

PURCHASE ORDER TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

In these General Conditions, capitalised terms have the following meanings:

- (a) **ACOR** means the ACOR entity identified as the purchaser of Goods or Services in the Purchase Order.
- (b) **Agreement** means the agreement formed between the ACOR and the Supplier in respect of the supply of Goods or the performance of Services in accordance with:
 - (i) a written agreement between ACOR and the Supplier for the supply of Goods or the performance of Services; or
 - (ii) if no written agreement has been entered into in accordance with (i) above, these Purchase Order Terms and Conditions, as amended or supplemented by the Special Conditions.
- (c) **Delivery Date** means the date specified for delivery of the Goods or completion of the Services in the Purchase Order.
- (d) **Goods** means the goods, materials, supplies, equipment or other items identified in the Purchase Order;
- (e) **Jurisdiction** means the Australian State or Territory identified in the address for ACOR in the Purchase Order or if no address is shown, the laws of New South Wales.
- (f) **Payment Term** means the period specified in the Purchase Order unless a different payment term has been agreed in the Agreement.
- (g) **Price** means the total amount (inclusive of GST) stated in the Purchase Order.
- (h) **Purchase Order** means an individual purchase order issued by ACOR to the Supplier for the supply of Goods or the performance of Services in accordance with the Agreement.
- (i) **Services** means the services identified in the Purchase Order that are to be performed by the Supplier
- (j) **Special Conditions** means any additional terms and conditions applying to the Agreement agreed in writing between the Supplier and ACOR prior to the date of the Purchase Order.
- (k) **Supplier** means the party identified in the Purchase Order.

2. SUPPLIER'S OBLIGATIONS

- 2.1 The Supplier must supply the Goods and/or perform the Services in a timely and efficient manner on or before the Delivery Date in accordance with the Agreement and comply with all statutory requirements, legislation, regulations and standards (including all Australian or International Standards) applicable to the Goods and/or the carrying out of the Services in the Jurisdiction.
- 2.2 If the Agreement relates to the supply of Goods, the Supplier warrants that:
 - (a) the Goods will be of merchantable quality;
 - (b) the Goods will be free from defects in design, materials and workmanship, and be suitable for the relevant purpose those Goods are usually supplied;
 - (c) it has good and marketable title to the Goods and ACOR will receive title to the Goods free of any charge or encumbrance; and
 - (d) risk in the Goods does not pass to ACOR until the Goods have been delivered to ACOR at the location directed by ACOR in the Purchase Order.
- 2.3 If the Agreement relates to the performance of Services, the Supplier will exercise the standards of diligence, skill and care normally exercised by a similarly qualified and competent person in the performance of comparable services.
- 2.4 The Supplier warrants that the Goods and/or the Services will not infringe any third party's intellectual property rights.
- 2.5 The Supplier will comply with ACOR's policies and procedures which are available at www.acor.com.au.
- 2.6 The Supplier acknowledges that ACOR has entered into this Agreement in reliance upon the Supplier's representations and warranties set out in the Agreement.
- 2.7 The Supplier must notify ACOR immediately if it becomes aware of any errors or discrepancies in the Purchase Order or the Agreement.

3. ACOR'S OBLIGATIONS

- 3.1 ACOR will provide the Supplier with any documents and other information in ACOR's control which are required by the Supplier to perform this Agreement.
- 3.2 In consideration of the due and proper performance of this Agreement by the Supplier ACOR will pay the Price.

4. PAYMENT

- 4.1 The Supplier may issue a written claim for payment of the Price in respect of the Goods supplied or the Services performed in the preceding month by the 20th day of each month. Only one claim for payment may be made each month. Claims received after the 20th day of the month, will be assessed as a claim received in the following month.
- 4.2 Unless otherwise provided, all financial amounts are in Australian currency and inclusive of all duties, exchange rates, administrative fees, levies or other surcharges and taxes.
- 4.3 ACOR will assess the claim for payment and pay the Supplier within the Payment Term. If there is a difference between the amount claimed and the amount to be paid, ACOR will issue a statement setting out the amount to be paid and reasons for the difference.
- 4.4 Payment of the Fee or any part of it by ACOR shall not be evidence that the Services have been provided satisfactorily or in accordance with this Agreement. All payments by ACOR are on account only.

5. VARIATION

No amendment or variation of the Purchase Order or the Agreement is valid or binding unless agreed in writing between the Supplier and ACOR.

6. COPYRIGHT

- 6.1 Copyright in all documents created by the Supplier in accordance with this Agreement will vest immediately, upon creation in ACOR.
- 6.2 The Supplier grants ACOR a royalty free, assignable and irrevocable license to use any pre-existing intellectual property for the purposes of using and enjoying the Goods or Services.

