

# PURCHASE ORDER ~ TERMS & CONDITIONS

## K&S CORPORATION LIMITED

ABN 67 007 561 837 ACN 007 561 837  
(Incorporated in South Australia)

# PURCHASE ORDER ~ TERMS AND CONDITIONS

## 1. Definitions

In these Purchase Order terms and conditions (“**Conditions**”):

“**Completion Date**” means the date and time by which the Services are to be performed stated in the Purchase Order, notified in writing to the Supplier or, if no date is stated, a reasonably accepted time consistent with best industry practice.

“**Consequential Loss**” means loss of profit or anticipated profit, loss of revenue or anticipated revenue, loss of production, loss of contract or opportunity under any contract, loss of business or custom, loss of goodwill or reputation, punitive or exemplary loss or damage, or any loss which: (a) at the time of entering the Contract was not in the contemplation of the parties as being a probable result of the event giving rise to the loss; and (b) does not arise naturally according to the usual course of things, but does not include any liquidated or delay damages payable by the Supplier (if any) or amounts which are expressed to be specifically recoverable pursuant to an express provision of the Contract.

“**Contract**” comprises the Purchase Order, these Conditions, the Special Conditions (if any), the Sitework Conditions (if any) and any document referred to in the Purchase Order. In the event of any conflict between these documents, the specific terms of the Purchase Order (including any Special Conditions) will take precedence over these Conditions.

“**Delivery Date**” means the date and time by which the Goods must be supplied, stated in the Purchase Order, notified in writing to the Supplier or, if no date is stated, a reasonably accepted time consistent with best industry practice.

“**Force Majeure**” means an unforeseeable event which prevents or delays a party from performing any of its obligations under the Contract including: (a) earthquake, flood, landslide, fire or explosion, including radioactive or toxic explosion; (b) war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, martial law or confiscation by order of any government or authority; (c) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; (d) riot, civil disturbance, blockade or acts of terrorism; or (e) epidemic or pandemic or quarantine by order of an government or authority; (f) cyber-attacks, to the extent that act, event or cause is beyond the reasonable control of the affected party.

“**Goods**” means any goods stated in the Purchase Order to be supplied by the Supplier to K&S pursuant to the Contract.

“**Gross Negligence / Wilful Misconduct**” means any act or failure to act (whether sole, joint or concurrent) by any person or entity that was intended to cause, or was in reckless disregard of or wanton indifference to, harmful consequences such person or entity knew, or should have known, such act or failure would have on the safety or property of another person or entity.

“**GST**” means the goods and services tax imposed under A New Tax System (Goods & Services Tax) Act 1999. Words defined in that Act have the same meaning in these Conditions.

“**K&S**” means K&S Corporation Limited ABN 67 007 561 837 of 141 Jubilee Highway West, Mount Gambier, South Australia and includes any of its wholly owned subsidiaries.

“**Law**” includes: (a) all applicable legislation, ordinances, regulations, bylaws, local laws, orders, and proclamations; (b) principles of law or equity; (c) standards, codes and guidelines; (d) directions or notices issued by any authority; (e) fees, rates, taxes, levies and charges payable in respect of these things, as amended from time to time.

“**Personnel**” means directors, officers, employees, servants, agents and subcontractors and their personnel.

“**Price**” means the amount or amounts stated in the Purchase Order.

“**Purchase Order**” means the K&S purchase order which describes the Goods and/or Services that K&S requires.

“**Related Bodies Corporate**” has the meaning defined by the Corporations Act 2001 (Cth).

“**Services**” means any services (which may include rental services) stated in the Purchase Order to be provided by the Supplier to K&S pursuant to the Contract.

“**Site**” means the location or locations stated in the Purchase Order.

“**Sitework Conditions**” means any rules and policies that are specified by K&S as applying to the Site, whether pursuant to K&S’ published policies or as set out in the Purchase Order.

“**Special Conditions**” means the special conditions set out in the Purchase Order (if any).

“**Supplier**” means the Supplier that is stated in the Purchase Order.

