

## 1. In this document:

**Principal:** means the Water Corporation (ABN: 28 003 434 917), 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* bid excluding any terms or conditions of sale or contract forming part of the *Supplier's* bid which are not specifically accepted in writing by the *Principal*;

**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;

**force majeure:** means:

- a) war and other hostilities (whether war be declared or not) invasion, terrorist activity, act of foreign enemies, mobilisation, requisition or embargo;
- b) rebellion, revolution, insurrection, military or usurped power or civil war;
- c) riot, commotion or disorder except where solely restricted to employees of the *Supplier* or its sub-suppliers;
- d) earthquake, flood, fire or other natural physical disasters except to the extent that any such disaster is caused by, or its effects contributed to by, the party claiming *force majeure*; or
- e) a general industrial dispute not limited to the employees of the *Supplier* or the employees of any of its sub-suppliers;

**intellectual property right:** means any patent, registered design, trademark or name, copyright or other protected right;

**Item or Items:** means the goods, or the services to be *delivered* by the *Supplier* under the *Contract*;

**Purchase Order:** means a purchase order issued by the *Principal*; and

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

2. 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 *Principal*.

3. 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; and
- c) are exclusive of GST.

4. *Items* supplied under the *Contract* shall be:

- a) if goods;
  - i) 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 *Principal*;
  - ii) appropriately packaged to protect against damage during handling, transit and storage; and
  - iii) unless otherwise stated in the *Purchase Order delivered* and offloaded by the *Supplier* at the *Supplier's* cost with due care diligence and skill reasonably expected of a supplier of *Items* of the kind described in the *Contract*; or

- b) if services;
  - i) performed in accordance with the *Contract* and appropriate industry or professional standards; and
  - ii) the *Supplier* shall supply, unless stated otherwise in the *Contract*, all labour, equipment, materials, and other requirements necessary to complete the services in accordance with the *Contract*.
- 5. The *Supplier* shall ensure that any warranty offered by the manufacturer of an *Item* or part thereof shall be enforceable by the *Principal*.
- 6. Ownership and risk are the responsibility of the *Supplier* until the *Items* are received by the *Principal* at the *delivery* point stated in the *Purchase Order* or until collected by the *Principal*.
- 7. The *Principal* may at any time prior to completion of the *Contract* vary the requirements of the *Contract* by advising the *Supplier* in writing. Variations shall be priced in accordance with *Contract* rates, if applicable, or by agreement between the *Supplier* and the *Principal*. The *Supplier* shall not vary from the requirements of the *Contract* without the prior written agreement of the *Principal*.
- 8. If the *Principal* 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 *Principal* such information as the *Principal* may require to verify compliance with the specified standards.
- 9. If after acceptance of the *Items*, the *Principal* discovers that the *Items* or part thereof are *defective*, are of an inferior quality or differ from those specified in the *Contract*, the *Principal* may notify the *Supplier* of the deficiency and require the *Supplier* to either:
  - a) at no cost to the *Principal*, and at the *Principal's* option, promptly replace or re-perform any rejected *Item* or part thereof; or
  - b) refund to the *Principal* any moneys paid for any rejected *Item* or *Items* or part thereof.
- 10. The *Supplier* warrants that any design, materials, documents and methods of working provided by the *Supplier* shall not infringe any *intellectual property right* and indemnifies the *Principal* against any such infringements. The *Supplier* retains the *intellectual property right* in or in relation to the *Items* and grants to the *Principal* an irrevocable licence to use that *intellectual property right* for any purpose for which the *Items* are provided including any subsequent repairs, maintenance or servicing, the supply of replacement parts, and additions or alterations.
- 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 and 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. Unless otherwise stated in the *Purchase Order*, the *Principal* shall make payment for the *Items* within 28 days of the end of the month in which the *Principal* receives the *Supplier's* claim for payment. Interest of 6% per annum may be claimed on any overdue payments.
- 13. The *Principal* shall not be obliged to pay:
  - a) for any *Item* not *delivered* in accordance with the *Contract*;
  - b) against any invoice or claim for payment which does not show the *Purchase Order* number; or
  - c) for *Items* that are not shown on the *Purchase Order*.
- 14. The parties confirm that they are both registered for GST pursuant to the GST Act and that should either of them cease to be so registered they will inform the other at the earliest opportunity.

Unless otherwise agreed with the *Principal* in relation to this *Contract*, the *Supplier* shall not issue tax invoices by way of claims for payment and hereby agrees that the *Principal* shall issue Recipient Created Tax Invoices setting out all relevant details required under the GST Act and related rulings, including the amount to be paid on account of GST for all payments made under this *Contract*.

If the *Supplier* fails to provide to the *Principal* an Australian Business Number, the *Principal* shall

