

# PURCHASE ORDER TERMS AND CONDITIONS

**NEWCASTLE AIRPORT PTY LIMITED**



## Purchase Order Terms and Conditions

1. The Supplier agrees that in supplying the Services in return for payment of the Contract Price, the Supplier is bound by these Purchase Order Terms and Conditions.
  - 1A. Notwithstanding any other provision of these Purchase Order Terms and Conditions:
    - (a) if the Principal and the Supplier have executed a written agreement in respect of the same subject matter (in whole or in part), that agreement shall be taken to apply to the Services, irrespective of whether the written agreement is executed before or after the issuing of the Purchase Order to the Supplier;
    - (b) if any terms and conditions of the Supplier are provided to the Principal in respect of the same subject matter (in whole or in part), including if those terms and conditions are printed on a delivery docket, those terms and conditions:
      - (i) will not be legally binding; and
      - (ii) will not constitute part of these Purchase Order Terms and Conditions; and
      - (iii) will not be capable of modifying or altering these Purchase Order Terms and Conditions in any way,  
including in circumstances where a representative of the Principal signs or otherwise indicates its acceptance of the terms and conditions of the Supplier.
  2. In these Purchase Order Terms and Conditions:
    - (a) **Business Day** means any day other than a Saturday, Sunday or public holiday in Sydney or the days from 26 to 31 December inclusive.
    - (b) **Completion** means the stage in the performance of the Services where:
      - (i) the Services are complete except for minor omissions or minor defects;
      - (ii) the Services comply with all legislative requirements;
      - (iii) all warranties and guarantees required under the Purchase Order Terms and Conditions have been supplied; and
      - (iv) any other matter or condition required to be achieved or satisfied prior to Completion has been achieved or satisfied.
    - (c) **Completion Date** means:
      - (i) if the Services comprise the supply of goods, the date by which the goods must be delivered; and/or
      - (ii) if the Services comprise the carrying out of works and/or services, the date by which the works and/or services must be completed,  
as identified in the Purchase Order.
    - (d) **Contract** means the contract comprising the Purchase Order, the Documents and these Purchase Order Terms and Conditions.
    - (e) **Contract Price** means the lump sum amount for the Services set out in the Purchase Order and is inclusive of GST.
    - (f) **Defects** means any defect or omission in the Services including any aspect of the Services which is not in accordance with the requirements of this Contract.
    - (g) **Delivery Address** means the delivery address referred to in the Purchase Order.
    - (h) **Documents** means any documents, including maps, specifications and drawings, provided by the Principal to enable the Supplier to carry out the Services;
    - (i) **Principal** means Newcastle Airport Pty Limited (ACN 060 254 542) of Level 1 (east), Terminal Building, Williamtown Drive, Williamtown NSW 2318;
  - (j) **Principal's Representative** means the person identified as the Principal's Representative in the Purchase Order;
  - (k) **Services** means:
    - (i) the supply of the goods; and/or
    - (ii) the carrying out of works and/or services,  
as described in the Purchase Order.
  - (l) **Services Description** means the Services Description set out in the Purchase Order;
  - (m) **Supplier's Representative** means the person identified as the Supplier's Representative in the Purchase Order;
  - (n) **Statutory Requirement** means any statute, regulation, order, rule, subordinate legislation or other obligation enforceable under any statute, regulation, order, rule or subordinate legislation.
  - (o) **Variation** means unless otherwise stated in the Contract any change to the Services including any addition, increase, decrease, omission, deletion, demolition or removal to or from the Services.
  - (p) **Warranty Period** means the period of three months after Completion.
  - (q) **WHS Legislation** means the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2011* (NSW).
3. The Supplier must supply the Services to the Principal on the terms of the Purchase Order including these Purchase Order Terms and Conditions, and any directions by the Principal.
  4. The Supplier must supply the Services to the Principal:
    - (a) if the Services comprise the supply of goods:
      - (i) in accordance with the Services Description and the Documents (if any);
      - (ii) in the quantity;
      - (iii) at the Contract Price; and
      - (iv) to the address requested, by the Completion Date,  
as described in the Purchase Order unless varied by the Principal.
    - (b) if the Services comprise the carrying out of works and/or services:
      - (i) in accordance with the Services Description and the Documents (if any); and
      - (ii) at the Contract Price,  
as described in the Purchase Order unless varied by the Principal.
  5. The Supplier warrants that:
    - (a) it has examined all information and conducted all investigations relevant to the risks, contingencies and other circumstances that may affect its ability to provide the Services at the Contract Price;
    - (b) it has based the Contract Price on its own determinations and assessment of the risks involved in carrying out the Services;
    - (c) it has not relied on any information provided by the Principal for the purposes of entering into the Contract (except to the extent that any such information forms part of the Contract).
    - (d) The Supplier acknowledges that the Principal has entered into the Contract relying upon the Supplier's warranties in this clause 5.
  6. The Supplier must:
    - (a) if the Services comprise the supply of goods:
      - (i) ensure that the goods:
        - (A) are properly packed for delivery;
        - (B) meet the requirements of the Contract;
        - (C) comprise materials which are of merchantable quality;
        - (D) comply with all Statutory Requirements; and

