

## 1. Definitions

**Goods** means the goods described in the Purchase Order.

**Services** means the services described in the Purchase Order.

**Purchase Order** means the order issued by LBW to the Supplier.

**LBW** means Lower Burdekin Water and its successors and assigns.

**Supplier** means the party described in the Purchase Order who is to supply the Goods and/or Services to LBW.

**Price** means the Supplier's costs to supply the Goods and/or Services to LBW, as set out in the Purchase Order.

## 2. Price and Contract formation

- (a) The Price is fixed and the Supplier is deemed to have carefully examined all documentation provided by LBW (if any), in relation to the Goods and/or Services and that the Supplier has satisfied itself of all conditions, risks, contingencies and other circumstances which might affect the supply. Without limiting the generality of the foregoing, the Price includes without limitation the Supplier's costs, if any, to formulate and implement any safety management systems or safe work method statements as may be applicable to the Services. The Price includes all costs payable by LBW for the Goods and/or Services including, but not limited to:
- packaging, delivery to and unloading charges at the destination stated in the Purchase Order (if any), or otherwise to LBW's business address;
  - any taxes, duties and associated fees;
  - insurance.
- (b) LBW may however vary the Purchase Order by written notice to the Supplier. Any addition or reduction to the Price or change to the delivery date or due date/s arising therefrom will be agreed to between the parties, prior to the Supplier performing the variation. If agreement cannot be reached, LBW in its sole and absolute discretion will determine the Price and effects on relevant dates. The Supplier is not permitted to vary the Purchase Order, except as directed and approved by LBW in writing.
- (c) An agreement between LBW and the Supplier (**the Agreement**) arises:
- where the Purchase Order is issued in acceptance of a quotation, tender or offer to supply; or
  - where the Purchase Order is issued following a verbal enquiry by LBW of the Supplier (in which case the Purchase Order constitutes an offer by LBW to purchase), upon receipt by the Supplier of the Purchase Order (an acknowledgment is not necessary) or any supply pursuant to the Purchase Order, whichever occurs first.
- (d) Unless otherwise agreed in writing, the Agreement comprises the Purchase Order and these terms, but excludes any terms or conditions contained in any document of the Supplier. If the parties enter into a separate contract which deals with the same subject matter as the Purchase Order, the terms of that separate contract will take priority over these terms, but only to the extent of any inconsistency.

## 3. Supplier warranties

In addition to any warranties contained in the Purchase Order and otherwise implied by law, it is a condition of LBW's purchase of the Goods and/or Services that:

- (a) as to the Goods:
- they will be supplied within the timeframes or any due date as directed by LBW in the Purchase Order, or otherwise;
  - they will be new, unless otherwise agreed in writing;
  - they will be of merchantable quality, free from defects and fit for the purpose for which they are intended and for which items of the same kind are commonly supplied;
  - they will conform to any specifications, description, model number and sample (if any) provided by the Supplier;
  - the Supplier is capable of passing title in the Goods free from any encumbrances, including but not limited to any security interest as defined by the *Personal Property Securities Act 2009*;
  - the Supplier bears all risk in the Goods until they are delivered to LBW in accordance with the Purchase Order and LBW accepts such delivery;
  - any third party warranty offered by the manufacturer of the Goods is enforceable by LBW;
- (b) as to the Services:
- they will be supplied within the timeframes or any due date as directed by LBW in the Purchase Order, or otherwise;
  - they will be supplied with due care and skill and in a proper and workmanlike manner;
  - the Supplier has the qualifications, experience, resources and expertise to provide the Services and they will satisfy all legal requirements, relevant standards and codes;
  - they do and will not infringe any third party's intellectual property or moral rights. Specifically, if the Purchase Order is for the provision of design services then upon creation, the ownership of any intellectual property rights in or associated with those services vests in LBW;
  - they will be undertaken in a manner which provides and maintains a working environment that is safe and without risk to the health and safety of the public, the Supplier's employees, agents or subcontractors and LBW's employees, agents or contractors. In particular, the Supplier will ensure that it and its employees, agents and subcontractors perform the Services safely and in accordance with the *Work Health and Safety Act 2011* (Qld) and its accompanying regulations and or other applicable legislation. This includes, without limitation, an obligation upon the Supplier and its contractors to have in place appropriate safety management systems and/or a safe work method statements appropriate to the Services being provided to LBW;
  - the Supplier will familiarise itself and comply with (and ensure that its employees, agents and subcontractors do likewise) LBW's applicable policies and procedures.

The Supplier acknowledges that a breach of any of the above warranties is a breach entitling LBW to suspend or terminate the Agreement under clause 6.

## 4. Delivery

- (a) Unless specified otherwise in the Purchase Order, the Goods must be delivered adequately packaged and protected to ensure safe delivery to the destination by the delivery date/s stated in the Purchase Order. If no date/s are specified, delivery must occur as soon as possible. The Supplier must take all reasonable steps to prevent any delay to delivery of the Goods.
- (b) If LBW considers the Goods are defective and do not comply with the warranties in clause 3, it may reject delivery. LBW may unpack, inspect and test the Goods for this purpose. If the Goods (in whole or part) are rejected then upon being notified by LBW, the Supplier must at its cost arrange for collection or return of the defective goods and refund LBW any amount previously paid for them. Defective goods held by LBW pending collection or return will be at the Supplier's risk.
- (c) Subject to the preceding subclause, risk in the Goods at all times remains with the Supplier and LBW will be under no liability, legal or otherwise, to pay for them until LBW approves the Goods and delivery is accepted in writing.

