

## GENERAL CONDITIONS OF PURCHASE ORDER AND CONTRACT FOR THE SUPPLY OF GOODS AND SERVICES (V2.3: 10/01/2019)

### 1. GENERAL

All additions or alterations to these General Conditions shall be in writing and attached as Special Conditions to the Purchase Order and Contract. In the event of any inconsistency between these General Conditions and any Special Conditions, the latter shall prevail.

The Contractor may only accept this Purchase Order on the General Conditions set out in this Purchase Order and any Special Conditions attached to this Purchase Order. Any attempt at acceptance by the Contractor on the basis of substituted conditions shall operate as a counter offer and shall not be binding on SA Water unless SA Water accepts the counter offer in writing stating that the General Conditions and any Special Conditions of this Purchase Order are modified to the extent and in the manner agreed by SA Water. In the absence of any such express agreement any additional or different terms proposed by the Contractor are automatically rejected and the subsequent supply of Goods and Services by the Contractor in response to this Purchase Order shall be on the General Conditions set out in, and any Special Conditions attached to, this Purchase Order.

### 2. SAFETY

The Contractor shall perform all services in accordance with the applicable/current Work Health and Safety legislation.

### 3. PRICE BASIS

The Purchase Order and Contract Price is firm subject to any Special Conditions. Prices shall include customs duty (unless specifically exempt), packaging, marking, handling, freight and delivery (Free-in-Store), insurance, and any other applicable costs and charges.

The Contractor shall issue SA Water with a valid tax invoice in accordance with A New Tax System (Goods and Services Tax) Act 1999 (the GST Act).

### 4. PAYMENT OF ACCOUNTS

SA Water's standard terms of payment are 30 days from completion of the Services and/or receipt of Goods along with provision of a correctly rendered invoice delivered to Accounts Payable (accounts payable@sawater.com.au) or GPO Box 1751, Adelaide 5001. An invoice is correctly rendered if it is issued and reflects the correct price in respect of Goods or Services which the Contractor is entitled to invoice, is a valid Tax Invoice within the meaning of the GST law and references the applicable Contract or Purchase Order number.

### 5. PERFORMANCE OF THE CONTRACT

The Contractor shall deliver the Goods and/or provide the Services at the time and place specified in the Purchase Order and Contract. The Contractor shall ensure that the Goods and/or Services comply with all of the General Conditions, and Special Conditions (if any).

### 6. VARIATIONS

Variations to the Purchase Order and Contract must be in writing.

### 7. WARRANTIES

#### Goods:

The Contractor warrants that the Goods:

- (a) are new (unless otherwise specified);
- (b) are unencumbered;
- (c) conform to any Specifications issued by SA Water in connection with this Purchase Order;
- (d) conform to the Contractor's technical specifications;
- (e) are free from defects in materials, manufacture, and workmanship;
- (f) conform to any legally applicable standards;
- (g) are of merchantable quality;
- (h) are installed correctly (if the Contractor is responsible for installation); and
- (i) are fit for their intended purpose.

SA Water may reject, within the warranty period, Goods that are faulty or do not fully comply with this Purchase Order. The Contractor shall make good or replace these Goods at no additional cost, including removal and incidental costs, within the time specified by SA Water.

**Warranty period:** The warranty period for Goods commences on the date of acceptance testing, or if no acceptance testing is carried out by SA Water on the first day of operational use of the Goods by SA Water and ends on the later of the first 12 month anniversary of that date unless otherwise agreed in writing between SA Water and the Contractor.

**Services:** The Contractor warrants that it will render the Services with due skill and care, and that materials supplied in connection with the Services will be fit for purpose.

If there is a defect in performance of the Services or they are incomplete, SA Water may, by notice, require the Contractor to remedy the defect in performance, complete the Services, or re-do the Services at no additional cost to SA Water. The Contractor has 30 days from the date of the notice to comply.

**8. INTELLECTUAL PROPERTY**

SA Water will own all intellectual property rights in anything that is generated wholly or partly by the Contractor in the course of the provision of any Services.

**9. CONFIDENTIAL INFORMATION**

All information which the Contractor obtains in the course of providing the Goods or Services is confidential and must not be disclosed or used by the Contractor except for the purpose of supplying the Goods or carrying out the Services.

**10. INSURANCE**

The Contractor must maintain in force at its own expense during the Term public liability insurance cover of ten million dollars for each occurrence. SA Water, in specifying levels of insurance in this Purchase Order accepts no liability for the completeness of their listing, the adequacy of the sum insured, limit of liability, scope of coverage, conditions or exclusions of those insurances in respect to how they may or may not respond to any loss, damage or liability.