“**Supplier Group**” means the Supplier, its Related Bodies Corporate and their respective Personnel.

## 2. Formation of Contract

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- 2.1 Unless otherwise specified in a Purchase Order, the Supplier must perform the Contract upon receipt of the Purchase Order.
- 2.2 No terms or conditions sought to be imposed by the Supplier (including any terms contained in any Supplier tender, offer, counteroffer, proposal, conditions or invoice) are incorporated in the Contract, unless specifically referred to in the Purchase Order or separately accepted in writing by K&S.

## 3. Supply

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- 3.1 The Supplier will supply to K&S the Goods by the Delivery Date and/or the Services by the Completion Date.
- 3.2 Goods must be new and fit for purpose upon delivery and must, for the period of one year commencing on the later of: (a) the Delivery Date; or (b) the date of delivery to K&S, comply with the specification or description in the Purchase Order and be free from defects.
- 3.3 Services must be performed safely, skilfully, diligently and according to the agreed timetable, and by suitably qualified and competent people and, for the period of one year commencing on the later of: (a) the Completion Date; or (b) the date of completion of the Services, comply with the specification or description in the Purchase Order.
- 3.4 The parties must comply with the terms of the Contract and nothing in this clause 3 limits or prejudices any of K&S’ rights or other remedies at Law.
- 3.5 Unless specifically included in a Purchase Order, the engagement of the Supplier is on a non-exclusive basis and K&S does not guarantee any minimum revenue or volumes under the Conditions.
- 3.6 The Supplier must provide (without any additional charge) any incidental or related services not specifically described in the Purchase Order which are necessary for the proper performance, use or enjoyment of those Services.

## 4. Price and Payment

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- 4.1 The Price is fixed, not subject to any adjustment and includes all costs that may be incurred by the Supplier in performing its obligations, and it includes all excise, duties and taxes (excluding GST).

- 4.2 K&S will pay the Price to the Supplier within 30 days of the end of the month in which a correct invoice is received, unless otherwise specified on the Purchase Order.
- 4.3 If it is a Taxable Supply, K&S will pay to the Supplier the GST in respect of the Taxable Supply provided that the Supplier submits a valid tax invoice that must include: (a) the Purchase Order number; (b) the Goods and/or Services supplied under that tax invoice; (c) the Site and date of supply; (d) if Services are charged by time, the time spent by the people; and (e) any other details reasonably requested by K&S.
- 4.4 K&S may set off, from any monies due to the Supplier (whether under the Contract or any other agreement with the Supplier), any sum that is payable by the Supplier to K&S.
- 4.5 The presentation, payment or non-payment of an invoice will not constitute a settlement of a dispute, a remedy of account stated or otherwise waive or affect the rights of the parties.

## 5. Delivery

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- 5.1 Unless stated otherwise in the Purchase Order, the Supplier must, at its own cost and risk: (a) deliver the Goods to the Site; and (b) in the case of Services, provide the Services (including any deliverables) at the Site by the due date.
- 5.2 Subject to clause 5.3, delivery is taken to occur upon completion of offloading by the Supplier. If the Goods are lost or damaged in transit, the Supplier must replace them at its cost as soon as practicable.
- 5.3 If stated in the Purchase Order, K&S will arrange for the Goods to be collected from the Supplier. Delivery occurs when possession of the Goods is transferred to K&S.
- 5.4 Where Services include deliverables, physical title in each deliverable passes to K&S upon creation of that item. The Supplier bears the risk for each deliverable until completion of testing, inspection and acceptance by K&S to its sole satisfaction.
- 5.5 Title in Goods passes to K&S when delivery is completed according to this Contract or when K&S pays for the Goods, whichever is earlier. Unless otherwise stated in the Purchase Order risk in the Goods passes to K&S when they are delivered according to this Contract.

