



STANDARD TERMS AND CONDITIONS OF PURCHASE

PRO-FRM-02 (AUS)

Revision Date: 14 Sep 2017

1. Definitions and Interpretation

In these Conditions and elsewhere in the Contract, unless a contrary intention appears the following shall mean:

Anti-Bribery and Anti-Corruption Legislation includes any statute, law, code, regulation or similar instrument in connection with the prohibition of bribery and corruption (including by virtue of the place of domicile or operations of RCR and the Supplier) including but not limited to the Criminal Code Act 1995(Cth), the Crimes Act 1914(Cth), the Financial Management and Accountability Act 1997(Cth), the Commonwealth Authorities and Companies Act 1997(Cth), the Corporations Act 2001 (Cth) and the Bribery Act 2010(UK).

ABCC means the body referred to in subsection 29(2) of the BCIP Act.

ABC Commissioner means the Australian Building and Construction Commissioner referred to in subsection 15(1) of the BCIPP Act.

Commonwealth Funded Building Work means Building Work in items 1-8 of Schedule 1 of the Building Code.

BCIPP Act means Building and Construction Industry (Improving Productivity) Act 2016.

Building Code means the Code for the Tendering and Performance of Building Work 2016 (Cth).

Building Work has the same meaning as in subsection 3(4) of the Building Code.

Goods means the goods, products, materials or equipment supplied by the Supplier and specified in the Contract.

Completion Date means the date specified in the Purchase Order or any extension thereof agreed in writing between the parties, on which the Supplier must complete the Services or deliver the Goods.

Conditions mean these terms and conditions.

Contract means the agreement between the Supplier and RCR evidenced by the Purchase Order, the Conditions and all other documents which are incorporated by written reference into the Contract by RCR. The Conditions take precedence over all other documents including any other documents provided by the Supplier.

Contract Price means the price or rates specified in the Purchase Order.

Delivery Place means the place the Goods are to be delivered as specified in the Purchase Order.

Enterprise Agreement has the same meaning as in the Fair Work Act 2009 (Cth).

Exclusion Sanction has the same meaning as in subsection 3(3) of the Building Code.

Intellectual Property means any intellectual property whether protected by statute, at common law or in equity, including any patent, invention, copyright, or design right (whether or not registrable), in any design, specification, process, technique, software, know-how, trade secret, technical information, financial information, business method and confidential information.

PPSA means the Personal Property Securities Act 2009(Cth).

Purchase Order means a document entitled "Purchase Order" which is issued by RCR to the Supplier to order any Works.

Related Entities has the same meaning as in subsection 3(2) of the Building Code.

RCR means the subsidiary of RCR Tomlinson Ltd (ABN 81 008 898 486) described in the Purchase Order or, if no description has been provided, the entity to which the Supplier is providing the Services or supplying the Goods.

Services means all the services the Supplier has agreed to perform for RCR under its offer and specified in the Purchase Order.

Site means the location where the Services are to be performed.

Supplier means the party described in the Purchase Order or, if no description has been provided, the entity providing the Goods or Services to RCR.

Warranty Period means the period described in clause 8.1 of these Conditions.

Works means the scope of works being tendered for as detailed in the Supplier's offer and the Contract, which is inclusive of any Goods and/or Services.

1.1 These Conditions become valid and binding on the parties when a Purchase Order from RCR containing details of the Supplier and the Works is accepted by the Supplier, in response to an offer made by the Supplier.

1.2 If the Supplier fails to acknowledge the Purchase Order in accordance with clause 1.1 of these Conditions within 10 days from receipt and proceeds with the Works, then these Conditions, the Purchase Order and all documents which are either attached to the Purchase Order or incorporated therein by reference by RCR shall be deemed the entire agreement between the parties.

2. Contract Price, Payment and GST

2.1 The Contract Price is in Australian Dollars (unless otherwise stated) and is the agreed Contract Price for the whole of the Works offered, inclusive of testing, packing, documenting and freight to the Delivery Place. The Contract Price is inclusive of GST and all other taxes and charges whatsoever and howsoever incurred (unless otherwise stated).