- (b) if the Services comprise the carrying out of works and/or services;
  - (i) regularly and diligently progress the execution of the Services in accordance with the requirements of the Contract;
  - (ii) complete the Services by the Completion Date referred to in the Purchase Order;
  - (iii) complete the Services so that they are fit for purpose and free from Defects; and
  - (iv) complete the Services in accordance with all Statutory Requirements, relevant Australian Standards or codes.

7. The Principal may give the Supplier written notice of a proposed Variation. The Supplier must within 24 hours of receiving such a notice, provide the Principal with a written notice in which the Supplier sets out:

- (a) the rates and prices to carry out the proposed Variation; and
- (b) the Supplier's estimate of the effect on the Completion Date.

The Principal may direct the Supplier to give a detailed quotation for the proposed Variation supported by measurements or other evidence of cost. The Contract Price will not be varied for the costs of each compliance with this clause 7.

The Principal may at any time direct the Supplier to carry out a Variation (whether or not the Principal has provided the Supplier with a notice of proposed Variation). The Principal will value each Variation which the Supplier is required to carry out in accordance with a direction under this clause 7, using the following order of precedence:

- (a) prior agreement between the parties; or
- (b) failing agreement, as determined by the Principal.

8. The Supplier must not vary the Purchase Order unless a direction pursuant to clause 7 has been issued by the Principal.

9. The Supplier must:

- (a) deliver the goods to the Delivery Address on the Completion Date; and/or
- (b) complete the Services by the Completion Date; and
- (c) promptly notify the Principal of anything which may cause delay to the Services, including details of the relevant cause and the estimated delay.

The Principal may, in its absolute discretion, and for any reason, extend the Completion Date by giving written notice to the Supplier.

10. If the Services comprise the supply of goods, the Supplier must, prior to Completion, procure and provide to the Principal manufacturers' warranties on the best terms available on the market for any goods which are supplied.

11. If the Services comprise the supply of goods, the Supplier must, prior to Completion, provide to the Principal a warranty from the Supplier to the Principal on the same terms as the manufacturers' warranties provided pursuant to clause 10.

12. The parties acknowledge and agree that the Supplier is only entitled to issue one invoice on Completion of the Services.

13. The Principal will assess each tax invoice issued by the Supplier under clause 12 and pay the Supplier the amount so assessed within 15 Business Days from the date that the tax invoice is issued. If the Principal does not agree to pay the whole amount claimed in the tax invoice it will, within 10 Business Days of service of the tax invoice, write to the Supplier indicating the:

- (a) amount that the Principal proposes to pay the Supplier; and

(b) the reasons why the Principal proposes to pay less than the amount claimed in the tax invoice.

14. The Principal may deduct from any moneys otherwise due to the Supplier any money due from the Supplier to the Principal or claimed by the Principal from the Supplier under the Contract or otherwise.