## 6. Non-Compliance and Returns

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- 6.1 If any Goods fail to comply with this Contract, K&S may (without prejudice to its other rights at Law) give the Supplier notice to collect the Goods, or return them, at the Supplier's expense, and the Supplier must reimburse K&S the Price of those Goods, plus any costs incurred by K&S in returning them, within 5 business days of receipt of a request for reimbursement.
- 6.2 Where K&S agrees in writing that the Supplier may resupply Goods, rather than reimbursing K&S the Price under clause 6.1, the Supplier warrants such resupplied Goods in accordance with clause 3.2 for one year commencing from the date of the resupply to K&S.
- 6.3 Acceptance of the Goods after any inspection or testing by K&S does not relieve the Supplier of any of its obligations to perform the Contract.
- 6.4 The Supplier must ensure that any warranties from sub-suppliers applicable to the Goods or Services (if applicable) are transferred to K&S or held for K&S' benefit.
- 6.5 If any Services fail to comply with the Contract, the Supplier, must promptly re-perform the deficient part of the Services at the Supplier's cost within a reasonable time stipulated by K&S. The Supplier warrants re-performed Services in accordance with clause 3.3 for one year from the final date of reperformance of the relevant Services. If the Supplier fails to re-perform the Services at all or in a timely manner, K&S may have the relevant Services performed by others and recover its costs from the Supplier.

## 7. Site Work Conditions

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The Supplier must ensure that its employees, contractors, agents and invitees:

- a) complete any inductions required by K&S prior to commencing performance of the Contract;
- b) comply with the Sitework Conditions and reasonable directions provided by K&S when on Site;
- c) use their best endeavours not to interfere with K&S' activities and activities of other contractors on the Site; and
- d) ensure that they do not leave rubbish or debris on the Site.

## 8. Supplier Warranties

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The Supplier represents and warrants to K&S that:

- a) all information in brochures, quotes or tenders provided in connection with the provision of the Goods or Services is accurate;
- b) it has unencumbered title to, and use of, the Goods, and use of them under the Contract will not infringe the rights of any third party;
- c) it holds, will maintain and comply with all licences, permits, forms, applications and authorities under Law to perform the Contract; and
- d) no virus or other harmful code or data designed to interrupt, damage, destroy or limit the functionality of any software, hardware or equipment will be introduced into K&S' or any member of the K&S Group's systems as a result of the supply of the Goods or Services by the Supplier.

## 9. Indemnity

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- 9.1 The Supplier indemnifies K&S and its Related Bodies Corporate ("K&S Indemnified Parties") against all claims, liabilities, loss, damage or penalties incurred by the K&S Indemnified Parties caused by the negligence or breach of the Contract of Supplier or any member of the Supplier Group, except to the extent that the claim, liability, loss, damage or penalty is contributed to by the negligent act or omission of any of the K&S Indemnified Parties.
- 9.2 K&S indemnifies the Supplier against all claims, liabilities, loss, damage or penalties incurred by the Supplier caused by the negligence or breach of the Contract of K&S, except to the extent that the claim, liability, loss, damage or penalty is contributed to by the negligent act or omission of the Supplier.
- 9.3 Neither party is liable to the other (including any member of the Supplier Group or K&S Indemnified Parties (as applicable)) for any Consequential Loss arising under or in connection with the Contract (howsoever arising, including negligence), but excluding where the liability of a party or any member of the Supplier Group or K&S Indemnified Parties (as applicable) arises out of the Gross Negligence of Wilful Misconduct of such a party or that party:
- a) is entitled to be indemnified for such liability under a policy of insurance effected under the requirements of the Contract; or
  - b) would have been entitled to be indemnified for such liability under a policy of insurance effected under the requirements of the Contract but for the party's failure to comply with the terms and conditions of the relevant policy or its obligations under the Contract in respect of such policy.
- 9.4 The indemnities provided in this clause 9 are a continuing obligation and survive expiry or termination of the Contract.