2.2 The Contract Price cannot be varied unless agreed by the parties in writing.

2.3 To the extent that rates for variations are specified, they shall be used by the Supplier to calculate the cost of a variation, but otherwise the cost of the variation shall be estimated by the Supplier at the lowest reasonable cost.

2.4 Unless otherwise stated in the Purchase Order, the Supplier shall invoice RCR at the end of each month for the Works duly completed in that month.

2.5 The invoice submitted by the Supplier must be in a form acceptable to RCR and must include:

- the Purchase Order number including the line item numbers on the Purchase Order (if any); and
- a detailed description of the delivered Goods or Services completed, including the date of delivery in respect of which the invoice relates.

2.6 The provision of an invoice that complies with clause 2.5 is a precondition to the Contractor's right to payment for the Goods or Services which are the subject of the invoice.

2.7 Invoices received earlier than the end of the month, will be deemed as received at the end of the month. RCR will (subject to the Works having been satisfactorily received, or completed and accepted by RCR) pay the amount properly invoiced by the Supplier (except to the extent that the invoice is in dispute). RCR will pay to the Supplier all undisputed amounts. The amount payable by RCR will be paid 45 days from month end in which the Supplier's tax invoice is received by RCR except where RCR is required by law to pay within a shorter time frame, in which case RCR must pay within that time frame.



STANDARD TERMS AND CONDITIONS OF PURCHASE

PRO-FRM-02 (AUS)

Revision Date: 14 Sep 2017

2.8 RCR may deduct from such amount due and payable by RCR pursuant to this Contract, any amounts payable by the Supplier to RCR on any account whatsoever.

2.9 A payment made pursuant to the Contract will not be evidence of the value of Works provided or an admission of liability or that the Goods delivered or Services completed, or any part of the Goods delivered or Services completed, were to the satisfaction of RCR but will be a payment on account only.

3. Packaging

The Supplier, at its cost, shall properly and carefully pack and protect the Goods in accordance with industry best practice having regard to methods of carriage, handling and to climatic conditions on the way to the Delivery Place. The Supplier will provide all lifting and handling of Goods in transit.

4. Standard to Conform to Specifications

The Supplier shall supply the Goods and provide the Services in accordance with the specifications, drawings, samples or other description (if any) furnished by RCR and contained in the Contract.

5. Delivery

Time is of the essence as to the Supplier's performance under this Contract. The delivery of the Goods to the Delivery Place and/or the completion of the Services must be achieved by the Completion Date unless an extension of time has been agreed to in writing by RCR.

6. Sub-Contract

6.1 The Supplier may not subcontract, assign or transfer any of its rights or obligations under this Contract without the prior consent of RCR, which consent may be conditional or withheld by RCR in its absolute discretion.

6.2 The Supplier must manage the performance of its subcontractor(s) to ensure that the quality and timeliness of its performance meets the requirements of this Contract.

6.3 The Supplier must ensure that its subcontractor(s) effect and maintain the insurances specified in clause 13.

6.4 The Supplier must ensure that its subcontractor(s) obtains and assigns to RCR all the usual customary trade warranties or has the ability to assign the benefit of such warranties to RCR upon completion of the Works.

7. Warranty

The Supplier warrants that:

7.1 it will exercise the skill, care and diligence to the standard acceptable to the trade, industry or profession of a similar nature;

7.2 it will perform the Works in a timely and professional manner using appropriately trained and experienced personnel;

7.3 all applicable standards will be applied to the Works;

7.4 the Works will be fit for purpose;

7.5 it will perform the Works in accordance with the Contract; and

7.6 further, in respect of any Goods supplied:

(a) the Goods are free of all liens and encumbrances and the Supplier has good and marketable title to the Goods;

(b) the Goods will be of merchantable quality and be free from substantial defect in workmanship;

(c) the Supplier has ensured that RCR and its client (if requested by RCR) has been assigned all the usual and customary trade warranties and/or has the

benefit of such warranties upon completion of the Works and that copies of such warranties will be supplied to RCR with invoices for payment; and

(d) any Goods manufactured or fabricated or Services performed by the Supplier will be performed to the standard agreed by the parties and as set out in the Purchase Order.

