

Purchase Order Terms and Conditions – WA, NT, SA, NSW, QLD

NRW Contracting Pty Ltd

Date – As per Purchase Order

1. Definitions

Anti-Bribery and Corruption Law means the *Criminal Code Act 1995* (Cth), and any other anti-bribery or corruption legislation that is applicable to NRW and the Principal

NRW means the NRW Contracting Pty Ltd and its authorised agents, employees, heirs and successors.

Building Code means the *Code for the Tendering and Performance of Building Work 2016* (as in force and varied from time to time) and as applicable to "building work" as defined in the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

CLA means the *Civil Liability Act 2002* (WA) as amended from time to time.

Consequential Loss means loss beyond the normal measure of direct damages and includes (without limitation and regardless of whether or not such loss would be within the normal measure of direct damages) indirect loss, loss of profit, loss of revenue, loss of business, loss of production, loss of actual or anticipated savings, loss of bargain, loss of chance, loss of goodwill, loss of access to markets or market share, loss of business reputation, loss of use, cost of capital or borrowings or costs of substitute goods, facilities or services and loss of opportunity (including opportunities to enter into arrangements with third parties).

Deed of Novation means a deed of novation on terms required by NRW including a term in which the transferee, assignee or novatee agrees to assume the obligations of the Vendor under the Purchase Order Agreement, whether arising before or after the effective date of the transfer, assignment or novation.

Defective means Goods and/or Services (or any aspect of them) which are not in accordance with the Purchase Order Agreement or which are damaged, deficient, faulty, inadequate or incomplete.

Delivery Address means the address described as the address to 'Ship To' in the Purchase Order.

Delivery Date means the delivery date specified on the Purchase Order.

Goods means the goods, if any, described on the Purchase Order in the Item Description.

GST, GST law and other terms used in clause 16 have the meanings given to them by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).

Insolvency Event means the following circumstances in respect of a party:

- (a) where that party enters into a compromise or arrangement (or announces one) under section 411 of the *Corporations Act 2001* (Cth);
- (b) where a managing controller is appointed over the whole (or substantially the whole) of that party's property; or
- (c) where that party enters into voluntary administration.

Instructions means the lawful and reasonable directions of NRW provided to the Vendor to supplement and complement the Purchase Order Agreement, including but not limited to, any schedules or annexures to the Purchase Order Agreement.

Law means:

- (a) Commonwealth, State and local government legislation including regulations, bylaws, orders, awards and proclamations;
- (b) common law and equity;
- (c) authority requirements and consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals) applicable in connection with the Purchase Order Agreement, including but not limited to applicable codes of practice and supporting guidelines, employment, industrial relations and workplace relations legislation (including but not limited to the *Fair Work Act 2009*), work health and safety laws and applicable obligations under the *Migration Act 1958* (Cth) and the *Privacy Act 1988* (Cth) and any subordinate legislation; and
- (d) guidelines of authorities with which the Vendor is legally required to comply.

Principal means the party for whom NRW has been contracted to perform the works which, in NRW's judgement, require NRW to obtain the Goods or Services from the Vendor

Purchase Order means the purchase order for Goods and/or Services issued by NRW to the Vendor from time to time containing, amongst other things, a description of the Goods and/or Services.

Purchase Order Agreement means the agreement between NRW and the Vendor for the supply of Goods and/or performance of Services that is comprised of the Purchase Order, these terms and conditions and any Instructions given by NRW.

Price means the price set out in the Purchase Order which is exclusive of GST but is inclusive of all other costs and charges.

Services means the services, if any, described on the Purchase Order in the Item Description.

SOPA means the security of payment legislation (as amended from time to time) applicable to 'construction work' being undertaken in the State in which the Goods or Services were supplied or performed:

- (a) *Building and Construction Industry Payments Act 2004* (Qld) or Chapter 3 of the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) (as the case may be);
- (b) *Building and Construction Industry Security of Payment Act 1999* (NSW);
- (c) *Building and Construction Industry Security of Payment Act 2009* (SA);
- (d) *Construction Contracts (Security of Payments) Act 2004* (NT); or
- (e) *Construction Contracts Act 2004* (WA).