## 10. Insurance

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- 10.1 Unless otherwise stated in the Purchase Order, the Supplier must take out and maintain at its expense the following insurance cover during the performance of the Contract:
- a) public and products liability insurance of not less than \$20 million (or such higher sum as K&S (acting reasonably) requires from time to time) for any one occurrence;
  - b) comprehensive motor vehicle insurance for third party property damage in the sum of \$5 million for any one occurrence, and compulsory third party insurance under applicable legislation if the provision of the Goods and/or Services involves the use of mechanically propelled vehicles;
  - c) workers compensation insurance as required by Law;
  - d) where required by K&S, professional indemnity insurance of not less than \$5 million (or such higher sum as K&S (acting reasonably) requires from time to time) for any one occurrence, and will maintain such insurance for a period of at least 7 years after the expiry or termination of the Contract;
  - e) any other insurance that is specified in the Purchase Order; and
  - f) and will provide evidence of the currency of such insurances upon request by K&S.
- 10.2 The Supplier must ensure that any subcontractors used in performing the Contract also have and maintain the insurance set out in clause 10.1 during the performance of the Contract.

## 11. Intellectual Property

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- 11.1 All intellectual property created in the performance of the Contract ("IP") vests in K&S. The Supplier must assign or transfer all such IP to K&S, and until that time holds any such IP on trust for K&S.
- 11.2 K&S grants the Supplier an irrevocable and royalty free licence to use the IP for this Contract. The Supplier grants to K&S and each member of the K&S Group an irrevocable, perpetual, worldwide and royalty free licence to use any intellectual property not vested in K&S that is necessary for the K&S Group to have the benefit of the Goods or Services provided under the Contract or the IP.

## 12. Confidentiality

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- 12.1 The parties must not disclose information belonging to one party which is disclosed to the other party under this Contract and which is not already known by the other party and is not already in the public domain ("Confidential Information") to any third party or use or reproduce it other than for the performance of the Contract, other than:
- a) as required by Law;
  - b) to their own employees or contractors that are required to access the Confidential Information in order to perform their obligations under the Contract;
  - c) to any potential investor, or to a financial institution from whom a party is seeking finance, provided they are bona fide in their intentions and have provided a similar undertaking of confidentiality to the disclosing party.
- 12.2 The parties must always safeguard the Confidential Information, and when the Contract ends, the parties must return the Confidential Information if requested by the disclosing party.

## 13. K&S Policies

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- 13.1 The Supplier must, in the performance of the Contract:
- comply with all Laws including privacy, environmental, health and safety Laws;
  - comply with K&S' policies or its own policies of the same or higher standard;
  - immediately notify K&S of any incident that is notifiable under environmental, health and safety Laws;
  - provide K&S with a copy of any incident investigation report and evidence that it has revised risk control measures so as to maintain, so far as is reasonably practicable, a work environment that is without risk to the environment, health and safety; and
  - allow K&S to monitor the Supplier's systems, work practices and procedures.
- 13.2 If requested to do so by K&S, the Supplier must remove from Site and any involvement in the performance of the Contract any Supplier Personnel whose acts or omissions cause the Supplier to fail to comply with the Contract, and the Supplier shall provide replacement Personnel at its own cost. The Supplier must not replace or withdraw any key Personnel as set out in the Purchase Order (if any) without K&S' consent.

## 14. Force Majeure

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- 14.1 If a party cannot carry out its obligations (wholly or in part) under the Contract due to a Force Majeure they must give written notice to the other party which details the Force Majeure Event, the specific obligations the affected party cannot perform, the estimated duration of the Force Majeure and steps taken or planned to mitigate or abate the Force Majeure.
- 14.2 Provided a compliant notice is provided under clause 14.1, the affected party's obligations under the Contract are suspended to the extent they are prevented or delayed by the Force Majeure. The affected party must take all reasonable steps to remedy the Force Majeure to the extent practicable, resume performance of its obligations as soon as reasonably possible and mitigate any loss suffered by the other party as a result of the affected party's failure to carry out its obligations under the Contract.
- 14.3 If the Force Majeure event continues for more than 30 consecutive days K&S may at its sole discretion terminate the Contract by written notice to the Supplier.