8. Warranty Period and Rectification of Defective Works

8.1 The Supplier warrants all Works and workmanship against any defect for the period stated in the Purchase Order and where no period is stated, for a period of eighteen (18) months from the receipt of the Goods, twelve (12) months from the completion of the Services or twelve (12) months from the date in which the Goods were first put into service, whichever the later.

8.2 If any part of the Works are found by RCR to be defective and/or not in compliance with the Contract the Supplier must immediately repair or replace the Works which are damaged, defective or found not to be in accordance with the Contract during the Warranty Period, to the satisfaction of RCR at the Supplier's costs.

8.3 The Supplier shall be responsible for all incurred costs associated with the repair or replacement of the Works, including transportation costs.

9. Confidentiality

9.1 The Supplier may not, and must ensure that its subcontractors do not, divulge to third parties for use any information relating to the Works (including Intellectual Property), until such information is within the public domain or express written consent has been given by RCR.

9.2 The Supplier shall indemnify RCR and keep RCR indemnified from and against all liabilities, losses, damages, actions, suits, proceedings, claims, costs and expenses arising from any breach of this clause by the Supplier.

10. Intellectual Property

10.1 The specifications, drawings, technical instructions or any other documentation whatsoever issued to the Supplier by RCR during tendering and at the time of establishing this Contract will remain the property of RCR.

10.2 The Supplier hereby grants to RCR a perpetual, irrevocable, non-exclusive, royalty free, transferable licence to use all Intellectual Property which is used or developed by the Supplier in connection with the Works under the Contract.

10.3 The Supplier shall indemnify and hold harmless RCR against and from any claim alleging an infringement of all intellectual property rights, moral rights and ownership rights in any information provided by the Supplier to RCR.

10.4 The Supplier warrants that:

(a) the Works and licence granted by it to RCR do not infringe any intellectual property rights of any third party; and

(b) the Works are not subject to any intellectual property rights of any third party that in any way restrict the rights of RCR or its client's to use or sell the same.

11. Indemnity

11.1 The Supplier will indemnify RCR and keep RCR indemnified from and against all liabilities, losses, damages, actions, suits, proceedings, claims, costs and expenses in respect of:

(a) injury to (including illness or disability), or death, of any person; and



STANDARD TERMS AND CONDITIONS OF PURCHASE

PRO-FRM-02 (AUS)

Revision Date: 14 Sep 2017

(b) loss or destruction of or damage to or loss of use of any property,

caused or contributed to by the act or omission of the Supplier or its directors, officers, employees, agents or contractors or by any breach of this Contract by the Supplier (including any breach of a warranty), except to the extent that it has been caused or contributed to by the wilful default or unlawful or negligent act or omission of RCR.

12. Proportionate Liability

12.1 In this clause 12, "Proportionate Liability Legislation" means Part 4 of the *Civil Liability Act 2002* (NSW), Part IVAA of the *Wrongs Act 1958* (Vic), Part 1F of the *Civil Liability Act 2002* (WA), Part 2 of the *Civil Liability Act 2003* (Qld), *Law Reform (Contributory negligence and apportionment of liability) Act 2001* (SA), *Civil Liability Act 2001* (Tas), *Civil Law (Wrongs) Act 2002* (ACT), *Proportionate Liability Act 2005* (NT) and any other legislative requirement that apportions liability between concurrent wrongdoers.

12.2 To the extent permitted by law, the operation of any Proportionate Liability Legislation is excluded in relation to all rights, obligations and liabilities arising under or in connection with the Contract, however arising.