System means a data processing, storage and protection system which incorporates appropriate technical and organisational measures for the backup and restoration of data after corruption or loss, and the protection of data against spyware, viruses, other malware and unauthorised access and use.

Vendor means the party named in the box 'Vendor's name and address' in the Purchase Order.

Vendor Default means any of the following:

- (a) a delay in the provision of Goods and/or Services;
- (b) unexplained shortages in stock;
- (c) if NRW determines (acting reasonably) that the Goods and/or Services are of poor quality or workmanship;
- (d) an unexplained or unreasonable failure to comply with an Instruction; or
- (e) the Vendor fails to comply with its warranty obligations in respect of any Goods and/or Services.

Vendor Personnel means the Vendor's employees, agents, suppliers or subcontractors.

Warranty Period means the period of 12 months commencing on the later of: the date of the last delivery of the Goods to NRW, and the date on which the Services were last performed for NRW.

2. Supply of Goods or Services

- 2.1 Unless the NRW and the Vendor have executed a specific contract (other than a Purchase Order Agreement) in respect of the supply of Goods and/or performance of the Services (**Specific Contract**), the Vendor agrees and acknowledges that a Purchase Order Agreement constitutes the sole agreement governing the Vendor's supply of the Goods and/or performance of the Services. The parties expressly agree and acknowledge that:
- (a) a signature by any NRW personnel on any quotation, order form or delivery docket of the Vendor (which contains, annexes or references the Vendor's terms and conditions) does not constitute, or give rise to, a Specific Contract for the purpose this clause 2.1;
 - (b) unless that parties execute a Specific Contract, the Vendor's actions in commencing the supply of the Goods, or the performance of the Services, the subject of a Purchase Order constitutes the Vendor's full and final acceptance that the Purchase Order Agreement constitutes the parties' sole agreement in respect of the Goods and/or Services; and
 - (c) where NRW and the Vendor have executed a Specific Contract for the supply of the Goods and/or provision of Services, the Specific Contract governs their relationship and the Purchase Order Agreement does not apply.
- 2.2 In consideration of payment of the Price by NRW, the Vendor must supply to NRW the Goods and/or perform the Services in accordance with the Purchase Order Agreement.
- 2.3 No Vendor's terms and conditions, howsoever provided, form part of these terms and conditions or the Purchase Order Agreement (even if any representative of NRW signs those terms and conditions and/or they are annexed to the Purchase Order Agreement or any quote or Purchase Order). The parties agree that any amendments to these terms and conditions can only be made in writing signed by authorised managers of both parties, including any inclusion of special conditions in or attached to any Purchase Order.
- 2.4 The parties' relationship is one of principal and independent contractor, not employer and employee, principal and agent or partnership and no contractual relations will arise between any of the Vendor's employees, agents or subcontractors and NRW as a result of the Vendor's and NRW's relationship, and the Vendor does not have the right or authority to act on behalf of or bind NRW unless the Vendor has been expressly authorised by NRW in writing.
- 2.5 The Vendor:
- (a) does not have the right or authority to act on behalf of, or bind, NRW unless the Vendor has been expressly authorised to do so by NRW in writing;
 - (b) will ensure that all Vendor Personnel faithfully, skilfully and diligently perform the Services and supply the Goods in a careful, competent, professional and responsible manner and comply with the Purchase Order Agreement; and
 - (c) acknowledges that it is independent from NRW, and that the Vendor will be responsible for all employment and industrial relations issues regarding all Vendor Personnel.
- 2.6 The Vendor must:
- (a) provide to NRW all such information and assistance as NRW reasonably requires to identify, evaluate, implement and report on any matter required by Law in respect of anything used, produced or created in connection with the performance of the Vendor's obligations under the Purchase Order Agreement;
 - (b) not interfere with NRW's activities or the activities of any other person at the Delivery Address; and
 - (c) ensure that any Vendor Personnel working pursuant to the Purchase Order Agreement have satisfactorily completed any site induction processes required by NRW or NRW's customers as a requirement for entry to their respective sites. Such induction will be at the cost of the Vendor unless otherwise agreed by NRW in writing.
- 2.7 The Vendor agrees that NRW and/or the Principal may use a tracking device or other surveillance device at the Delivery Address.