7. SUBCONTRACTING

The Supplier may not subcontract, assign, novate or otherwise delegate its obligations under this Agreement without ACOR's prior written consent.

8. CORRECTIONS

Should any error, ambiguity or deficiency in the Goods or the Services ("defect") be discovered, the Supplier will remedy the defect and provide any necessary directions, instructions, advice or revision to documents to ACOR, at no extra cost to ACOR. The Supplier indemnifies ACOR for any loss, cost, damage or other expense arising out of any defect or breach by the Supplier.

9. INSURANCE

- 9.1 The Supplier is required, at its cost, to effect and maintain the following insurances:
 - (a) Public and Products Liability insurance covering all liabilities in respect of any injury to, or death of, any person or any loss, damage or destruction to any property for amount of not less than \$20,000,000 to be maintained until completion of the Agreement;
 - (b) Workers' compensation insurance covering all liabilities, whether arising under statute, common law or civil law, in relation to the death of, or injury to, any employee of the Supplier or any person deemed to be an employee of the Supplier;
 - (c) Professional Indemnity insurance, if the performance of the Agreement includes the provision of Services or professional advice or services, for an amount of not less than \$10,000,000 for each and every claim to be maintained until 10 years after completion of the Agreement;
 - (d) Motor Vehicle Insurance (compulsory third party and comprehensive) over the Supplier's owned and leased motor vehicles if used in the performance of the Agreement; and
 - (e) Plant and Equipment insurance of the any plant and equipment used by the Supplier for the supply of Goods or the performance of Services under the Agreement.
- 9.2 The Supplier must provide ACOR with evidence of the currency of insurances required by the Agreement within 7 days of the date of the Purchase Order and whenever renewed during the performance of this Agreement.
- 9.3 The Supplier is responsible (and indemnifies ACOR) for all retentions or excesses applicable to the Supplier's insurances.

10. WORK HEALTH AND SAFETY

The Supplier must ensure that the supply of the Goods and/or provision of the Services is carried out in accordance with work health and safety legislation applicable in the Jurisdiction.

11. CONFIDENTIALITY AND PUBLICITY

- 11.1 Except as required by law, the Supplier must treat as confidential all information relating to this Agreement and the Purchase Order.
- 11.2 The Supplier is not permitted to make any publication, promotion, public announcement or marketing in respect of its supply of Goods or Services under the Agreement without ACOR's express written approval.

12. TERMINATION OR SUSPENSION

ACOR may terminate or suspend this Agreement upon 14 days prior written notice.

13. DISPUTE RESOLUTION

- 13.1 Each of the parties will use their best endeavours to co-operatively resolve a dispute.
- 13.2 If a dispute arises, either party may give notice of a dispute in writing to the other party. Upon service of a notice of dispute, each party will nominate a senior representative who will meet within 7 days to attempt to resolve the dispute.
- 13.3 If the dispute is not resolved by the parties' representatives within 14 days of a notice of dispute being served, either party may commence legal proceedings.
- 13.4 The Supplier must continue to perform its obligations under this Agreement notwithstanding the existence of a dispute, unless directed otherwise by ACOR.

14. GOODS AND SERVICES TAX

- 14.1 Unless otherwise stated, the Fee is exclusive of any GST, as that term is defined in A New Tax System (*Goods and Services Tax Act 1999 (Cth)*) ("GST Act").
- 14.2 If any GST is incurred, payable by or collectable from the Supplier in respect of Services under this Agreement, ACOR shall pay or reimburse the Supplier for any GST paid or indemnify the Supplier for any GST payable. Where such GST payment is due, the Supplier must promptly provide ACOR with a tax invoice or receipt suitable for claiming GST in accordance with the GST Act.

15. ENTIRE AGREEMENT

- 15.1 The Agreement constitutes the entire agreement between the parties and supersedes all previous communications, representations, inducements, undertakings, agreements or arrangements between the parties and their respective officers.
- 15.2 No terms or conditions submitted by the Supplier that are in addition to, different from or inconsistent with those contained in the Agreement or the Purchase Order, including, without limitation, the Supplier's printed terms and conditions contained in any Supplier's quotation, invoice, purchase order or other acknowledgment shall be binding upon ACOR unless agreed in writing as Special Conditions.

16. GOVERNING LAW

The Contract is governed by the laws of the Jurisdiction Each Party submits to the non-exclusive jurisdiction of the Courts exercising jurisdiction there in connection with matters concerning the Agreement.

17. RELATIONSHIP

The Consultant is an independent contractor and nothing in the Contract creates a relationship of partnership, joint venture or employer and employee between the parties.