13. Insurances

13.1 The Supplier shall effect and maintain the following insurances:

- (a) public and product liability insurance, providing cover for an amount in respect of any one occurrence of not less than \$20,000,000;
- (b) contract works insurance for any Works conducted by the Supplier on Site;
- (c) motor vehicle insurance covering all mechanically propelled vehicles that are registered, or capable of being registered, for road use and are at any time used in connection with the performance of the Works, including cover for third party property damage, for an amount in respect of any one occurrence of not less than \$20,000,000;
- (d) workers' compensation insurance which complies with the relevant laws in the Jurisdiction and where legally permitted, includes a principal's indemnity extension in favour of RCR; and
- (e) such other insurance as stated in the Purchase Order.

13.2 Before the Supplier commences any Works and whenever requested in writing by RCR, the Supplier shall provide evidence of insurances required to be held under clause 13.1.

13.3 Provision of evidence of insurance is a precondition to the Supplier being paid by RCR pursuant to clause 2.

14. Termination

14.1 RCR may terminate the Contract by written notice to the Supplier:

- (a) in its absolute discretion, giving the Supplier 5 days notice; or
- (b) in the event the Supplier defaults on any of the terms of this Contract, for any reason (including insolvency), giving the Supplier 7 days notice.

14.2 In the event of termination due to default by the Supplier, RCR can appoint another supplier to complete the uncompleted portion of the Works at the Supplier's cost.

14.3 If, for any reason, a notice of termination given by RCR under clause 14.1(b) is deemed ineffective to terminate the Contract, the notice given is deemed to have been given under clause 14.1(a) and the termination is effective under that clause.

14.4 Termination of the Contract pursuant to this clause shall be without prejudice to the rights of RCR.

15. Reporting

The Supplier must report progress of the Works to RCR on a regular basis.

16. Inspection

RCR's nominated representative may inspect the Works from time to time during the progress of the Works, and on the Completion Date and will examine the documentation to ensure compliance to the Contract. Any technical or commercial questions or notices should be addressed to him/her and his/her written instructions in response to those questions or notices will become part of this Contract and should be accepted as lawful instructions for the execution of the Contract.

17. Access

RCR's nominated representative shall be afforded free access to any place where the Works are being carried out during the progress of the Contract for the purpose of expediting or inspection of the Works.

18. Title and Risk

18.1 Property and ownership of any Goods supplied will pass to RCR from the Supplier on the earlier of payment by RCR for those Goods or receipt of the Goods at the Delivery Place.

18.2 Risk in the Works passes to RCR upon acceptance of the Works at the Delivery Place.

19. Personal Properties Security Act

19.1 In this clause 19 words and expressions which are not defined in these Conditions but which have a defined meaning in the PPSA have the same meaning as in the PPSA.

19.2 The Supplier acknowledges that RCR has a purchase money security interest in the Goods including, but not limited to, where RCR has paid the Supplier (in whole or in part) for the Goods prior to delivery.

19.3 The Supplier acknowledges that if RCR has rights and interest in proceeds derived from the Goods such rights and interests constitute a security interest in such proceeds.

19.4 RCR may register any security interest on the PPSA register in any manner it chooses (including by registering one or more financing statements in relation to its interest in the Goods, with such expiry dates as RCR determines in its absolute discretion). The Supplier must provide RCR with any information it requires for the purposes of giving effect to such registration.

19.5 For the purposes of section 157(3) of the PPSA, the Supplier irrevocably and unconditionally waives its right to receive any notice from RCR in connection with the registration of a financing statement or a financing change statement in respect of the Goods.

19.6 If section 95 or chapter 4 of the PPSA would otherwise apply to the enforcement of any security interests then those provisions are excluded, to the extent possible.

19.7 The Supplier must take any steps (including provide information) RCR reasonably requires to perfect or otherwise ensure the enforceability and priority of any security interest.



STANDARD TERMS AND CONDITIONS OF PURCHASE

PRO-FRM-02 (AUS)

Revision Date: 14 Sep 2017

19.8 Neither the Supplier nor RCR will disclose information of the kind described in PPSA section 275(1), unless section 275(7) of the PPSA applies.

