

Purchase Order Terms & Conditions

1. General

- 1.1 These Terms and Conditions apply to the order for goods ("Goods") or services ("Services") as described in the attached purchase order ("Purchase Order") with the supplier of the Goods or Services ("Supplier").
- 1.2 Where a purchase of Goods or Services is made under an agreement between the icare entity named on the Purchase Order ("icare") and a Supplier, or under a NSW whole of government contract (both "Contract"), these Purchase Order Terms and Conditions ("Terms and Conditions") are in addition to the terms and conditions of the relevant Contract.
- 1.3 Under these Terms & Conditions:
 - a) references to the singular includes the plural and vice versa; and
 - b) references to person or individuals include that person's successors, administrators, executors and assigns and a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any government agency.
- 1.4 In the event of any inconsistency with these Terms and Conditions and the terms of the Contract, the terms of the Contract will prevail to the extent of the inconsistency.
- 1.5 These Terms and Conditions apply to the exclusion of the Supplier's terms and conditions of trade, unless otherwise agreed by the parties in writing.
- 1.6 No amendments to these Terms and Conditions will be binding on the parties unless approved in writing by icare.

2. Offer and Acceptance

- 2.1 The Supplier is taken to have accepted a Purchase Order and these Terms and Conditions if it notifies icare that it accepts the Purchase Order or delivers the Goods and/or Services described in the Purchase Order.
- 2.2 If the Supplier is unable or unwilling to accept a Purchase Order, it must notify icare promptly prior to delivery of the Goods and/or Services. It may propose a variation to the Purchase Order or offer other Goods and/or Services in substitution, but any such variation or substitution must be approved in accordance with clause 1.6.

3. Cancellation and Changes

- 3.1 icare may at any time before delivery, change or cancel the Purchase Order by issuing an amended purchase order or written cancellation.
- 3.2 If the Supplier has already incurred expenses in arranging for the order or delivery of the Goods and/or Services specified in the first Purchase Order, icare agrees to pay the Supplier's reasonable and demonstrable costs or expenses incurred. The Supplier must mitigate any such costs or expenses.
- 3.3 If icare changes the Purchase Order and any change causes an increase or decrease in the cost of the Goods and/or Services, or time required to deliver the Goods and/or Services, an equitable adjustment to the Fees which is appropriate to the circumstances will be made by the Supplier for icare's approval, not to be unreasonably withheld.
- 3.4 Notwithstanding the dispute resolution procedures in clause 13, where icare rejects the Supplier's adjustment to the Fees, and the Supplier wishes to have that decision reviewed, the issue will be referred to icare's Representative for resolution, with the icare Representative's decision being final.

4. Delivery, Acceptance and Title

- 4.1 Unless otherwise specified in the Purchase Order, time will be of the essence with respect to the Supplier's delivery obligations under these Terms and Conditions. The Supplier must deliver the Goods and Services as set out in the Purchase Order in accordance with the time periods for delivery specified in the Purchase Order.
- 4.2 Title and risk in the Goods will pass to icare when they are delivered to, and accepted by, icare.
- Acceptance of the Goods is subject to inspection upon delivery to the satisfaction of icare. icare will not unreasonably withhold or delay acceptance.
 - Goods that do not conform in every respect with the description in the Purchase Order may not be accepted by icare and their costs of storage, handling and return will be borne by the Supplier. Substitute Goods will not be accepted without prior written agreement.
 - The Supplier must ensure that the Goods are suitably packed for safe delivery to icare and are accompanied by documentation setting out the Purchase Order number and a description of the Goods, including their quantities.
- 4.3 For Services the Supplier must ensure that the Services conform in every respect to the description in the Purchase Order.
- 4.4 The Goods and/or services are not accepted by icare until certified by an authorised representative of icare.