3. Delivery

- 3.1 The Vendor must deliver the Goods to the Delivery Address by the Delivery Date.
- 3.2 The Vendor must ensure that the Goods are suitably packed to avoid damage in transit or in storage and in such a way to comply with any applicable Laws.
- 3.3 If the Vendor fails to deliver all required Goods and/or Services by the Delivery Date, NRW may:
- (a) acting reasonably, reject all or part of the Goods and/or Services;
 - (b) terminate the Purchase Order Agreement at any time prior to full delivery of all required Goods and/or Services by giving written notice to the Vendor, and in such cases no payment or part payment for any Goods and/or Services undelivered or rejected will be payable;
 - (c) set off against the Price any additional costs incurred by NRW as a consequence of the Vendor's failure to supply the Goods and/or Services by the Delivery Date; and/or
 - (d) exercise any other rights or remedies available to NRW under the Purchase Order Agreement or any Law.

4. Time for Performance

4.1 The Vendor must supply the Goods and/or Services in accordance with the Purchase Order Agreement by the Delivery Date. If the Vendor does not supply the Goods and/or Services by the Delivery Date, NRW, in addition to all other rights and remedies available to NRW, may set off against the Price any additional costs reasonably incurred by NRW (with the exception of those costs excluded under clause 12) as a consequence of the Vendor's failure to supply the Goods and/or Services by the Delivery Date.

5. Title and Risk

5.1 Title in the Goods passes to NRW upon the earlier of payment of the Price or delivery of the Goods to the Delivery Address.

5.2 Risk in the Goods passes to NRW when the Goods are delivered to the Delivery Address.

5.3 If NRW pays any deposit or other part payment of the Price prior to delivery of the Goods to NRW, then the Vendor charges the Goods (and any materials purchased for incorporation into the Goods) with the obligations owed or which may be owed by the Vendor to NRW under or in respect of the Purchase Order Agreement, including any obligation to repay any sums paid by NRW in the event of non-delivery of the Goods.

5.4 The Vendor shall not part with possession of the Goods, except by delivery to or at the direction of NRW.

6. Price

6.1 NRW must pay the Vendor the Price for the Goods and/or Services after they have been delivered and/or performed, provided that NRW is entitled to deduct from any amount owed to the Vendor, the value of any claim NRW has against the Vendor under the Purchase Order Agreement or otherwise.

6.2 On delivery of the Goods and/or completion of the Services, the Vendor must provide to NRW, if NRW directs, a tax invoice which includes:

- (a) a reference to the Purchase Order including any Purchase Order or contract number;
- (b) a detailed description of the delivered Goods or performed Services, including the date of delivery and/or period of Services and the relevant quantity of the Goods and/or Services; and
- (c) an individual reference number for NRW to quote with remittance of payment.

6.3 If NRW requests, the Vendor must provide NRW with all relevant records to calculate and verify the amount set out in any tax invoice.

6.4 NRW will pay any undisputed portion of the tax invoice within 45 calendar days from the end of the month in which the invoice is issued unless the Goods or Services are 'construction work' as that term or a similar term is defined in respective State security of payment legislation ("SOPA"). With respect to Goods or Services subject to SOPA, payment terms are as follows:

- (a) WA – payment to be made within 42 days after payment is claimed;
- (b) NT – payment to be made within 28 days after payment is claimed;
- (c) SA – payment to be made within 15 business days after payment is claimed;
- (d) NSW – payment to be made within 20 business days after payment is claimed; and
- (e) QLD – payment to be made within 15 business days after payment is claimed.

