



## Standard Terms and Conditions of Trade – Purchase Order

### Effective from September 2020

#### 1. General

- 1.1. These Standard Terms and Conditions of Trade – Purchase Order ("Standard Terms") apply to an order for goods ("Goods") or services ("Services") placed by Parakeelya Pty Ltd ("PACM") as described in a attached purchase order ("Purchase Order") with the supplier of the Goods or Services ("Supplier") that expressly incorporate these Standard Terms.
- 1.2. These Standard Terms form an integral part of the Terms and Conditions. The Terms and Conditions are to be read as if the Standard Terms were set out in full within them.
- 1.3. Employees and agents of PACM:
  - a. are only authorised to procure Goods and Services on behalf of PACM using PACM's "Terms and Conditions of Purchase Order", including these Standard Terms, or other longer form agreements provided by PACM; and
  - b. do not have authority to enter into agreements on any other written terms, orally, or by conduct, except for a written agreement signed by the Chief Executive Officer of PACM.
- 1.4. Any purported agreement entered into on written terms other than those identified in 1.3.a, orally, or by conduct, is not authorised by and will not bind PACM.

#### 2. Cancellation and Changes

- 2.1. PACM may cancel the Purchase Order at any time:
  - a. before delivery, to the extent the Purchase Order relates to the supply of goods; and
  - b. before the Services are performed, to the extent the Purchase Order relates to Services.
- 2.2. Any cancellation or adjustment costs due to a change or cancellation of the Purchase Order must be disclosed to PACM prior to the Purchase Order being accepted by either party. If no such costs are disclosed then no cancellation fee, change fee or restocking fees will be accepted.
- 2.3. If PACM 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 must be made to the Fees which is appropriate to the circumstances, and must be agreed in writing by PACM.

#### 3. Delivery, Acceptance and Title

- 3.1. Unless otherwise specified as such in the Purchase Order, time will be of the essence with respect to the Supplier's obligations to deliver Goods and perform Services under this Agreement. 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.
- 3.2. None of the following constitutes or evidences acceptance by PACM of any Goods and/or Services:
  - a. payment of any invoice;
  - b. taking possession or custody of the Goods;
  - c. testing or commissioning of the Goods and/or Services; or
  - d. use of the Goods and/or Services.
- 3.3. Neither acceptance of the Goods/Services nor any event or circumstance referred to in 3.2 affect PACM's rights under this Agreement, including with respect to any Non Conformance.
- 3.4. Goods and/or Services will be subject to a Defects Liability Period and Warranty of 12 months, unless PACM agrees a shorter period in writing, commencing when the Supplier has delivered all Goods and performed all Services under this Agreement.



- 3.5. If PACM rejects any Goods and/or Services within such period, an equitable adjustment must be made to the Fees to reflect non-delivery (the Supplier must repair or replace the goods/ services or refund PACM accordingly).
- 3.6. Title to Goods passes upon the earlier of payment for any part of Goods, and when delivered to PACM.
- 3.7. Risk in Goods passes when the Supplier has delivered all Goods and performed all Services under this Agreement.
- 3.8. The Supplier warrants that all Goods and Services will be in accordance with any drawings, specifications, performance requirements, budget amount, or any other requirements specified by PACM.
- 3.9. The Supplier must provide to PACM any documents and information necessary for the convenient or beneficial use of the Goods and/or Services, including but not limited to:
  - a. evidence of licenses, registrations, quality checks, certificates of origin, servicing manuals, training, inductions;
  - b. all manufacturer and supplier warranties, instructions, commissioning and tests, training, Certificates of Compliance, permits, registrations, software, licenses;
- 3.10. The Supplier must provide to PACM any other documents and information requested by PACM, in the form requested by PACM, prior to the delivery of Goods and/or completion of Services.
- 3.11. The Supplier must provide to PACM maintenance and consumables for the Defect Liability Period.
- 3.12. The Supplier must comply with all safety, environmental and quality management system procedures and policies, and allow any goods, services, staff and equipment used in the provision of the Goods or Services to be inspected, tested or audited as may be required by PACM in its absolute discretion.
- 3.13. At any time until the end of the Defects Liability Period PACM may give the Supplier a written notice which:
  - a. must identify one or more matters that PACM reasonably considers to be Non Conformance(s); and
  - b. may specify a reasonable period for the Supplier to remedy the Non Conformances.
- 3.14. If PACM gives a written notice under 3.13, the Supplier must at its own cost remedy the Non Conformance(s) to PACM's reasonable satisfaction within the period specified in the notice, or if no period is specified, within ten business days.