15. The Contract Price for all Services supplied under a Purchase Order is inclusive of GST and is in Australian dollars.

16. The Supplier warrants that title in any goods which are supplied will pass to the Principal when payment is made by the Principal to the Supplier for the Services.

17. The Supplier warrants that it will correct all Defects notified by the Principal prior to the expiration of the Warranty Period within the time specified in the notice or if no time is specified, within a reasonable time.

18. If the Supplier fails to correct any Defect within the time required, the Principal may rectify the Defect itself or by using others and any costs incurred will be a debt due and payable by the Supplier to the Principal.

19. The Supplier represents and warrants that all agents, staff, and sub-consultants employed by the Supplier are covered by worker's compensation insurance or similar cover as required by law.

20. The Supplier must have public and product liability insurance with a limit of indemnity not less than the amount of \$10 million for each claim which will be obtained from the date of issue of the Purchase Order and which is to be maintained until the expiration of the Warranty Period.

21. The Supplier bears the risk of:

- (a) any loss or damage to the Services caused or contributed to by the Supplier prior to the expiry of the Warranty Period; and
- (b) any loss of or damage to the Services or otherwise (including property damage) arising from non-compliance of the Services with the Contract.

22. The Supplier indemnifies the Principal against:

- (a) any loss or damage to the property of the Principal (other than the Services); and
- (b) any liability to or claims by a third party in respect of loss of or damage to property, loss of use of property or injury to or death of persons,

caused by or arising out of or in connection with the provision of the Services by the Supplier.

23. The Supplier:

- (a) warrants that the supply of the Services to the Principal will not infringe any patent, copyright, trade secret or other rights, whether proprietary, contractual or equitable, of any third party, in Australia or elsewhere (**Intellectual Property Rights**); and
- (b) indemnifies the Principal against any claims against, or costs, losses or damages suffered or incurred by the Principal arising out of, or in connection with, any alleged or actual infringement of Intellectual Property Rights arising out of or in connection with the Services.

24. The Supplier will be responsible for the safety of its employees and will ensure, if directed by the Principal, that each of its employees attend a safety induction program approved by the Principal prior to commencement of the Services.

25. Without limiting the general nature of clause 24, the Supplier will:

- (a) comply, and ensure that its subcontractors and others engaged in the Services comply, with the WHS Legislation and related codes of practice;
- (b) comply, and ensure that its subcontractors and others engaged in the Services comply with any of the Principal's WH&S policies and/or management plans; and
- (c) execute the Services in a safe manner and so that no damage is caused to person or property.

26. If the Supplier breaches the Contract, the Principal may give the Supplier a written notice requiring it to remedy the breach stating:

- (a) that it is a notice under this clause 26;

- (b) the breach relied upon; and
  - (c) that the breach must be remedied within the time stated in the notice (which time must not be less than 14 days after the notice is received).
27. If the Supplier does not remedy the breach of Contract the subject of a notice under clause 26 within the time stated in the notice then the Principal may, without prejudice to any other right it may have, immediately terminate the Contract by written notice to the Supplier.
28. Any notice to be given or served in relation to this Contract must be in writing and delivered by hand or sent by prepaid post to the relevant postal address (deemed received 5 days after posting), or email address of the Supplier's Representative or the Principal's Representative (deemed to have been received once sent unless the sender receives notice that the email transmission has been unsuccessful or could not be delivered or an out of office notice indicates that the recipient is unavailable. Any email sent on a day which is not a Business Day will be deemed not to have been received until the next Business Day) stated in the Purchase Order or last notified in writing to the party giving the notice by the party to whom or upon which the notice is to be given or served.
29. The parties agree that, to the extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities under this Contract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise at law or in equity.
30. The Supplier agrees that this Contract constitutes the entire agreement between the parties. In the event of any conflict between any Documents and the Purchase Order Terms and Conditions, the Purchase Order Terms and Conditions will prevail.
31. The Contract is governed by the laws of New South Wales.