

In this document:

Water Corporation means the Water Corporation, a statutory body corporate created by the Water Corporation Act 1995 (WA) and includes its successors and assigns;

Contract means the contract evidenced by the Purchase Order, these Terms and Conditions and the Supplier's Offer excluding any terms or conditions of sale or contract forming part of the Supplier's offer which are not specifically accepted in writing by the Water Corporation;

defective means differs from that specified in the Contract or is in any other way not fit for the intended purpose;

deliver, delivery and delivered include supply, supplied, provide, provided, provision, perform, performed or performance as the context may require;

Item or Items means the goods, materials, services or works, as the case may be, that are to be delivered by the Supplier under the Contract;

Purchase Order means a Purchase Order issued by the Water Corporation; and

Supplier means the company, partnership, firm or person to which the Purchase Order is addressed and includes all sub-suppliers.

1. Oral or written acknowledgment of the Purchase Order by the Supplier or, in the absence of such acknowledgement, the delivery of the Items shall constitute the Supplier's acceptance of the Purchase Order, including the terms of the Contract as the sole basis of the sale to the exclusion of any conditions of sale or contract appearing on any document of the Supplier. No prior commercial dealings between the parties nor any prior customs, practices, conduct or behaviour of the parties in those dealings shall be relevant to supplement or explain any terms used in the Contract. A purported modification of the Contract expressed in any document of the Supplier shall not apply to the Contract unless expressly accepted in writing by the Water Corporation.
2. Unless otherwise stated in the Purchase Order, the prices shown in the Purchase Order:
 - a) are in Australian currency;
 - b) are firm and not subject to adjustment;
 - c) include for delivery of Items to or at the location stated in the Purchase Order and for off-loading by the Supplier at that location; and
 - d) are exclusive of GST.
3. The Supplier is at all times independent of the Water Corporation and shall not be considered an employee, partner or agent of the Water Corporation for any purpose whatsoever.
4. Items shall be:
 - a) new, of merchantable quality and fit for the purpose for which Items of the same kind are commonly supplied and any other purpose made known to the Supplier by the Water Corporation;
 - b) appropriately packaged to protect against damage during handling, transit and storage; and
 - c) delivered with due care diligence and skill reasonably expected of a Supplier of Items of the kind described in the Contract.

In addition, the Supplier shall ensure that any warranty offered by the manufacturer of an Item or part thereof shall be enforceable by the Water Corporation.

5. All Items are at the risk of the Supplier until delivered to the location stated in the Contract.
6. The Water Corporation may at any time vary the requirements of the Contract by advising the Supplier in writing. The supplier shall not vary from the requirements of the Contract without the prior written agreement of the Water Corporation.
7. The Supplier agrees that the Water Corporation may return part or all of any shipment received after the delivery date specified in the Contract and may charge the Supplier for any loss or expense sustained as a result of its failure to deliver as agreed. The exercise of such rights by the Water Corporation shall be without prejudice to any claim for damages or other rights of the Water Corporation against the Supplier.
8. Where the Water Corporation requires any aspect of an Item to be designed, manufactured, tested or installed to a specific standard or standards, or to be delivered in accordance with specific standards, the Supplier shall provide to the Water Corporation such information as the Water Corporation may require to verify compliance with the specified standards.
9. If an Item is defective, the Water Corporation may reject that Item, or the portion thereof that is defective, up to a period of 3 months after the date of completion of delivery. The Supplier must, at no cost to the Water Corporation and at the Water Corporation's option, promptly replace or re-perform any rejected Item or refund to the Water Corporation any monies paid for that Item. Should any Item or part of any Item fail or prove to be defective within the earlier of 12 months of being placed in service or 24 months from the date of delivery, the Supplier shall promptly repair or replace that Item upon request to do so by the Water Corporation. Signed delivery dockets shall not signify acceptance by the Water Corporation of Items delivered but only the number of packages or cartons delivered.