- (d) If the Supplier becomes unable to supply the Goods as required, it must immediately notify LBW in writing. If the Goods are completely unavailable, the Supplier may offer alternative goods which LBW may, in its sole and absolute discretion, accept or reject. Any such substitution must be approved by LBW in writing.

## 5. Invoicing and payment

- (a) Payment will be made by LBW to the Supplier by electronic funds transfer or cheque not less than 30 days after LBW's receipt of a GST compliant tax invoice from the Supplier, subject to:
- the Price being in accordance with the Purchase Order;
  - the invoice being correctly addressed to LBW and sent by email to [accountspayable@lowerburdekinwater.com.au](mailto:accountspayable@lowerburdekinwater.com.au) or posted to LBW's business address;
  - the Purchase Order number and contract number (if any) being stated thereon; and
  - in the case of delivered goods, inclusion of a delivery docket number/s, quantity amount and price per unit;
- v. any set-off or deduction which LBW is entitled to make pursuant to these terms.

## 6. Termination and cancellation

- (a) In the event of a breach by the Supplier of the Agreement, LBW may:
- suspend the supply of Goods and/or Services by notice in writing to the Supplier in which case, the suspension will continue until otherwise advised in writing by LBW; or
  - give to the Supplier a written notice specifying the breach and giving the Supplier seven (7) days to remedy it, failing which the Agreement may be terminated by further written notice; or
  - immediately terminate the Agreement by written notice to the Supplier. Where the Purchase Order is for the provision of Services, LBW may engage another supplier to complete any remaining works and recover such costs from the Supplier. This does not restrict LBW's rights to recover all or any other loss and damage it may otherwise incur or take any other steps it may be entitled to, at law or in equity.
- (b) Without prejudice to the preceding subclause, LBW may cancel the Purchase Order by written notice to the Supplier at any time. Upon that notification, the Supplier must take appropriate action to mitigate any loss or prevent the incurring of any costs associated with the Purchase Order. LBW will pay the Supplier's reasonable fees and expenses associated with and incurred up to the time of cancellation (but not any loss of profits, prospective or otherwise), upon full and proper particulars of the claimed fees and expenses being provided to LBW in writing.
- (c) If the Supplier, being an individual, commits an act of bankruptcy or being a company, an act of insolvency, the Agreement is deemed to be terminated immediately upon the happening of such act.

## 7. Insurance

- (a) As may be applicable, during the period in which the Supplier is providing Goods and/or Services to LBW, the Supplier must effect and maintain appropriate insurance, including but not limited to and unless otherwise advised by LBW:
- worker's compensation;
  - motor vehicle insurance;
  - public liability for not less than \$10 million per occurrence;
  - product liability for not less than \$10 million per occurrence;
  - professional indemnity insurance for not less than \$5 million per occurrence.
- (b) The Supplier must, upon reasonable written request, provide to LBW copies of certificates of currency for any such insurance. The Supplier's failure to do so amounts to a substantial breach of the Agreement in which case, clause 6 applies.

## 8. Indemnity

The Supplier indemnifies and holds LBW harmless in respect of all claims, losses, proceedings, liabilities, costs, personal injury, death or damage to property arising out of or in connection with any act or omission of the Supplier, its employees, agents or subcontractors (negligent or otherwise) associated with the Agreement.

## 9. Confidentiality

The Supplier acknowledges that it may obtain or be provided with information or given access to documentation confidential to LBW. Other than for the sole purpose of the Agreement, the Supplier will not disclose and will ensure that its employees, agents or subcontractors do not disclose any such information to third parties without LBW's express written consent being first obtained. A breach of this clause so amounts to a substantial breach of the Agreement in which case, clause 6 applies.

## 10. General

- (a) Where the Supplier consists of more than one person or entity, their obligations and liability under the Agreement are joint and several.
- (b) The Agreement is governed by the laws of Queensland and the parties hereto submit to the jurisdiction of the courts and tribunals of that State.
- (c) LBW's failure to exercise any right or power herein does not operate as a waiver and a partial exercise of a power or right does not preclude any further exercise of that power or right.
- (d) Nothing in the Agreement constitutes or is deemed to constitute a partnership, joint venture or employer/employee relationship between the parties. Further, neither party is permitted to act nor hold itself as having any actual or ostensible authority to act, as an agent for the other.

## 11. Notices

- (a) A notice required by the Agreement must be given by one party to the other in writing and addressed to the other party's last known business address and may be sent by prepaid ordinary post, fax or email.
- (b) A posted letter, fax or email is taken to be received:
- in the case of the posted letter, on the second business day after posting;
  - in the case of a fax, at the time the fax was successfully transmitted to the recipient;
  - in the case of an email, upon notification of a receipt message.