

# **MCS Purchase Order Terms and Conditions**

## **General**

These terms and conditions apply to Purchase Orders issued by MCS to the Supplier. No other terms or conditions apply to the Order or to the supply of the specified goods or services unless agreed in writing by MCS.

Upon acceptance of the Order by the Supplier, these terms and conditions form part of a binding agreement between the parties. By supplying the goods or services, the Supplier is deemed to have accepted the Order. If the Supplier declines to accept or is unable to supply the goods or services as required, the Supplier must promptly notify MCS.

## **Existing Contracts**

If the Order is issued under the terms of an existing agreement, the terms of that existing agreement will prevail. If there is a conflict between a clause of the Order and a clause in a written agreement between the Supplier and MCS, the clause in the written agreement will supersede the Order.

## **Entire Agreement**

The Order and the written agreement, if any, between the Supplier and MCS governing this transaction will constitute the entire agreement between the parties. No modifications may be made unless in writing and signed by both parties.

## **Performance of the Contract**

The Supplier must provide the goods and services at the time and place specified in the Order and in a manner that meets all applicable Australian Standards, legislation and codes of practice. The Supplier must ensure that its personnel and sub-contractors comply with WHS requirements at MCS sites.

## **Delivery**

For each delivery of goods, the Supplier shall provide a delivery advice quoting the Order number. The goods must be packed for safe delivery to the address on the Order.

Where the Goods are not received by the due date, MCS has the right to cancel the Order in respect of all or part of the incomplete supply and pay only for the supply received.

Goods delivered in error, or failing to comply with the terms of the Order, shall be returned to the Supplier at the Supplier's expense. Acceptance of goods/services by MCS is subject to satisfactory inspection on delivery.

## **Title and risk in goods**

Title and risk in the goods will remain with the Supplier until they are delivered and accepted by MCS, except where MCS pays for the goods either in full or in part, in advance of the receipt, in which case title is deemed to have passed to MCS upon full payment, and the Supplier will provide adequate insurance until delivery and acceptance by MCS.

Until installation, if applicable, and acceptance of the work by MCS, risk in the goods will remain with the Supplier regardless of full or partial payment for the Items prior to installation and acceptance.

## **Price**

Unless stated on the order, the price includes all costs and expenses incurred in the supply. Prices stated on the order are firm and cannot be varied except with prior approval from MCS.

### **Invoices and Payment of Accounts**

The Supplier must issue MCS with a valid tax invoice in accordance with *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act). The invoice must include the Order number.

The MCS standard terms of payment are 30 days from month end following acceptance of the goods or services.

### **Intellectual Property**

MCS will retain all intellectual property rights including copyright, patent and trade marks to any work or service commissioned by MCS through a Purchase Order, and the Supplier hereby assigns such rights to MCS free from all encumbrances on and from the date of creation.

The Supplier warrants that the use of the Goods by MCS or the performance of the Services by the Supplier will not constitute an infringement of the rights of any third party.

### **Privacy**

The Supplier must comply with the Privacy Act 1988 (Cth) and any laws governing privacy, personal or sensitive information and must not engage in any act that would cause MCS to be in breach of any privacy legislation. The Supplier must establish effective measures to safeguard personal and sensitive information from unauthorised access, modification, use, loss or disclosure and ensure that any personal or sensitive information is only used or disclosed in accordance with the privacy legislation. The Supplier must immediately notify MCS of any breach relating to MCS's personal or sensitive information.

### **Warranty**

The Supplier warrants that at the time ownership of goods or services supplied under the Order passes to MCS, they will be free from any charge or liability, comply with all applicable standards and legislation, are free from defects in material and workmanship and conform to the description and quality of the goods or services specified in the Order.

### **Indemnity**

The Supplier hereby indemnifies MCS, its employees and representatives against any liability, loss, damage costs and expenses arising out of the supply of the goods or services by the Supplier, and the Supplier is liable under this clause for the acts and omissions of its employees, agents or subcontractors.

### **Assignment and Subcontracting**

The Supplier must obtain written approval from MCS prior to assigning or subcontracting the Order or any part thereof. Approval to assign or subcontract shall not relieve the Supplier from any of its obligations under the Contract, or impose any liability upon MCS to an assignee or a subcontractor.

### **Insurance**

The Supplier must hold appropriate insurances (where applicable, public liability, product liability, workers' compensation, professional indemnity insurance) to cover the risks associated with the supply of the goods/services supplied and provide evidence when requested by MCS.

In addition to the obligation set out above, the supplier must take out and maintain insurance for at least \$10 million per claim covering MCS and the Supplier against all claims of personal injury or death arising from the delivery of the goods or the performance of services by the Supplier, its subcontractors, employees or agents.

### **Termination**

In the event of any default by the Supplier, MCS may terminate all or part of the Order. In addition, MCS may terminate the Order at its discretion for any reason.

MCS will not be liable for any consequential loss or loss of profits suffered by the Supplier as a result of the termination of the Order. MCS will be under no obligation to pay for any goods/services which are wholly or partly manufactured, or yet to be delivered, and in the Supplier's possession at the time of termination.

### **Limitation of Liability**

In no event will MCS be liable to the Supplier or any third party for any incidental, indirect, special, punitive or consequential loss or damages, or damages for any loss of profits, loss of revenue, loss of business or goodwill, data or data use arising out of or in connection with the Order.

### **Confidentiality**

The Supplier agrees to treat all Confidential Information as confidential information of MCS, both during and after fulfilment of the Order and not to use the information other than for the purposes of the Order; or directly or indirectly disclose the information to any third party, beyond those reasonably involved in the contract on a need to know basis; without the prior written consent of MCS.

All confidential information furnished to the Supplier will remain solely the property of MCS and must be returned to MCS upon completion or termination of the Order.

### **Governing Law**

The Order will be governed by and construed in accordance with the laws of the State of Queensland, and the parties submit to the courts of that jurisdiction.

### **Waiver**

Failure by either party to enforce a term of this contract shall not be construed as in any way affecting the enforceability of that term in any other instance, or the enforceability of the contract as a whole.

### **Survival**

The obligations set forth in clauses for Intellectual Property, Indemnity, Limitation of Liability, and Confidentiality will survive any expiration or termination of the Order.

### **Definitions**

- Agreement means the Purchase Order Terms and Conditions.
- MCS means Mercy Community Services SEQ Limited, ABN 51 166 477 318.
- Order means the Purchase Order.
- Purchase Order Number means the Document Number shown on the Order.

- Supplier means the person, firm, enterprise, or corporation to whom the Purchase Order is addressed.
- Confidential Information means any information designated by MCS as confidential, or which is by its nature is confidential. No information will be regarded as confidential if it is already in the public domain; is received by the Supplier from a third party who is lawfully in possession and has the power to disclose the information; becomes available to the Supplier by any means other than a breach of this agreement by the Supplier.
- WHS requirements means current workplace health and safety Acts, regulations, codes of practice and associated MCS policies/procedures.