**11. INDEMNITY**

The Contractor will indemnify, SA Water and keep indemnified, SA Water from and against any costs, losses, damages, expenses (including legal expenses), liabilities or other outgoings of any nature arising out of or in connection with any breach of obligation or warranty under this Purchase Order, or any negligence, wrongful act or omission or breach of duty by the Contractor or any of its employees or agents.

**12. PRIVACY AND RECORDS STANDARDS**

The Contractor agrees that in performing its obligations under this Purchase Order it will act in a manner that ensures that SA Water is able to comply with Information Privacy Principles and State Records' Contracting and Official Records Standard.

**13. GIFTS, BENEFITS AND INCENTIVES**

In this clause "public sector employee" has the meaning given in the Public Sector Act 2009.

The Contractor agrees to conduct itself in a manner that does not invite, directly or indirectly, SA Water's officers, employees or agents or any public sector employee to behave unethically, to prefer private interests over SA Water's interests or to otherwise contravene the Code of Ethics for the South Australian Public Sector. If the Contractor fails to comply with this requirement SA Water may terminate this purchase order, refuse further payment, and at its discretion, return unused goods.

If the arrangements related to this Purchase Order include the intentional promise or delivery of any goods or benefits (whether to SA Water or any of its officers, employees or agents or any public sector employee) not specified in the Purchase Order and SA Water is reasonably satisfied that promise or delivery is not the result of a genuine mistake, then SA Water may terminate this Purchase Order, recover all moneys paid under this Purchase Order, refuse further payment, and (at its discretion) return unused goods.

Nothing in this clause derogates from SA Water's other rights under this Purchase Order.

**14. CONTRACT DISCLOSURE**

SA Water may disclose this Purchase Order or information in relation to this Agreement in either printed or electronic form and either generally to the public or to a particular person as a result of a specific request or as required by SA government policies and procedure.

While SA Water understands the need to keep commercial matters confidential in appropriate circumstances, SA Water reserves the right to disclose some or all of the contents of your (bid/offer/contract) and related information to the Australian Competition and Consumer Commission ("ACCC") if SA Water reasonably suspects, or is notified by the ACCC that it reasonably suspects, that cartel conduct or unlawful collusion has occurred or exists in connection with the procurement process to which your (bid/offer/contract) relates, whether or not the suspicion relates to your particular (bid/offer/contract), and any condition in your (bid/offer/contract) that purports to prohibit or restrict the Government's right to make such disclosures is not accepted.

**15. TERMINATION**

SA Water may terminate the Purchase Order and Contract in whole or in part when the Contractor has not remedied a breach within the time specified in the notice of breach, becomes bankrupt or insolvent, or is unable to complete the Contract.

**16. FORCE MAJEURE**

Neither the Contractor nor SA Water will be liable to the other for default or delay in performing its obligations under this Agreement caused by any occurrence beyond its reasonable control (including, without limitation, nation-wide or state-wide strikes, riots, industrial disturbances, wars, acts of God, Government order of regulations, storm, tempest or epidemics). Each party must promptly notify the other Party of any occurrence beyond its reasonable control which may or does cause delay or default in performing its obligations and use its best efforts to overcome the effects of the occurrence as soon as possible.

**17. ASSIGNMENT/SUBCONTRACTING**

The Contractor must obtain the prior written approval of SA Water to assign or subcontract the Purchase Order or any part thereof. Approval to assign or subcontract shall not relieve the Contractor from any of its obligations under the Purchase Order and Contract, or impose any liability upon SA Water to an assignee or a subcontractor.

**18. TITLE, ACCEPTANCE AND RISK**

Title to the Goods vests in SA Water on acceptance by SA Water. The risk of any loss or damage to the Goods remains with the Contractor until delivery to SA Water.

**19. NOTICES**

All notices, requests, variations, and other communications by both parties are to be in writing and delivered promptly to the appropriate addresses named in the Purchase Order.

**20. EXISTING CONTRACTS AND STANDING OFFERS**

Where this Purchase Order is issued under the terms of a Standing Offer or to extend the terms of an existing contract, the terms of that Standing Offer or existing contract shall prevail. Special Conditions, where utilised, shall take precedence over both the terms of the Standing Offer and an Existing Contract.

**21. WAIVER**

Failure by either party to enforce a provision of the Purchase Order and Contract shall not be construed as in any way affecting the enforceability in any other instance, or the enforceability of the Purchase Order and Contract as a whole.

**22. NO OFFER OF EMPLOYMENT TO SA WATER EMPLOYEES**

The Contractor agrees during the Term of this Purchase Order and for a period of twelve months after it ends, not to directly or indirectly offer employment or solicit or use the services of any of SA Water's employees (either independently or via a third party). However, the Contractor may advertise or recruit generally in the media.

**23. APPLICABLE LAW**

This Purchase Order and Contract shall be governed by and construed in accordance with the law applicable in South Australia.