6.5 If NRW is required by Law to pay within a shorter time frame, then NRW must pay within that time frame.

6.6 NRW may withhold any sum to the extent NRW:

- (a) exercises any right to retain, withhold, reduce or set-off any amount due to the Vendor; or
- (b) is required by Law to withhold a portion of payment for Goods or Services rendered by a foreign contractor.

6.7 Payment shall not constitute an acceptance by NRW that the Services or Goods are not Defective and shall not in any way effect NRW's rights under the Purchase Order Agreement including but not limited to those rights set out in clauses 7 and 9.

7. Quality

7.1 The Goods and/or Services must match the description (if any) referred to in the Purchase Order.

7.2 If the Vendor gave NRW a sample of the Goods or a demonstration of the Services, the Goods and/or Services must be of the same nature and quality as the sample or demonstration given.

7.3 The Goods and/or Services must be fit for the purpose for which Goods and/or Services of the same kind are commonly supplied or bought and for any other purpose NRW specifies.

7.4 The Goods must be of merchantable quality, unencumbered and, unless otherwise specified in the Purchase Order, must be new.

7.5 All Services provided by the Vendor must be undertaken by persons who are appropriately licensed, qualified and/or trained to provide those Services.

7.6 If the Goods are found to be Defective or otherwise do not comply with this clause 7:

- (a) the Vendor must replace the Goods at the Vendor's cost. This clause does not prejudice NRW's rights to terminate the Purchase Order Agreement for breach; and
- (b) NRW may hold the Goods for the Vendor at the Vendor's risk. The Goods will be returned at the Vendor's cost.

7.7 The Vendor must ensure that NRW has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Vendor must pursue any manufacturer's warranties on NRW's behalf if NRW so requests).

8. Warranties

8.1 The Vendor warrants that:

- (a) it will provide the Goods and/or Services in a safe manner free from risks to health and safety including (without limitation) in compliance with all safety Laws in the performance of the Services;
- (b) the Vendor and all Vendor Personnel have the appropriate level of skill, training and competence to perform the Services safely and to a reasonable standard of workmanship expected in the profession or industry of the Vendor and the Vendor Personnel;
- (c) the Vendor and all Vendor Personnel will comply will all relevant Laws, and policies and procedures of NRW, in the performance of the Services and/or supply of Goods;
- (d) the Vendor, and all Vendor Personnel, will act consistently with the Building Code in respect of the performance of the Services and the supply of Goods;
- (e) there is no prohibition, exclusion sanction, restriction or other obligation which would preclude, prevent or hinder the Vendor or the Vendor Personnel from providing the Goods and/or Services in accordance with the Purchase Order Agreement, including in respect of the Building Code;
- (f) it will take all steps needed to ensure that NRW is not subject to any claim or finding that the Vendor and/or any Vendor Personnel are deemed to be employees of NRW;
- (g) information, documentation and certification it has provided (and/or it subsequently provides) to NRW in respect of the Goods, Services and/or the Purchase Order Agreement are accurate, valid and in good order;
- (h) the Vendor (or if the Vendor uses a third party contractor to store its data, then that third party contractor) has and uses a robust System to protect the security, privacy and integrity of all data it collects, including any data provided to the Vendor by NRW;
- (i) the Vendor will (upon request) provide NRW with information about the System (including responding to NRW's reasonable queries about the System), or the privacy and security of its data, and the Vendor will immediately inform NRW of any breach or suspected breach of the System, and will use its best endeavours to rectify the breach as soon as practicable;
- (j) the Vendor will not engage in any action that could conflict with NRW's rights or with the Vendor's obligations under these terms and conditions; and
- (k) the Vendor is aware that NRW is relying on these warranties.

9. Warranty Period

9.1 If, before the end of the Warranty Period, any of the Goods or Services are found to be Defective or otherwise fail to comply with the Purchase Order Agreement, NRW may at its discretion:

- (a) return the Defective Goods to the Vendor at the Vendor's cost;
- (b) reject the Defective Services;
- (c) repair or make good the Defective Goods; or
- (d) re-perform or make good the Defective Services.

