the Institute is not liable for, any additional amounts whatsoever.
- 16.4 Subject to clause 16.3, termination of the Contract, however it may occur, does not prejudice any claim that either party may have against the other under the Contract on termination.

17. **NOTICES**

Any notice or other communication relating to the Contract must be in writing, signed by the sender or its agent, and either hand delivered, sent by pre-paid post, faxed or emailed to the other party at the address, fax number or email address set out in the Purchase Order.

18. **DISPUTES**

- 18.1 Neither party may commence any action, bring any proceedings or seek any relief or remedy in a court, except interlocutory or equitable relief, from a court in respect of a dispute until they have complied with the dispute resolution process in accordance with this clause 18.
- 18.2 If any dispute arises between the parties in relation to the Contract, either party must give notice of the dispute to the other party.
- 18.3 A senior representative of each of the parties must promptly meet and attempt to resolve the dispute. If the parties are unable to resolve a dispute within 15 Business Days of the notice referred to in clause 18.2, then either party may issue court proceedings.

19. **MODERN SLAVERY**

- (a) The Contractor must, in performing its obligations under this Contract, comply with all Laws relating to Modern Slavery, and must not directly or indirectly use child, forced or involuntary labour in any form or in any way be associated with slavery or human trafficking.
- (b) For the purposes of this clause 19, Modern Slavery means conduct which would constitute an offence under the *Modern Slavery Act 2018* (Cth), and this includes trafficking of persons, illegal forms of child labour, slavery, forced labour, deceptive recruiting, debt bondage, or offences involving non-citizens working in Australia without the correct visa.

20. **GENERAL**

- 20.1 The Contract states all the express terms of the agreement between the parties and supersedes all prior representations, discussions, negotiations, understanding and agreements in respect of its subject matter.
- 20.2 The Contract is governed by the law in force in Western Australia and each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia.
- 20.3 The Contractor must not assign or novate the Contract or assign any other right, benefit or interest under the Contract to any person or entity without the prior written consent of the Institute.
- 20.4 No term or provision of the Contract will be construed against a party on the basis that the Contract or the term or provision in question was put forward or drafted by that party.
- 20.5 The Contract is a non-exclusive contract for the supply of Goods or Services and it does not prevent the Institute from entering into other contracts for the supply or performance of the same or similar goods or services with other contractors.
- 20.6 Any provision of the Contract which is illegal, void or unenforceable will be ineffective to the extent only of that illegality, voidness or unenforceability without invalidating the remaining provisions.
- 20.7 Where approved personnel have been nominated by the Contractor and approved by the Institute, the Contractor must use the approved personnel in delivering the Goods or Services. The Contractor must obtain the Institute's written approval, which will not be unreasonably withheld, if it wishes to change the approved personnel.
- 20.8 Clauses 5, 7.7, 7.8, 9, 12, 13, 14.2(f), 15, 16.4 and 20 and any other term by its nature intended to survive termination of this Contract, survives the termination or expiry of the Contract.

21. **DEFINITIONS**

Australian Consumer Law means the Australian Consumer Law as embodied in Schedule 2 to the Competition and Consumer Act 2010 (Cth).

Confidential Information means the Contract and information (regardless of its form) which is disclosed directly or indirectly by the Institute to the Contractor or Contractor's Personnel which is treated or designated as confidential, or which the Contractor or the Contractor's Personnel ought to know is confidential, but does not include information which is or becomes public knowledge (other than by the Contractor's disclosure or breach of the Contract).

Consequential Loss means any loss of production, loss or revenue, loss of profit, loss of business reputation, business interruptions, loss of opportunities, loss of anticipated savings or wasted overheads.

Contract means these terms and conditions and the Purchase Order.

Contract Price means the price for the Goods and / or Services (exclusive of GST) set out in the Purchase Order.

Contractor means the contractor specified in the Purchase Order.

Contractor IP means any Intellectual Property Rights of the Contractor (or Intellectual Property Rights licensed to the Contractor by a third party) which:

- (a) is in existence before the date of the Contract or comes into existence after the date of the Contract other than in connection with the Contract, the Goods or the Services; and
- (b) which the Contractor makes available, contributes, brings to or uses in connection with the Contract.

Contractor's Personnel means the Contractor's officers, employees, agents and subcontractors and their respective employees and agents.

Date for Delivery means the date or dates for delivery of the Goods and / or Services specified in the Purchase Order.

Date of Delivery means the date on which the Goods are delivered to the Delivery Address.

Business Day means a day that is not a Saturday, Sunday, a public holiday in Western Australia.

Defect means any defect, error, damage, deficiency, fault or inadequacy in the design, performance, workmanship, quality or makeup of the Goods or Services.

Defects Liability Period means a period of 12 months commencing on the Date of Delivery, and, where relevant, any additional period of time specified in accordance with clause 9.4.

Delivery Address means the place set out in the Purchase Order for delivery of the Goods or otherwise notified by the Institute in writing.

Goods means the goods and products specified in the Purchase Order.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means in respect of the Contractor, the following events: appointment of an administrator, appointment of a liquidator, appointment of a provisional liquidator, appointment of a controller (including any receiver or receiver and manager), insolvency, bankruptcy, winding up or any event analogous to these events.

Intellectual Property Rights means all intellectual and industrial property rights, including trade-marks, copyright (including future copyright), inventions, patents, designs, circuits and other eligible layouts, database rights, including any application or right to apply for registration of any of these rights.

Invoice means a tax invoice as defined by the GST Law.

Law means any law in force in Australia, whether common law, equity or any law under any statute, subordinate legislation, ordinance or code.

National Police Check means a "National Police Certificate" issued by the Police Force in the State or jurisdiction in which the relevant Contractor's Personnel resides.

Purchase Order means the purchase order to which these terms and conditions are attached.

Services means any services specified out in the Purchase Order, including the delivery of any goods and performance of services ancillary to the Services.

Tax means any income, land, indirect and other taxes, levies, imposts, deductions, charges, duties, compulsory loans and withholdings, including financial institutions duty, debits tax or other taxes whether incurred by, payable by return or passed on to another person and includes any interest, penalties, charges, fees, fines or other amounts imposed in respect of any of the above, but does not include GST.

The Institute means The Kids Research Institute Australian ABN: 86 009 278 755.

The Institute IP means any Intellectual Property Rights of The Kids Research Institute Australia (or licensed to the Institute by a third party) which the Institute makes available, contributes, brings to or uses in connection with the Contract.

22. INTERPRETATION

In the Contract:

- (a) a reference to "Goods or Services" is to be read as "Goods or Services, or both of them, as applicable";
- (b) the singular includes the plural and the plural includes the singular;
- (c) a reference to a clause or party of the Contract is a reference to a clause of, and a party to, the Contract;
- (d) a reference to legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them; and
- (e) the words 'include', 'includes' and 'including' must be construed without limitation as to what else might be included.