5. Wrongly supplied and defective Goods and/or Services

- 5.1 In respect of any Goods and/or Services that, within the warranty period, are found after acceptance to be defective or wrongly supplied, upon notification and election by icare, the Supplier must:
- refund to icare any payments made for the Goods and/or Services;
 - make good the Goods and/or Services free of charge;
 - provide replacement Goods and/or Services free of charge;

- re-perform the Services free of charge; or
- reimburse icare for any expenses incurred in making good the Goods and/or Services, or procuring replacement Goods and/or Services.

- 5.2 Any Goods and/or Services that are repaired, re-performed or replaced by the Supplier will be:
- granted a three (3) month warranty from their date of repair, re-performance, or replacement; or
 - will continue to be covered by the balance of the relevant warranty period, whichever is the greater of the two.
- 5.3 The rights and remedies under this clause are in addition to and do not limit any other rights of icare at law.

6. Sub-contracting

- 6.1 Except as expressly provided in the Purchase Order or the Contract, the Supplier may not sub-contract any obligations under these Terms and Conditions without the prior written consent of icare.
- 6.2 Where the Supplier sub-contracts any of its obligations under these Terms and Conditions, the Supplier remains liable for the carrying out and completion of those obligations.

7. Service Orders

- 7.1 With respect to a Purchase Order line item expressed to be a Service, the supplier acknowledges that:
- The price in the Purchase Order is an estimation of the total cost of the Services and icare is not obliged to order Services amounting to the total price; and
 - Any payments made to the Supplier for a line item expressed to be a Service will be subject to these Terms and Conditions, whether or not a separate Purchase Order is issued with respect to such payments.
- 7.2 In relation to the provision of the Services, clause 4.1 does not apply and Supplies must be provided within the time, at the place, and in the manner agreed by the Parties in writing.

8. Fees and Invoices

- 8.1 Payment of correctly rendered invoices will be made within thirty (30) days (exceptions apply for eligible small businesses; further information can be found on: www.smallbusiness.nsw.gov.au) of receipt by icare of a correctly rendered tax invoice, provided that:
- icare has accepted the Goods and/or Services; and
 - any further details reasonably requested by icare, including an itemised account, have been provided.
- 8.2 The Supplier's invoice must:
- include the Supplier's full trading name and ABN;
 - include the relevant Purchase Order number;
 - refer to one Purchase Order only;
 - be sent to icare in the manner and address set out in the Purchase Order; and
 - be a valid tax invoice under GST law.
- 8.3 Payment is not an acknowledgment that the Goods and/or Services have been provided in accordance with these Terms and Conditions or the Contract but will be taken to be on account only until acceptance of the Goods and/or Services by icare.
- 8.4 All prices in the Purchase Order are fixed and exclusive of GST. Unless specified otherwise in writing, all prices in the Purchase Order include insurance, packaging, freight, delivery and all costs associated with the supply.

9. Indemnity

- 9.1 The Supplier indemnifies icare against all Losses it directly or indirectly sustains or incurs as a result of:
- any negligent, unlawful or wilful act or omission of the Supplier, the Supplier's personnel or the Supplier's subcontractors;
 - any infringement or claimed infringement of the Intellectual Property Rights (**IPR**) or moral rights of a third party arising out of its receipt or use of the Goods and / or Services;
 - death or personal injury of any person to the extent caused by the Supplier;
 - property damage to the extent caused by the Supplier; or
 - any breach by the Supplier of clause 10.

- 9.2 Losses means actions, claims, liabilities, expenses, losses, damages and costs (including but not limited to legal costs on a full indemnity basis, whether incurred by or awarded against a party) and consequential and indirect losses and damages including those arising out of any third party claim.

10. Insurances

- 10.1 The Supplier must have and maintain Public and Products liability insurance, professional indemnity insurance (in each case \$10 million for each occurrence) and workers' compensation insurance as required by Law for the duration of the Services and the Supplier must ensure that any sub-contractor engaged by it is insured to a level commensurate with the insurance obligations of the Supplier under these Terms & Conditions.
- 10.2 Upon icare's request, the Supplier must provide icare with a certificate of currency certifying that it has the insurance required under these Terms & Conditions.