#### **4. Sub-contracting**

- 4.1. Except as expressly provided in the Purchase Order, the Supplier may not sub-contract any obligations under this Agreement without the prior written consent of PACM, which PACM may withhold in its absolute discretion.
- 4.2. Where the Supplier sub-contracts any of its obligations under this Agreement, the Supplier remains liable for the carrying out and completion of those obligations.

#### **5. Fees and Invoices**

- 5.1. In consideration for the provision of Goods and/or Services under this Agreement, PACM agrees to pay to the Supplier the fees specified in the Purchase Order ("Fees").
- 5.2. Unless otherwise specified in the Purchase Order, PACM agrees to pay the Supplier the Fees within the payment terms specified on the Purchase Order after receipt and acceptance of an invoice by PACM (such invoice to be accompanied by such reasonable information as PACM may require). PACM may withhold any disputed portion of the Fees and the return of any security held by PACM until the dispute is resolved.

- 5.3. If the Seller is to deliver Goods or perform Services over a period of 56 days or longer, the Seller may submit progress payment invoices for the value of the work at intervals of not less than 28 days. The amount payable for each progress payment will be the value of the Goods delivered and Services performed up to the date of the progress payment invoice, as determined by PACM is its sole and absolute discretion.
- 5.4. If GST is payable in connection with the Goods and/or Services to be supplied under this Agreement, then the Supplier irrevocably warrants and agrees that the Fees payable to it under this Agreement and specified in the Purchase Order is the GST inclusive price of those Goods and/or Services unless otherwise agreed in the Purchase Order.
- 5.5. PACM may specify to withhold payment(s), or a portion of them, by way of retention for a period of time or until a date specified on the Purchase Order. Should no amount be specified then the retention will be 10% of each invoice. If no period or date is mentioned, the amounts shall be withheld as retention until 12 months after the end of the Defects Liability Period.

## 6. Indemnity, Insurance and Warranties

- 6.1. The Supplier indemnifies PACM against all Losses it directly or indirectly sustains or incurs as a result of:
  - a. Any negligent, unlawful or wilful act or omission of the Supplier, Supplier personnel or Supplier subcontractors;
  - b. Any infringement or claimed infringement of the IPRs or moral rights of a third party arising out of its receipt or use of the Goods and / or Services;
  - c. Death or personal injury of any person to the extent caused by the Supplier;
  - d. Property damage to the extent caused by the Supplier;
  - e. any breach by the Supplier of clause 8.
- 6.2. The Supplier must have and maintain Public and Products liability insurance (\$10 million for each occurrence) and professional indemnity insurance where design or professional services are supplied (\$1 million for each occurrence) from the date this Purchase Order is issued until the expiration of the Defects Liability Period including the following contractual endorsements:
  - a. a waiver of subrogation; and
  - b. contractual liability,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 this Agreement.
- 6.3. The Supplier must provide PACM with a certificate of currency from its insurance broker certifying that it has the insurance required under this Agreement.
- 6.4. The Supplier represents and warrants that:
  - a. it has all rights, title, licences, interests and property necessary to provide the Goods and/or perform the Services;
  - b. the Supplier 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;
  - c. the Goods and/or Services are fit for the purposes for which Goods and/or Services of the same description would ordinarily be used;
  - d. the Goods and/or Services are fit for any particular purpose expressly or impliedly made known to the Supplier at the time of the conclusion of the Agreement;
  - e. the Goods and/or Services are of the quantity, quality and description required by the Agreement, and are contained or packed in the manner required by the Agreement;

- f. if applicable, the Goods and/or Services will meet any agreed design and performance criteria and correspond with any sample;
- g. the Goods will be complete, accurate and of merchantable quality;
- h. it is entitled to grant any licence of IPRs to PACM under this Agreement;
- i. PACM'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
- j. it will supply to PACM in English all complete, accurate and up-to-date documentation associated with the use of the Goods and/or Services.