9.2 If required by NRW, the Vendor must:

- (a) repair or replace the Defective Goods or re-perform or make good the Defective Services all at its own cost; and/or
- (b) reimburse NRW for any expenses incurred by NRW in repairing, re-performing or making good (as the case may be) any Defective Goods or Services.

9.3 The Vendor must:

- (a) pay for any damage made by the Vendor or any Vendor Personnel (or arising from Defective Goods or Services) to property on or near any Sites in performing the Services and/or supplying the Goods; and
- (b) take all steps required to assign the benefits of any warranties provided by manufacturers of the Goods or materials and other components which are used in the performance of the Purchase Order Agreement where NRW will ultimately take ownership of those Goods, materials or components.

10. Indemnities

10.1 The Vendor must indemnify NRW and agrees to hold NRW harmless from all claims for:

- (a) any wilful, reckless or negligent act or omission and any breach or non-performance of the Purchase Order Agreement by the Vendor or the Vendor Personnel (including, without limitation, for legal fees on a solicitor-client basis);
- (b) injury to or death of any person caused or contributed to by the Vendor and/or the Vendor Personnel; or
- (c) damage to or destruction of any property belonging to NRW or any person;
- (d) failure by the Vendor to comply with any Law including the payment of any taxes required at Law or in accordance with the Purchase Order Agreement,

arising out of or in connection with the supply of Goods or Services, except to the extent that NRW caused or contributed to such injury, death, damage or destruction.

11. Insurance

11.1 The Vendor must obtain and maintain the following insurances:

- (a) if the Vendor is supplying Goods, materials, plant and equipment insurance, including all constructional plant and equipment, in relation to the Goods to be supplied for not less than full replacement value;
- (b) if the Vendor is supplying Goods, transit (all risk) insurance covering transit, loading and unloading of the Goods for not less than full replacement value;
- (c) Workers compensation and employer's liability insurance, covering all claims and liabilities in respect of any statutory or common law liability for the death, injury or illness of or to any person employed by (or deemed to be employed by), the Vendor;

- (d) Public and products liability insurance for an amount not less than \$5,000,000 for any one occurrence (and in the annual aggregate in respect of products liability insurance); and
- (e) any other insurance which is required by law for the time being in force in the State or Territory in which the Goods and/or Services are provided.

11.2 All insurance policies to be obtained by the Vendor under the Purchase Order Agreement must be with an insurer authorised by the Australian Prudential Regulation Authority, with a financial security rating of A- or better by Standard & Poors, or the equivalent rating with another recognised rating agency.

11.3 The Vendor shall provide evidence, to NRW's satisfaction, that it has obtained and is properly maintaining the insurances that it is obliged to obtain pursuant to the Purchase Order Agreement.

12. Consequential Loss

12.1 Despite any other provision in the Purchase Order Agreement, neither party is liable for any Consequential Loss suffered by the other party.

13. Jurisdiction

13.1 The Purchase Order Agreement shall be governed by and construed with reference to the laws of the State or Territory in which the Goods and/or Services are provided.

13.2 The parties submit to the non-exclusive jurisdiction of the Courts of that State or Territory.

14. Dispute Resolution

14.1 Subject to clause 14.3, neither party may commence litigation in relation to any difference or dispute arising between the parties in relation to this Purchase Order Agreement, unless the process set out in this clause 14 has been followed in relation to the difference or dispute and the matter remains unresolved.

14.2 If a dispute or difference arises between NRW and the Vendor in respect of any fact, act, matter or thing arising out of or in any way connected with the Purchase Order Agreement and one party requires the dispute or difference to be resolved, then that party shall promptly give the other party a written notice giving details of the dispute.

14.3 Nothing in this Purchase Order Agreement prevents or prohibits a party from applying to the Court or commencing legal proceedings to seek interlocutory injunctive relief in relation to any difference or dispute arising between the parties in relation to this Purchase Order Agreement.