## 15. Termination

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- 15.1 K&S may terminate the Contract in whole or in part immediately by written notice if:
- the Supplier is unable to pay its debts when they are due;
  - subject to Law, the Supplier is involved in any insolvency proceedings or equivalent processes;
  - the Supplier ceases to carry on business;
  - there is a change in control of the Supplier;
  - the Supplier or Supplier Group, in the reasonable opinion of K&S, is endangering anyone's health or safety;
  - the Supplier or Supplier Group is in breach of the Law, including any anti-bribery, export control, anti-money laundering, modern slavery or sanctions regulations; or
  - the Supplier or Supplier Group materially breach the Sitework Conditions.

- 15.2 The Supplier may terminate the Contract in whole or in part immediately by written notice if:
- K&S is unable to pay its debts when they are due;
  - subject to Law, K&S is involved in any insolvency proceedings or equivalent processes;
  - K&S ceases to carry on business; or
  - K&S breaches a term of the Contract or fails to perform the Contract and fails to remedy that breach to the reasonable satisfaction of the Supplier within 7 calendar days of receiving written notice from the Supplier requiring it to do so.
- 15.3 If the Supplier breaches a term of the Contract or fails to perform the Contract, K&S may give written notice requiring the breach to be remedied within 7 calendar days. If the breach is not remedied within these 7 days, or where the breach cannot reasonably be remedied within these 7 days and the Supplier does not commence the remediation of the breach within that period and diligently pursue the remediation to K&S' satisfaction, then K&S may terminate the Contract and recover its reasonable and direct losses that arise from such termination, including having any Goods or Services (as applicable) supplied by another supplier on an expedited basis.
- 15.4 Unless the Special Conditions provide otherwise, K&S may terminate the Contract for convenience at any time, in its sole discretion, by providing 30 days written notice to the Supplier. Upon receipt of such notice, the Supplier must seek to minimise any costs or losses arising from such early termination. K&S will pay that part of the Price for any work completed up to the date of termination, and for the cost of materials and equipment properly ordered by the Supplier for the purpose of supplying the Goods or the Services (as applicable) and which the Supplier has paid or is legally bound to pay. K&S is not liable for, and the Supplier releases K&S from, any other loss or damage suffered by the Supplier as a result of the early termination.
- 15.5 Termination of the Contract does not affect any accrued rights or remedies.

## 16. General

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- 16.1 The Supplier is an independent contractor.
- 16.2 The Supplier must not assign or novate any rights, obligations or liabilities under the Contract, including by way any change in control of Supplier except with the prior written consent of K&S (such consent not unreasonably to be withheld). If the Supplier subcontracts any of its obligations under the Contract it will remain liable in full for the performance of the Contract.
- 16.3 The Supplier must not make any public announcements in relation to this Contract.
- 16.4 Any variation to the Contract must be agreed in writing by the parties.
- 16.5 The Supplier must not register any security interest in relation to this Contract against any K&S Group property.
- 16.6 The Contract is governed by the Laws of the State of Australia in which the Services or Goods are supplied or, if they are supplied in more than one State, then the Laws of Victoria, Australia govern.
- 16.7 Any dispute, controversy or claim arising out of or in connection with the Contract ("Dispute"), shall first be attempted to be resolved by senior managers of the parties within 30 days of the disputing party providing a Dispute notice to the other party setting out full particulars and the resolution(s) being sought. The senior managers must use their best endeavours and act in good faith to attempt to resolve any Dispute. If the senior managers fail to resolve the Dispute, then either party may seek to have the Dispute resolved by arbitration in accordance with the ACICA Arbitration Rules in Melbourne, Australia. Nothing in this clause prevents any party from seeking urgent interlocutory relief from a court at any time.
- 16.8 Formal notices under the Contract must be sent to the Supplier's address in the Purchase Order, and to K&S at the K&S address specified in the Purchase Order, marked to the attention of the K&S representative named in the Purchase Order.
- 16.9 The Contract is the entire agreement between K&S and the Supplier in relation to the subject matter of the Purchase Order.