19.9 Until RCR's security interest (whether perfected or not) is satisfied, the Supplier agrees not to cause or allow a security interest of higher priority to be created in the Goods. If the Supplier breaches this subclause, the Supplier shall indemnify RCR for any cost, expense, loss or damage suffered.

20. Dispute Resolution

If a difference or dispute between the parties arises in connection with the subject matter or interpretation of this Contract, including a dispute concerning a claim in tort, under statute or on any other basis in law or equity available under the law governing the Contract ('Dispute'), either party may by hand or registered post give the other party written notice of the dispute identifying and providing details of the dispute and titled Dispute Notice ('Dispute Notice').

Within seven (7) days of receipt of a Dispute Notice, representatives of the parties having authority to bind the parties shall confer to seek to resolve the Dispute or agree on a method of doing so and whether that method shall be binding. If a resolution or method of resolution has not been agreed within twenty one (21) days of the receipt of the Dispute Notice, the General Manager of the parties shall confer for the same purpose as the parties' representatives. All aspects of such conference(s) shall be privileged.

Neither party may institute legal proceedings in respect of any Dispute unless a Dispute Notice in respect thereof has first been given and then only after a period of twenty eight (28) days from receipt of such Dispute Notice has elapsed.

21. General

21.1 RCR's liability to the Supplier is limited to its liability to pay the Contract Price, as amended from time to time, in accordance with this Contract.

21.2 Notwithstanding any other provision of the Contract and to the full extent permitted at law, RCR is not liable for any indirect, special, contingent or consequential type losses or damages, including but is not limited to loss of actual or anticipated profits, loss of opportunity, loss of goodwill or loss of revenue.

21.3 If any provision of this Contract is unenforceable, such unenforceability shall not affect any other provision or any other part of the Contract.

21.4 Any waiver by RCR of strict compliance with any provision of this Contract shall not be effective unless in writing and signed by an authorised officer of RCR.

22. Place of Contract and Governing Jurisdiction

The Contract is governed by the law of the jurisdiction stipulated in the Purchase Order and the parties submit to the non-exclusive jurisdiction of those Courts. If no place is nominated in the Purchase Order, the jurisdiction and place of contract is the place in which the Goods are delivered or the Services are performed.

23. Anti-Bribery and Corruption

23.1 RCR is committed to operating in a manner consistent with the laws of the jurisdiction in which it operates, including laws relating to anti-bribery and anti-corruption.

23.2 The Supplier represents and warrants it complies with Anti-Bribery and Anti-Corruption Legislation and that it has and maintains reasonable and effective anti-bribery and anti-corruption policies and procedures, such policies and procedures to be made available to RCR for inspection on demand.

23.3 The Supplier represents and warrants it has not and will not breach any Anti-Bribery and Anti-Corruption Legislation in connection with the Contract.

23.4 If the Supplier becomes aware of any breach or suspects a breach of Anti-Bribery and Anti-Corruption Legislation in connection with the Contract it must immediately notify RCR in writing and provide reasonable details of such breach or suspected breach and provide reasonable access to information, books and records relevant to such breach.

23.5 If RCR, acting reasonably, believes the Supplier has breached Anti-Bribery and Anti-Corruption Legislation in connection with the Contract, RCR must give the Supplier written notice of such. If the Supplier, within 30 days of that written notice, fails to show there is no reasonable basis to conclude a breach has occurred, RCR may terminate the Contract without further notice to the Supplier.

24. Security

24.1 Prior to the final payment and before completion of the Works, the Supplier must provide RCR with a security for the Warranty Period equal to 5% of the Contract Price ('Security').

24.2 The Supplier must provide the Security in the form of an unconditional, irrevocable, enforceable bankers undertaking in a form accepted by RCR, in its absolute discretion. The undertaking must:

- (a) have an expiry date not later than 24 months from the date of delivery to the Delivery Place;
- (b) be payable on demand; and
- (c) be given by a bank acceptable to RCR in its absolute discretion.