11. Warranties

- 11.1 The Supplier represents and warrants that:
- it has all rights, title, licences, interests and property necessary to provide the Goods and/or perform the Services;
 - the Supplier's personnel will have all necessary experience, skill, knowledge and competence to perform the Services, and the Services will be performed in accordance with good industry practice;
 - the Goods and/or Services will be fit for the purposes intended;
 - if applicable, the Goods and/or Services will meet any agreed design and performance criteria and correspond with any sample;
 - the Goods will be complete, accurate and of merchantable quality;
 - it is entitled to grant any licence of IPRs in the Goods/Services to icare under these Terms & Conditions;
 - icare's use of any Background IPRs and/or Project IPRs in the Goods and/or Services ("Warranted Materials") will not infringe the IPRs of any person; and
 - it will supply to icare in English all complete, accurate and up-to-date documentation associated with the use of the Goods and/or Services.

12. Fund Loss

12.1 For the purposes of this clause:

- a) **Fund** means the Workers Compensation Insurance Fund established under the Workers Compensation Act 1987.
- b) **Fund Loss** means any loss, liability, damage, cost or expense of the Fund of any kind (including but not limited to any diminution in the value of the assets of the Fund or the deprivation of any gain to which the Fund would otherwise be entitled).

12.2 The Supplier agrees that:

- a) subject to the dispute resolution provisions of these Terms and Conditions, icare is entitled to recover any Fund Loss suffered as a result of an act or omission of the Supplier or its personnel in connection with these Terms & Conditions recoverable at law as if it were a loss suffered by icare;
- b) it will not, in any legal proceedings, raise as a defence or otherwise allege that icare is not entitled to bring the legal proceedings or recover the Fund Loss claimed in the legal proceedings on the basis that the Fund Losses were not suffered by icare; and
- c) this clause may be pleaded in bar to any defence raised by the Supplier in breach of sub-clause 12.2(b) above.

12.3 For the avoidance of doubt, nothing in this clause 12 permits any double recovery of any Fund Loss by icare and the Fund.

13. Resolution of Disputes

13.1 The parties shall attempt to settle a dispute in relation to this Agreement using the dispute resolution process provided for in these Terms and Conditions before resorting to court proceedings, provided however, nothing in this clause will preclude either party from seeking urgent interlocutory relief.

13.2 If icare requests it, the Supplier must continue performing the Services while a dispute is being dealt with in accordance with this clause 13, other than the Services (or part thereof) the subject of the dispute, to the extent practicable to do so.

13.3 A party claiming that a dispute has arisen must give written notice of the dispute to the other party. The parties must endeavour in good faith to resolve the

dispute within 5 Working Days of receipt of a notice of dispute.

13.4 In the event that the dispute is not resolved in good faith within 10 Working Days (or such other period as agreed between the parties in writing), then either party, if it wishes, may commence legal proceedings.

14. Intellectual Property Rights

14.1 IPRs means any intellectual property rights protected by statute or common law in Australia or elsewhere in the world and whether registered or unregistered and includes copyright, design, patent, trade mark, semi-conductor and circuit layout rights.

14.2 Subject to clause 13.2, all rights, title and interest in any IPRs created in providing the Goods and/or Services ("Project IPRs") will be owned by icare, and to the extent needed, the Supplier hereby assigns all rights, title and interest it may have now or in the future in those Project IPRs to icare.

14.3 The IPRs owned by a party prior to the date of these Terms & Conditions ("Background IPRs") remain with that party.

14.4 The Supplier grants to icare a perpetual, irrevocable, royalty-free worldwide, non-exclusive licence (including a right of sub-licence) to use, reproduce, modify, publish, adapt, or communicate to the public and exploit the Supplier's Background IPRs in conjunction with the Goods and/or Services, and the Project IPRs. The Supplier must provide icare with all necessary documentation and materials to take advantage of this licence.