10. The Supplier warrants that any design, documents and methods of working used by the Supplier do not infringe any patent, registered design, trademark or name, copyright, or other protected right and the Supplier indemnifies the Water Corporation against any action, cost or expense resulting from any alleged infringement. These obligations shall survive the term or termination of the Contract for a period of 2 years and shall be enforceable at any time at law or in equity.
11. Plant or equipment used for an Item, or for delivery of an Item, on any lands or property made available to the Supplier for the delivery of the Item shall be well maintained, have a high level of operating availability. Operators of such plant or equipment, provided by the Supplier under the Contract, shall be suitably qualified to operate the plant or equipment.
12. Claims for payment shall only be accepted from the Supplier and shall be supported by any information reasonably required by the Water Corporation. Unless otherwise stated in the Purchase Order, the Water Corporation shall make payment for the Items within 28 days of the end of the month in which the Water Corporation receives the Supplier's invoice. Failure by the Water Corporation to pay the amount payable at the time due shall not be grounds to invalidate or terminate the Contract nor entitle the Supplier to the payment of any interest or charge for extended credit.
13. The Water Corporation shall not be obliged to:
 - a) pay for any Item not delivered in accordance with the Contract; or
 - b) make payment against any invoice or claim for payment which does not show the Purchase Order number, nor for Items that are not shown on the Purchase Order.
14. If GST is payable on a taxable supply made under or in connection with the Contract, the Supplier may recover from the Water Corporation the amount of that GST at the same time as when the Water Corporation is required to pay for the Items under the Contract but only if the Supplier provides the Water Corporation with a tax invoice so that the Water Corporation can claim input tax credits on the Items. If the Supplier fails to provide an Australian Business Number, the Water Corporation will be obligated to deduct "Pay As You Go" tax, at the rate of 48.5%, from any payment due to the Supplier under the Contract and to remit the amount of that tax to the Australian Taxation Office for the benefit of the Supplier.
15. The Supplier shall not, without the prior written approval of the Water Corporation, assign the benefit of all or any part of the Contract.
16. The Water Corporation and the Supplier shall maintain as confidential and shall not disclose to any third party any information or documentation identified by either of them as confidential unless required by law. The Supplier shall not advertise, publish or release information or statements to the media or the public concerning the Contract, the Items, or operations of the Water Corporation, without the prior written agreement of the Water Corporation.
17. The Supplier indemnifies the Water Corporation against any loss, damage, cost, expense or liability for injuries (including death) to any person and/or damage to and/or destruction of the property of any person, including the Water Corporation and the Supplier, their agents, employees and customers, arising out of or in connection with an act or omission of the Supplier in connection with the Items and/or the Supplier's performance or lack of performance under the Contract, whether suffered in contract, tort, under any statute (including the Trade Practices Act 1974 or the Fair Trading Act 1987), in equity or otherwise. The Supplier shall effect and maintain insurance to cover its liability under this clause 17 and provide evidence of such insurance to the Water Corporation on request. The Supplier's liability is reduced proportionately to the extent that the Water Corporation contributed to any loss, damage, cost, expense or liability which the Supplier is required to indemnify the Water Corporation against under this clause 17.
18. The Supplier shall, as soon as it becomes aware of any circumstances that would prevent it being able to fulfil the Contract, promptly notify the Water Corporation in writing and provide details in the notice of those circumstances and the impact on the Contract. Upon receipt of the notice, the Water Corporation, at its sole discretion, may:
 - a) cancel all or any part of the Contract; or
 - b) vary the Contract, at no cost to the Water Corporation, to enable the Supplier to fulfil the Contract.
19. If the Supplier:
 - a) fails to deliver the Items by the date for delivery; or
 - b) at a rate of progress satisfactory to the Water Corporation, or
 - b) is in breach of any of these conditions; or
 - c) has neglected or omitted to carry out any direction of the Water Corporation in respect to the Contract; or
 - d) has intimated that it is unwilling or unable to complete its obligations under the Contract; or
 - e) becomes insolvent or has committed an act of bankruptcy,

the Water Corporation may, without prejudice to its rights to recover damages or any other rights, by giving notice in writing, terminate the Contract and make such other arrangements as the Water Corporation may consider necessary. Any additional expenditure incurred by the Water Corporation in connection therewith shall be a debt due from the Supplier to the Water Corporation.

20. The Water Corporation may terminate the Contract at its absolute discretion without assigning any reason for the termination and under such circumstances the Water Corporation shall pay the Supplier for any Items delivered prior to the date of termination and shall reimburse the Supplier for such reasonable costs otherwise incurred as a result of the Contract being terminated. The Water Corporation's liability to the Supplier shall under no circumstances exceed the amount for the Items otherwise payable under the Contract.
21. The Contract shall be governed by and construed with reference to the laws for the time being in force in the State of Western Australia. The Supplier must comply with applicable laws throughout the Contract and the Supplier warrants that Items delivered under the Contract have been delivered in full and complete compliance with any applicable laws or regulations.
22. Nothing in the Contract limits the Water Corporation's rights under any law, including (without limiting the generality of the foregoing) under the *Trade Practices Act 1974*, the *Sale of Goods Act 1895* or the *Fair Trading Act 1987*.