deduct "Pay As You Go" tax, at the top marginal rate from any payment due to the *Supplier* under the *Contract* and 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 *Principal*, assign the rights and obligations of all or any part of the *Contract*.
16. The *Principal* 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 *Principal*, without the prior written agreement of the *Principal*. If required and directed by the *Principal* the *Supplier* shall sign a confidentiality agreement.
17. The *Supplier* shall, as soon as it becomes aware of any circumstances (other than *force majeure*) that would prevent it being able to fulfil the *Contract*, promptly notify the *Principal* in writing and provide details in the notice of those circumstances. Upon receipt of the notice, the *Principal* shall, at its sole discretion, notify the *Supplier* in writing, that the *Contract*:
  - a) is terminated; or
  - b) is varied in order to enable the *Supplier* to fulfil the *Contract*.
18. Notwithstanding any other provision of the *Contract*:
  - a) the *Principal's* total liability to the *Supplier* for all claims (other than claims for personal injury or death) arising out of, or in connection with the *Contract* (other than the obligation to pay under clause 12) is limited to the greater of:
    - i) \$100,000;
    - ii) the total value of the *Purchase Order* (including any variations); or
    - iii) any amounts the *Principal* is able to recover under any insurances taken out under the *Contract*;
  - b) the *Supplier's* total liability to the *Principal* for all claims (other than claims for personal injury or death) arising out of or in connection with the *Contract* is limited to the greater of:
    - i) \$100,000;
    - ii) the total value of the *Purchase Order* (including any variations); or
    - iii) any amounts the *Supplier* is able to recover under any insurances taken out under the *Contract*, or which it would have been able to recover if the insurances had been taken out, or which it would have been able to recover under the insurances, in either case, but for any act, failure or omission by the *Supplier*; and
  - c) neither party is liable to the other for any indirect, consequential, special, contingent or penal loss or damage, including but not limited to, loss of use, loss of profit, loss of revenue or cash flow, loss of reputation, loss of opportunity or loss of anticipated savings.
19. Subject to Clause 18, and except in circumstances constituting an indemnity under subsection 175AA(7) of the Workers' Compensation and Injury Management Act 1981 (WA), the *Supplier* shall indemnify the *Principal* against:
  - a) loss of or damage to property of the *Principal*; and
  - b) claims by any person against the *Principal* in respect of personal injury or death or loss of or damage to any other property; arising out of or in consequence of carrying out the *Contract* by the *Supplier* to the extent such loss, damage, death or injury has been caused or contributed to by the *Supplier* or its personnel. The indemnity under this Clause 19 shall not apply to the extent that the liability of the *Supplier* is limited by another provision of the *Contract* or exclude any other right

of the *Principal* to be indemnified by the *Supplier*.

20. The *Supplier* shall maintain insurances relevant to the responsibilities of the *Supplier* under the *Contract* including, but not limited to:
- a) Public Liability;
  - b) Motor Vehicle Third Party;
  - c) Professional Indemnity; and
  - d) Workers' Compensation.

However, if the *Supplier* is a natural person or has a working director without workers' compensation insurance coverage providing services under this *Contract*, the natural person or working director shall be covered under the *Principal's* workers' compensation insurance. In this regard the *Supplier* shall promptly provide any information the *Principal* may require in order to determine the premiums for the *Principal's* workers' compensation insurance coverage, including an estimate of the value of its services for the *Principal* as a percentage of its total work, which information will not be used for any other purpose and shall be kept confidential.

The *Supplier* shall provide satisfactory evidence of insurances to the *Principal* on request.

21. If the *Supplier* commits a breach of the *Contract*, including, but not limited to:
- a) failure to *deliver* the *Items* by the date for *delivery*;
  - b) failure to proceed at a rate of progress satisfactory to the *Principal*;
  - c) failure to comply with clause 20;
  - d) failure to carry out any direction of the *Principal* in respect to the *Contract*;
  - e) inability or refusal to complete its obligations under the *Contract*; or
  - f) insolvency or bankruptcy of the *Supplier*;

the *Principal* 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 *Principal* may consider necessary.

Any goods *delivered* after the date for *delivery* specified in the *Contract* (or as varied in writing by the *Principal*) may be returned by the *Principal*. Any additional expenditure incurred by the *Principal* in connection therewith shall be a debt due from the *Supplier* to the *Principal*.

22. The *Principal* may terminate the *Contract* at its absolute discretion without assigning any reason for the termination and under such circumstances the *Principal* 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 *Principal's* liability to the *Supplier* shall under no circumstances exceed the amount for the *Items* otherwise payable under the *Contract*.
23. 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 legislation throughout the *Contract* and the *Supplier* warrants that *Items delivered* under the *Contract* have been *delivered* in full and complete compliance with any applicable legislation.
24. Nothing in the *Contract* limits the *Principal'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.
25. Where the *Supplier* is required to carry out work under the *Contract* on the *Principal's* premises or sites it shall obey all directions, instructions and notices issued by the *Principal's* employees regarding OSH and shall familiarise itself with the *Principal's* Handbook for Suppliers which may be obtained from the *Principal's* website at <http://www.watercorporation.com.au/> under Your Business/Suppliers/ Occupational Health and Safety for Contractors.

26. If any provision of the *Contract* is illegal, void, invalid or unenforceable for any reason, all other provisions which are self-sustaining and capable of separate enforcement shall, to the maximum extent permitted by law, be and continue to be valid and enforceable.
27. Neither party shall be considered to be in default of its obligations under the *Contract* to the extent that it can be established that the performance of such obligations is prevented by any circumstances of *force majeure* which arises after the date of the *Contract* and which was not foreseeable at the date of the *Contract*.

Subject to the provisions of this clause but notwithstanding any other provisions of this *Contract*:

- a) The non-performance by a party of an obligation on that party contained in this *Contract*, will be excused during the time and to the extent, whether wholly or in part, that such performance is prevented by *force majeure*;
  - b) The party claiming *force majeure* shall use all reasonable diligence to remove the *force majeure* as quickly as possible, provided that the requirement that any *force majeure* be remedied with all reasonable diligence, and shall not require the settlement of strikes or other industrial dispute by the party involved upon terms contrary to its wishes;
  - c) The period of time during which the performance of any obligation of this *Contract* is prevented by *force majeure* will be added to the time provided under this *Contract* for the performance of that obligation and to the time required for doing of any act dependant thereon; and
  - d) If the *force majeure* continues for a period of 30 days (whether or not that period is comprised of a continuous period or is comprised of a number of non consecutive periods related to the same *force majeure*) then the party who is not claiming the *force majeure* may terminate this *Contract* immediately by notice in writing to the other party.
28. Part 1F of the Civil Liability Act (WA) 2002 is excluded from application to this *Contract*.