14.4 Within 14 days of a party receiving a notice referred to in clause 14.2, NRW and the Vendor and/or their delegates must meet and attempt to resolve the dispute in good faith.

14.5 Any party may, but need not, appoint a delegate/representative of their choice for the purposes of the procedures in this clause.

14.6 If, within 14 days of the meeting referred to in clause 14.4, the dispute is still not resolved, then either party may proceed to litigation.

14.7 This clause does not prevent a party from electing to follow a process in the applicable SOPA in relation to a dispute about payments in the event that negotiations are unsuccessful.

14.8 Notwithstanding the submission of any dispute to the dispute resolution procedures set out in this clause 14, the parties will continue to perform their obligations under this Purchase Order Agreement in accordance with its terms.

15. Cancellation, Breach and Termination

15.1 NRW may for its convenience and in its sole and absolute discretion, cancel all or any portion of the Purchase Order Agreement upon 14 days written notice to the Vendor. In the event of cancellation, NRW will be liable for:

- (a) Goods delivered or Services provided before the date of cancellation, the amount which would have been payable if the Purchase Order had not been cancelled;
- (b) the Vendor's reasonable actual costs of demobilising from any site which, for the sole purpose of providing the Goods or Services to NRW, the Vendor was operating from (not including any amount for overheads or profit);
- (c) the reasonable costs of goods or materials reasonably ordered by the Vendor for the Goods, provided that the value of the goods or materials is not included in clause 15.1(a) and the title in those goods or materials will vest in NRW on payment; and
- (d) the costs reasonably incurred by the Vendor in preparing for the supply of Services or in part-performing the Services, provided that the value of those preparatory or part-performed Services is not included in clause 15.1(a).

15.2 If the one party commits a breach of the Purchase Order Agreement ("**Defaulting Party**") then without limiting any other rights of the other party ("**Affected Party**") upon breach or repudiation by the Defaulting Party, the Affected Party may by notice in writing serve a notice entitled 'Default Notice' on the Defaulting Party. The Default Notice shall:

- (a) state that it is a notice under this clause;
- (b) specify the breach upon which it is based; and
- (c) if the default is capable of rectification, specify the time (which must be reasonable in the circumstances) within which the default must be rectified.

15.3 Without limiting clause 15.1, if the Defaulting Party does not remedy a breach to the Affected Party's reasonable satisfaction within the time prescribed in a Default Notice, the Affected Party may:

- (a) in the case of substantial breach, terminate the Purchase Order Agreement immediately by written notice to the Defaulting Party; or
- (b) in all other cases, carry out or engage others to carry out the obligation on the Defaulting Party's behalf and any costs incurred shall be a debt due by the Defaulting Party to the Affected Party.

15.4 NRW or the Vendor ("**Non-Defaulting Party**"), without prejudice to any other right it may have under the Purchase Order Agreement, may immediately terminate the Purchase Order Agreement by notice in writing to the other party ("**Defaulting Party**") if:

- (a) a judgement, order or encumbrance is enforced, or becomes enforceable upon any of the Defaulting Party's property;
- (b) an order for payment is made or judgment for an amount exceeding \$10,000 is entered or signed against the Defaulting Party which is not satisfied within 7 days;
- (c) the Defaulting Party suspends or delays payment of its debts;
- (d) the Defaulting Party is unable to pay its debts as and when they fall due or goes into bankruptcy;
- (e) the Defaulting Party (being a person), commits an act of bankruptcy, is the subject of a petition in bankruptcy or a sequestration order or if any step is taken by the person, its creditors or any third party which has as its object or may result in it being the subject of a petition in bankruptcy or a sequestration order or has any step taken by a mortgagee to enter into possession or dispose of the whole or any part of the person's assets or business;
- (f) the Defaulting Party (being a corporation) is deregistered;
- (g) to the extent permitted by law, the Defaulting Party suffers an Insolvency Event; or
- (h) the Defaulting Party (being a corporation) has a liquidator appointed to it, or a mortgagee of the corporation enter into possession or assume control of, or a receiver appointed to any of the assets or undertaking of the corporation (not being an Insolvency Event);

