

## Terms and Conditions of Purchase

### 1. Definitions

In these terms and conditions, unless the context otherwise requires, the following terms have the following meanings:

- (a) **Business Day** means a day on which banks are open for business in Sydney and which is not a Saturday, Sunday or public holiday.
- (b) **Coal Services** means Coal Services Pty Limited (ABN 98 099 078 234) and Mines Rescue Pty Limited (ABN 15 099 078 261).
- (c) **Contract** means the completed Purchase Order.
- (d) **Delivery Date** means the date by which the Goods and/or Services must be supplied to Coal Services, as specified in the Purchase Order.
- (e) **Goods** means the goods purchased by Coal Services as specified on the Purchase Order.
- (f) **GST** means a goods and services tax imposed on the supply of goods and services under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (g) **Intellectual Property Rights** means all present and future intellectual and industrial property rights in the goods, software and/or service, whether conferred by statute, at common law or in equity and wherever existing, including, without limitation:
  - (i) patents, designs, copyright, rights in circuit layouts, plant breeder's rights, trademarks, know how, brand names, domain names, inventions, product names, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;
  - (ii) Any application or right to apply for registration of any of these rights;
  - (iii) Any registration of any of those rights or any registration of any application referred to above; and
  - (iv) All renewals and extensions of these rights.
- (h) **Party** means either the Supplier or Coal Services as the context dictates.
- (i) **Purchase Order** means a purchase order issued by Coal Services to the Supplier under these terms and conditions.
- (j) **Personal information** means personal information as defined in the *Privacy Act 1988* (Cth) and health information as defined in the *Health Records and Information Privacy Act 2002* (NSW)
- (k) **Services** means all services to be provided by the Supplier as specified on the Purchase Order or provided as ancillary to the provision of Goods.
- (l) **Supplier** means the party providing the Goods and/or Services specified on the Purchase order.

### 2. General

- 2.1 The Purchase Order and these Terms and Conditions constitute the entire agreement between the parties and supersede all prior agreements or understanding of the parties.
- 2.2 Each provision of these Terms and Conditions is severable. If any provision is or becomes invalid or unenforceable or contravenes any application law or regulation, the remaining provisions will not be affected.
- 2.3 No variation, waiver, addition or modification of any Purchase Order or these Terms and Conditions will be binding on the parties unless in writing and signed by the parties.
3. **Provision of Goods and/or Services**  
The Supplier will supply to Coal Services the Goods and/or Services stated on the Purchase Order:
  - (a) in the case of Services, with due care and using the standards of relevant skill, care and diligence;
  - (b) in accordance with any timeframes specified on the Purchase Order and no later than the Delivery Date, if specified on the Purchase Order; and
  - (c) in accordance with any service levels or standards specified on the Purchase Order.
4. **Price, Invoice and GST**
  - 4.1 The price specified on the Purchase Order is:
    - (a) exclusive of GST and any other taxes or duties imposed on or in relation to the Goods and/or Services, unless stated otherwise; and
    - (b) includes all delivery and packaging costs.
  - 4.2 Subject to the Supplier having complied with the Purchase Order and these Terms and Conditions, within 20 Business Days after the end of the calendar month in which Coal Services receives a correctly rendered tax invoice from the Supplier, Coal Services will pay to the Supplier:
    - (a) the price for the supply of Goods and/or Services as specified on the Purchase Order; and
    - (b) an amount equal to the GST liability (if any) payable by the Supplier.
  - 4.3 The Supplier's tax invoice must:
    - (a) be sent to Coal Services at the address specified on the Purchase Order;
    - (b) clearly state the Purchase Order number;
    - (c) clearly state the cost of the Goods and/or Services supplied and the amount of GST (if any) in accordance with the amounts specified on the Purchase Order; and
    - (d) contain clear instructions about how payment can be made.
5. **Delivery, Packing and Packaging of Goods**
  - 5.1 Where the Purchase Order relates to Goods, the price specified on the Purchase Order includes packaging and delivery. The Supplier must package, deliver and unload the Goods in accordance with the Purchase Order and Coal Services' reasonable instructions including, but not limited to, delivering Goods on the Delivery Date to the delivery location stated on the Purchase Order.
  - 5.2 The Supplier will use suitable packaging and delivery methods (having regard to the nature of