14.5 If a third-party claims, or icare reasonably believes that a third party is likely to claim, that all or part of the Warranted Materials infringe their IPRs or breach their confidence, the Supplier must, in addition to the indemnity under these Terms and Conditions and to any other rights that icare may have against it, promptly, at the Supplier's expense:

- a) use its best efforts to secure the rights for icare to continue to use the affected Warranted Materials free of any claim or liability for infringement; or
- b) replace or modify the affected Warranted Materials so that the Warranted Materials or the use of them does not infringe the IPRs of any other person without any degradation of the performance or quality of the affected Warranted Materials.

15. Confidential Information

- 15.1 Confidential Information means all data and/or information exchanged between the parties for the purposes of these Terms & Conditions, before, on or after the date of the Purchase Order relating to the operations, business, research and technology of the disclosing party, but not including any information which:
- a) is publicly available at the date of the Purchase Order;
 - b) becomes publicly available subsequent to the date of the Purchase Order without breach of these Terms & Conditions;
 - c) a party obtained from a third party without breach by that third party of any obligation of confidence concerning that Confidential Information; or
 - d) was already in the party's possession (as evidenced by written records) when provided by or on behalf of the other party.
- 15.2 Each party ('recipient') must keep any Confidential Information disclosed to it confidential and must not deal with it in any way that might prejudice its confidentiality. These obligations continue indefinitely beyond the Services, but do not extend to disclosures:
- a) required by law (including under the Government Information (Public Access) Act 2009); and
 - b) to a recipient's officers or employees:
 - i) who have a need to know for the purposes of these Terms & Conditions (but only to the extent that each has a need to know); and
 - ii) before disclosure, have been directed by the recipient to keep that Confidential Information confidential.
- 15.3 The Supplier must comply with, carry out and discharge the obligations contained in the information privacy principles set out in the *Privacy and Personal Information Act 1998* (NSW) as if it were icare carrying out and discharging those obligations. The Supplier must notify icare as soon as possible upon it becoming aware of a breach of these obligations.

16. Termination

- 16.1 icare may terminate these Terms & Conditions by written notice to the Supplier:
- a) if the Supplier breaches a term of these Terms & Conditions and fails to remedy the breach within 14 days after receiving notice requiring to do so (or the Supplier breaches a term of these Terms &

- Conditions which is not capable of remedy); or
- b) if the Supplier is or becomes subject to proceedings which may result in the Supplier becoming bankrupted, wound up, under voluntary administration or subject to the control of a receiver or receiver and manager.

17. Applicable Law and Policies

- 17.1 These Terms and Conditions are governed by the laws of New South Wales.
- 17.2 The Supplier must comply with any applicable icare or NSW Government policies and procedures as notified by icare to the Supplier from time to time.

18. Non-exclusivity

- 18.1 icare reserves the right to retain other persons or entities to supply the Goods and/or Services, including but not limited to any part of the Goods and/or Services.

19. Assignment and Novation

- 19.1 The Supplier may only assign its rights or novate its rights and obligations under these Terms & Conditions with the prior written consent of icare.

20. Entire Agreement and Waiver

- 20.1 A provision of these Terms & Conditions or a right created under it may not be waived or varied except in writing, signed by the party or parties intended to be bound. A failure of a party to exercise a right arising out of these Terms & Conditions does not constitute a waiver of that right.

21. Public Access to Government Information

- 21.1 If required to do so whether under the Government Information (Public Access) Act 2009 or otherwise, the Supplier agrees that icare has the right to publish details of these Terms & Conditions in the manner set out in the applicable requirements.

22. Notices

22.1 Any notice or other communication under these Terms & Conditions must be in writing and is treated as having been duly given and received:

- a) when delivered (if left at that party's address);
- b) on the third Working Day after posting (if sent by pre-paid mail); or
- c) on the first working day after the email was sent (if sent by email and the sending Party has not received a message that the email has not been delivered).