- 6.5. If a third party claims, or PACM 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 this Agreement and to any other rights that PACM may have against it, promptly, at the Supplier's expense:
- a. use its best efforts to secure the rights for PACM 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.
- 6.6. The Supplier shall be liable for and fines, damages or penalties incurred to PACM as a result of any direct or indirect act or omission by the Supplier

## 7. Intellectual Property Rights and Confidential Information

- 7.1. Subject to clause 8.2, all rights, title and interest in any IPRs created in providing the Goods and/or Services ("Project IPRs") will be owned by PACM, 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 PACM.
- 7.2. The IPRs owned by a party prior to the date of this Agreement ("Background IPRs") remain with the contributing party.
- 7.3. The Supplier grants to PACM 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 any of the Supplier's IPRs that are necessary or useful for the convenient or beneficial use of the Goods and/or Service. The Supplier must provide PACM with all necessary documentation and materials to take advantage of this licence.
- 7.4. 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 end of this Agreement, 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 this Agreement (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.

## 8. Liability and claims

- 8.1. The *Civil Liability Act 2002 (WA) Part 1F*, *Civil Liability Act 2002 (NSW) Part 4*, and *Civil Liability Act 2002 (TAS) Part 9A*, including any successors to those provisions, are excluded.
- 8.2. The Supplier must give written notice to PACM of any Claim within 10 business days of the occurrence of the events on which the Claim is based. If the Supplier fails to give timely notice, the Supplier must

not make and releases PACM from, and PACM will not be liable for, any Claim arising from or in connection with the relevant fact, matter or thing.

- 8.3. Nothing in this Agreement derogates from any of PACM's rights at common law or in equity.
- 8.4. Any right to payment of Fees expressly granted by this Agreement is the Supplier's sole and exclusive right against PACM arising out of or in connection with this Agreement. To the extent permitted by law, all other rights (including in law, equity, statute, or contract) are excluded, and the Supplier waives those rights and releases PACM from all such claims in respect of them.

## 9. Miscellaneous

- 9.1. PACM may terminate this Agreement by written notice to the Supplier:
  - a. if the Supplier fails to complete remediation under 3.14 within the required time;
  - b. the Supplier breaches a term of this Agreement which is not capable of remedy; or
  - c. 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.
- 9.2. This Agreement is governed by the laws of South Australia.
- 9.3. Each party agrees to execute such agreements, deeds and documents and do or cause to be executed or done all such acts and things as may be reasonably necessary to give effect to this Agreement. The Supplier agrees to cooperate and work with third party suppliers of PACM to the extent necessary to give effect to this Agreement.
- 9.4. PACM 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.
- 9.5. The Supplier may only assign its rights or novate its rights and obligations under this Agreement with the prior written consent of PACM.
- 9.6. A provision of this Agreement 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 this Agreement does not constitute a waiver of that right.
- 9.7. The Supplier must comply with any applicable PACM policies and procedures as notified by PACM to the Supplier from time to time or published on PACM's website.
- 9.8. If required to do so whether under the Freedom of Information Amendment Act 2006 or otherwise, the Supplier agrees that PACM has the right to publish details of this Agreement and/or the Agreement itself in the manner set out in the applicable requirements.
- 9.9. Unless the contrary intention appears, in this Agreement:

**Confidential Information** means all data and/or information exchanged between the parties for the purposes of this Agreement before, on or after the date of this Agreement (including the terms of this Agreement) 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 this Agreement;
- b. becomes publicly available subsequent to the date of this Agreement without breach of this Agreement;
- 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.



**IPRs** means all registered and unregistered rights in relation to the present and future copyright, trademarks, designs, know-how, patents, confidential information and other intellectual property as defined in article 2 of the Convention establishing the World Intellectual Property Organisation 1967.

**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.

**Non Conformance** means any defect or omission in the Goods and/or Services resulting from a failure of the Goods and/or Services to comply with, or the Supplier to perform its obligations in accordance with, this Agreement.