- the Goods) to ensure the Goods are delivered in good condition and without damage.
- 5.3 The Supplier must provide a delivery advice with each delivery. All delivery advices must state the Purchase Order number.
- 6. Title, Risk and Insurance**
- 6.1 Where the Purchase Order relates to Goods:  
 (a) risk in the Goods shall remain with the Supplier until such time Coal Services takes delivery of the Goods; and  
 (b) title in the Goods shall pass to Coal Services on the first to occur of (1) delivery of the Goods in accordance with the Purchase Order and these Terms and Conditions; and (2) payment by Coal Services of the relevant Purchase Order.
- 6.2 The Supplier must effect and maintain insurance policies, including, without limitation, public liability insurance for not less than \$10 million per claim, workers compensation in the amount required by law and, in the case of Services (where applicable) professional indemnity insurance for not less than \$10 million per claim, and, in the case of Goods, insurance policies for goods in transit and (where applicable) product liability insurance. The Supplier must provide evidence of currency of its insurances on request by Coal Services.
- 7. Inspection Testing**
- Coal Services may inspect, test and approve the Goods and/or Services either before despatch, at the point of delivery or within a reasonable period after delivery.  
 Such inspection and testing will be conducted at a time and place reasonably required by Coal Services. Coal Services will approve the Goods and/or Services if they are in accordance with the Purchase Order and these Terms and Conditions.
- 8. Warranties**
- The Supplier represents and warrants that:  
 (a) it has all rights, title, licences, interests and property necessary to provide the Goods and/or perform the Services;  
 (b) the Supplier personnel will have the necessary experience, skill, knowledge and competence to perform the Services, and the Services will be performed in accordance with best industry practice;  
 (c) the Goods and/or Services will be fit and proper for their usual purpose;  
 (d) the Goods and/or Services will meet any agreed design and performance criteria and correspond with any sample;  
 (e) the Goods will be complete, accurate and of merchantable quality;  
 (f) it is entitled to grant any licence of Intellectual Property Rights to Coal Services;  
 (g) it will supply to Coal Services all complete, accurate and up-to-date documentation associated with the use of the Goods and/or Services;  
 (h) in performing its obligations under any agreement with Coal Services, the Supplier shall ensure that it and each of its subcontractors shall comply with all applicable laws, statutes, regulations in force from time to time, including but not limited to the *Modern Slavery Act 2018* (NSW) and *Modern Slavery Act 2018* (Cth) and take reasonable steps to ensure that there is no modern slavery or human trafficking in the supplier's or subcontractor's supply chain or in any part of their business.  
 (i) the Goods and/or Services will comply with all applicable NSW and Commonwealth laws, work health and safety obligations and reasonable directions by Coal Services, legal requirements, regulations, Australian Standards, codes and statutes.
- 9. Ownership of Intellectual Property Rights**
- 9.1 The Supplier warrants that it owns or has otherwise obtained an appropriate licence over all Intellectual Property Rights necessary to supply the Goods and/or Services and to ensure that Coal Services has the full benefit of the Goods and/or Services.
- 9.2 Where the Goods and/or Services have been created specifically for Coal Services and are not available to the general public, Coal Services shall own all Intellectual Property Rights created by the Supplier in the course and for the purpose of fulfilling the Purchase Order.
- 9.3 For the purposes of clause 9.2, the Supplier:  
 (a) assigns to Coal Services all existing and future Intellectual Property Rights in and for the Goods and/or Services created by the Supplier in fulfilling the Purchase Order; and  
 (b) acknowledges that by virtue of this clause, all such existing rights are vested in Coal Services, and, on their creation, all such future rights will vest in Coal Services.
- 9.4 The Supplier, at its own cost, must do all things reasonably requested by Coal Services to enable Coal Services to secure the rights assigned under this clause 9.
- 10. Defective Goods and/or Services**
- 10.1 Without limiting any other right or remedy Coal Services may have, Coal Services may notify the Supplier in writing that it rejects the Goods and/or Services (Rejected Supplies) as soon as reasonably possible after Coal Services first becomes aware of the applicable defect, damage or non-compliance.
- 10.2 The Supplier must, at its own cost and within five (5) Business Days (or any longer period allowed by Coal Services) after receiving the notice from Coal Services:  
 (a) in the case of Goods, collect the Goods from Coal Services and repair, replace or modify (at the election of Coal Services) those Goods at no additional cost to Coal Services (which repairs, replacement or modification must comply in all respects with the relevant Purchase Order; and  
 (b) in the case of Services, perform the relevant Services again in accordance the relevant Purchase Order.
- 10.3 At the time that Coal Services has notified the Supplier of its rejection of the Goods and/or Services, any Supplies comprised in the Rejected Supplies become the property of the Supplier and, if held by Coal Services, will be held at the Supplier's risk.