15.5 NRW, without prejudice to any other right it may have, may immediately terminate the Purchase Order Agreement by notice in writing to the Vendor if:

- (a) the Vendor restructures, transfers, sells or assigns all or part of its business, or there is a deemed assignment of the Purchase Order Agreement without NRW's prior written consent, or fails to provide NRW with a Deed of Novation in accordance with the Purchase Order Agreement;
- (b) a change occurs in the Vendor's circumstances which, in NRW's reasonable opinion, may have a material adverse effect on the Vendor's ability to comply with its obligations under the Purchase Order Agreement. Examples include (but are not limited to):
 - (i) a change in the Vendor's financial position up and until an Insolvency Event occurring;
 - (ii) the Vendor factoring its debts; or
 - (iii) the Vendor becoming party to litigation, arbitration or any other administrative proceeding; or
- (c) any Vendor Default occurs in relation to any supply to, or works performed for, NRW (whether under the Purchase Order Agreement or another arrangement) more than three times over a period of 12 months (even where the relevant Vendor Default is remedied or waived).

15.6 The rights set out in these terms and conditions comprise the Vendor's sole entitlements upon cancellation or termination of the Purchase Order Agreement.

15.7 The parties' respective rights and remedies under clause 15 are without prejudice to any other rights and remedies they may have under the Purchase Order Agreement or at law.

16. Goods and Services Tax (GST)

16.1 Unless otherwise stated, the Price or any other amounts payable by NRW to the Vendor, is exclusive of GST.

16.2 If a Supply under the Purchase Order Agreement is subject to GST, NRW will pay to the Vendor an additional amount equal to the amount of the Price multiplied by the prevailing GST rate.

16.3 The additional amount under clause 16.2 is payable at the same time as the amount payable for the Supply is to be paid. However, the GST need not be paid until the Vendor provides a Tax Invoice to NRW.

16.4 If the amount of GST payable in accordance with clause 16.3 is found to differ from the amount paid in relation to a Supply then:

- (a) if the amount of GST paid is more than is required under the GST law the Vendor shall refund the excess amount to NRW; or
- (b) if the amount of GST paid is less than is required under the GST law, NRW shall pay the Vendor the difference.

16.5 For the purposes of calculating further variations under clause 16.4, any additional amount referred to in clause 16.2 is taken to be amended by the amount of any earlier variation made under clause 16.4.

16.6 If either NRW or the Vendor is entitled to be reimbursed or indemnified under the Purchase Order Agreement, the amount to be reimbursed or indemnified by either party is to be the GST exclusive amount. For the avoidance of doubt, the amount of any reimbursement does not include any amount attributable to GST for which either NRW or the Vendor is entitled to an Input Tax Credit.

17. Assignment

17.1 The Vendor shall not, without the prior written consent of NRW:

- (a) assign, novate or otherwise transfer the Purchase Order Agreement, any interest in the Purchase Order Agreement, any payment under the Purchase Order Agreement or any of its rights or obligations under the Purchase Order Agreement;
- (b) materially change the shareholding or beneficial ownership of the Vendor; or
- (c) subcontract any of its obligations under the Purchase Order Agreement.

17.2 For the purposes of clause 17.1, if the Vendor:

- (a) undertakes a restructure; or
- (b) is a corporation (and is not listed in any Stock Exchange in Australia), and there is any direct or indirect change in the beneficial ownership of 20% or more (in aggregate) of the voting shares in the Vendor or any change in the effective control of the Vendor,

this will constitute a deemed assignment of the Purchase Order Agreement to which clause 17.1 applies.

17.3 If NRW consents to the Vendor restructuring, transferring, selling, novating or assigning all or part of its business or the Purchase Order Agreement, the Vendor must provide NRW with a Deed of Novation executed by the Vendor and the transferee, assignee or novatee within 14 days of receiving the same from NRW and in any case, prior to the effective date of the relevant restructure, transfer, sale, novation or assignment.