24.3 RCR will not be obliged to make further payment in accordance with these Conditions until the Supplier has complied with this clause.

24.4 RCR may have recourse to the Security if the Supplier fails to rectify or make good any defect in the Goods or Services within a reasonable time of being requested to do so by RCR or if RCR has any claim against the Supplier.

24.5 The Supplier agrees it will not take any steps to injunct or restrain:

- (a) RCR from using any sums received from the conversion of the Security or otherwise exercising its rights in relation to the Security; or
- (b) the issuer of the Security exercising its rights or performing its obligations under the Security.
- (c) RCR shall return the Security at the expiration of the Warranty Period.

25. Liquidated Damages

25.1 The Supplier will pay to RCR the sum equivalent to 0.15% of the Contract Price for each and every day during which the delivery of the Goods or the completion of the Services is delayed after the Completion Date or any extension thereof up to a maximum of 10% of the Contract Price in aggregate.

25.2 The parties agree that the value of liquidated damages payable by the Supplier is a genuine and reasonable pre estimate of the loss to RCR for the Supplier's delay in delivering the Goods or completing the Services.

26. Building Code

26.1 This clause 26, shall apply if required by RCR or where the Works relate to Commonwealth Funded Building Work.

26.2 The Supplier:



STANDARD TERMS AND CONDITIONS OF PURCHASE

PRO-FRM-02 (AUS)

Revision Date: 14 Sep 2017

- (a) declares as at the date of commencement of this Contract in relation to the Works; and
- (b) must ensure that during the term of this Contract in relation to the Works,
- that it and its subcontractors:
- (c) comply with the Building Code;
- (d) are not covered by, and do not have Related Entities covered by, an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code;
- (e) are not subject to an Exclusion Sanction;
- (f) will only use products in relation to the Works that comply with the relevant Australian standards published by, or on behalf of, Standards Australia; and
- (g) unless approved otherwise by the ABC Commissioner, are not excluded from performing Building Work funded by a state or territory government.
- 26.3 Without limiting and notwithstanding clause 26.2(c), the Supplier will ensure that remedial action is taken to rectify any behaviour on the part of it and its subcontractors that is non-compliant with the Building Code.
- 26.4 The Supplier must every six months during the term of this Contract advise RCR whether:
- (a) it has in the preceding 6 months or since it last advised RCR, whichever is the earliest, had an adverse decision, direction or order of a court or tribunal made against it for a breach of a designated building law, work health and safety law or the *Migration Act 1958* (Cth); or
- (b) it has in the preceding 6 months or since it last advised RCR, whichever is the earliest:
- (i) been required to pay any amount under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of building work) to a Building Contractor or Building Industry Participant; or
- (ii) owed any unsatisfied judgement debts to a Building Contractor or Building Industry Participant.
- 26.5 Compliance with the Building Code does not relieve the Supplier from responsibility to perform this Contract, or from liability for any defect in the Works arising from compliance with the Building Code.
- 26.6 The Supplier must notify the ABCC and RCR of any breach or suspected breach of the Building Code as soon as practicable but no later than 2 working days after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach.
- 26.7 The Supplier acknowledges the powers and functions of the ABC Commissioner and the ABCC under the BCIP Act and the Building Code and will ensure that it and its subcontractors comply with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including but not limited to requests for entry under section 72 of the BCIP Act, requests to interview any person under section 74 of the Improving Productivity Act, requests to produce records or documents under sections 74 and 77 of the BCIP Act and requests for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.
- 26.8 Without limiting clause 6, the Supplier must only enter into a subcontract for any of the Works where:
- (a) the subcontractor has submitted a declaration of compliance, including the further information outlined in Attachment A to the declaration of compliance, in substantively the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code; and
- (b) the subcontract with the subcontractor contains clauses in substantively the same form as the model contract clauses applicable to contractors and subcontractors in relation to the Building Code.
- 26.9 The Supplier must ensure that it and its subcontractor comply with clauses contained in the subcontract and referred to in clause 25.8(b).