- 10.4 The Supplier must not sell or otherwise dispose of any Goods and/or Services comprised in the Rejected Supplies that are marked or identified by Coal Services' name, while the Rejected Supplies are so marked or identified.
- 10.5 If the Supplier is unable to adequately repair, replace, modify or reperform (as the case may be) the Rejected Supplies within the period specified in clause 10.2:
- (a) any moneys paid by Coal Services in respect of those rejected or incorrect Goods and/or Services must be repaid immediately to Coal Services by the Supplier; and
- (b) without limiting Coal Services' other rights and remedies, Coal Services may fulfil its requirements for those Goods and/or Services by sourcing substitute services or products from an alternative supplier.
- 10.6 The Supplier must pay all costs in relation to the performance of its obligations under clause 10.5, including in respect of any packaging, freighting, repair, modification, resupply, disassembly and reassembly.
- 11. Termination**
- 11.1 Coal Services may at any time before delivery, change or cancel the Purchase Order by written notice to the Supplier, if:
- (a) the Supplier has failed to supply the Goods and/or Services in accordance with the Purchase Order;
- (b) the Supplier commits a breach of any of these Terms and Conditions and has failed to remedy the breach within 5 Business Days of receipt of a written notice from Coal Services specifying the breach;
- (c) the Supplier being a company, becomes insolvent as defined in the *Corporations Act 2001* (Cth); or
- (d) the Supplier, being an individual, commits an act of bankruptcy as defined in the *Bankruptcy Act 1966* (Cth).
- 11.2 The Supplier may cancel a Purchase Order in the event that Coal Services commits a breach of these Terms and Conditions and fails to remedy that breach within 5 Business Days of receipt of a written notice from the Supplier specifying the breach.
- 11.3 To the extent permitted by law, neither party shall make a claim against the other party in respect of any loss of profits that arises as a result of the cancellation of a Purchase Order under this clause 11.
- 11.4 Notwithstanding clauses 11.1 and 11.2, Coal Services may cancel a Purchase Order without cause by giving one month's written notice to the Supplier. Where the Supplier receives such notice it shall stop work as specified in the notice and take all available steps to minimise the loss arising from the cancellation. Coal Services will only be liable for any reasonable costs (excluding, without limitation, loss of profits) unavoidably incurred by the Supplier and directly attributable to the cancellation.
- 12. Indemnity**
- To the fullest extent permitted by law, the Supplier indemnifies Coal Services and its personnel against any liability, claim, action, loss, damage, cost or expense (including legal costs), arising as a result of:
- (a) a breach by the Supplier of these Terms and Conditions; or
- (b) any negligent, fraudulent or wilful act or omission in the performance of the Goods and/or Services by the Supplier, except to the extent that any loss or damage is directly attributable to Coal Service' negligent act or omission, fraud, wilful misconduct or breach of these Terms and Conditions.
- This indemnity is a continuing obligation of the Supplier and will survive the cancellation of a Purchase Order and termination or expiry of these Terms and Conditions.
- 13. Privacy**
- The Supplier must handle Personal Information in accordance with the *Privacy Act 1988* (Cth) and *Health Records and Information Privacy Act 2002* (NSW) and any code of practice or guidelines made under these Acts and must use reasonable endeavours to co-operate with all efforts by Coal Services to comply with these laws, codes and guidelines, including in response to a complaint or suspected privacy breach.
- 14. Time is of the essence**
- Time shall be of the essence in the performance of the Supplier's obligations under the Purchase Order and these Terms and Conditions (unless the failure to perform any obligations on time is cause by an act or omission of Coal Services).
- 15. Governing Law**
- These Terms and Conditions are governed by and must be construed in accordance with the laws of New South Wales, Australia. The parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.
- 16. Dispute Resolution**
- The parties agree to cooperate and act in good faith to resolve any disputes arising from the Purchase Order before any dispute is submitted to a Court in the State of New South Wales.
- 17. Notices**
- All written notices made under these Terms and Conditions may be sent via email, or by express post to the address of the Contact Person noted on the Purchase Order.