- 17.4** NRW may, at its sole discretion and without prior consultation with the Vendor, assign or novate the Purchase Order Agreement or assign any payment or any other right, benefit or interest under the Purchase Order Agreement, to any person or entity that has financial capacity to perform NRW's obligations under the Purchase Order Agreement. If required by NRW, the Vendor must execute and return to NRW any document required by NRW to give effect to the assignment or novation contemplated by this clause, within 28 days of receiving the same from NRW.
- 17.5** Notwithstanding any approval by NRW to subcontract, the Vendor:
- (a) remains liable for all of its obligations under the Purchase Order Agreement; and
 - (b) is liable for the acts and omissions of any of its subcontractors, their employees and agents, as if they were the acts or omissions of the Vendor.
- 18. Entire Agreement & Variation**
- 18.1** The Purchase Order Agreement constitutes the entire understanding between the parties and supersedes all prior communications and agreements between the parties, including any prior written or verbal undertakings or statements. No variations to the Goods or Services required under the Purchase Order Agreement are to be made unless agreed in writing between NRW and the Vendor.
- 19. PPSA**
- 19.1** Where NRW makes a payment in advance of delivery of any Goods, the Vendor charges the Goods (including any item identified for incorporation into the Goods) to NRW with its obligations under the Purchase Order Agreement and consents to NRW registering its interest in the Goods on the Personal Property Security Register and will sign all documents and provide all information and assistance required to effect that registration. To the extent that the law permits the Vendor waives its rights to receive any notice required from NRW (or any of its related entities) under any provision of the *Personal Property Security Act 2009* (Cth) (**PPSA**) (including a notice of a verification statement). However nothing in this clause prohibits NRW (or its related entities) from giving a notice under the PPSA or any other law.
- 20. Proportionate Liability**
- 20.1** To the fullest extent permitted by law, the parties agree that the provisions of Part 1F of the CLA (or any similar law of any other jurisdiction):
- (a) are specifically excluded from the Purchase Order Agreement; and
 - (b) have no operation or application to the rights, obligations and liabilities of the parties under the Purchase Order Agreement, with respect to any matter to which Part 1F of the CLA (or any similar law of any other jurisdiction) applies.
- 21. Privacy**
- 21.1** NRW collects the Vendor's personal information for the purpose of acquiring Goods and/or Services and keeping a record of transactions on our file. Personal information can include sensitive health information as required by NRW from time to time. NRW's Privacy Policy can be found at www.nrw.com.au/privacy
- 22. Anti-bribery & Corruption**
- 22.1** The Vendor represents and warrants that with respect to, and in connection with, the subject matter of this Purchase Order Agreement:
- (a) it and its directors, officer, employees, agents or subcontractors have not offered, authorised, promised or given directly or indirectly (and will not offer, authorise, promise or give directly or indirectly) to any person or entity any payment, gift, service, thing of value or other advantage where such payment, gift, service, thing of value or other advantage would violate any Anti-Bribery and Corruption Laws;
 - (b) it will otherwise comply with all Anti-Bribery and Corruption Laws;
 - (c) it has not and will not utilise or participate in any practice whereby any contractors, sub-contractors, vendors and other suppliers (including its own competitors or suppliers, or competitors or other suppliers of NRW) are approached and offered confidential information or influenced in order to obtain business through corruption of competitive bidding processes;
 - (d) it will comply with NRW's anti-bribery and corruption policy as amended from time to time (and which is available for inspection by the Vendor upon written request to NRW);
 - (e) it will immediately notify NRW in writing if becomes aware of, or suspects a breach of, the obligations imposed by this clause, and provide NRW with any further information NRW requires about that breach;
 - (f) it and its directors, officer, employees, agents or subcontractors have not engaged in and will not engage in, any behaviour that may affect the competitive bidding process for, or contravene the *Competition and Consumer Act 2010* (Cth) in connection with either the subject of matter of this Purchase Order Agreement or the project or works for which NRW requires the Goods and Services the Vendor is providing.