

York Civil Pty Ltd

Standard Terms and Conditions of Purchase

1. Definitions

Where the context permits:

'Agreement' means the agreement between the Supplier and the Customer for the supply of Goods by the Supplier to the Customer and shall be constituted by these Terms and Conditions of Purchase, the Customers' purchase order, Customer specifications and requirements and if any, the Supplier's quotation (excluding commercial terms and conditions);

'Business Day' means a day that is not a Saturday, a Sunday or a public holiday in the place concerned;

'Client' means the party with whom York Civil has contracted to undertake work in which the Supplier's Goods will be used to undertake the work or incorporated into the works;

'Confidential Information' means any and all information, data, databases, CD ROMs, printouts, instructions, plans, specifications, formulae, contracts, financial details, technology, drawings, computer software, reports, results, developments, trade secrets, materials, designs, know-how, processes, technical advice, documents, intellectual property rights and other information in whatever form and however stored and whether owned by York or provided to the Supplier by York;

'Customer' means York Civil Pty Ltd, ABN 65 050 019 969;

'Goods' means the goods and services agreed to be supplied by the Supplier and purchased by the Customer pursuant to the Agreement;

'GST' has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

'Supplier' means the entity stated on the purchase order with which the Customer has agreed to purchase the Goods pursuant to the Agreement;

'SOP' means the:

- (a) Building and Construction Industry Security of Payments Act (SA) 2009;
- (b) Building and Construction Industry Security of Payment Act (NSW) 1999;
- (c) Building and Construction Industry Security of Payment Act (VIC) 2002;
- (d) Building and Construction Industry Payments Act (QLD) 2004;
- (e) Construction Contracts (Security of Payments) Act (NT) 2006; and
- (f) Construction Contracts Act (WA) 2004,

and their regulations as amended from time to time.

'Tax Invoice' has the same meaning given in A New Tax System (Goods and Services Tax) Act 1999 (Cth), as amended from time to time;

'Warranty Period' means the period during which the Supplier, at its sole expense, shall replace, repair or make good the Goods if they are found by the Customer to be damaged, defective or otherwise non-compliant with the requirements of this agreement. The Warranty Period shall be the greater of:

- (i) the period stated on the Purchase Order or if no period is stated, 12 months from the date the last of the Goods has been delivered to the nominated delivery point; or
- (ii) the Suppliers standard warranty period

2. Interpretation

In this Agreement, headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:

2.1 words in the singular include the plural and vice-versa;

2.2 a gender includes all genders;

2.3 if a word or phrase is defined, its other grammatical forms have a corresponding meaning;

2.4 a reference to a person, corporation, trust, partnership, unincorporated body or their entity includes any of the foregoing;

2.5 a reference to a clause or schedule is a reference to a clause of or a schedule to this Agreement;

2.6 a reference to a Party includes that Party's successors and permitted substitutes or assigns (and, if applicable, the Party's legal personal representatives).

2.7 "York", "we", "our" and "us" means York Civil Pty Ltd.

3. Governing Law

The Agreement is governed by and must be interpreted in accordance with the laws of the State stated in the Agreement, and if not stated then the State in which the Goods are supplied. The Supplier unconditionally submits to the non-exclusive jurisdiction of the courts of that State.

4. Quotations and Purchase Orders

4.1 In order to purchase the Goods, the Customer will place with the Supplier a written purchase order setting out an order number, the Supplier's quotation reference (if applicable), full description of the Goods to be purchased, the delivery date, delivery point and any other information considered relevant by the Customer.

4.2 The Supplier shall be deemed to have accepted the Agreement and a contract shall be formed between the Customer and the Supplier upon the earlier of:

- (a) signature by the Supplier of the Agreement, or some other written acknowledgement;
- (b) delivery of Goods by the Supplier to the delivery point; or
- (c) submission to the Customer by the Supplier of an invoice for payment in respect of the Goods.

4.3 This Agreement constitutes the entire agreement between the Supplier and Customer as at the date of acceptance by the Supplier and supersedes any request for quotation, the Supplier's quotation, all negotiations and/or previous agreements either written or oral with respect to the subject of the Agreement and made prior to the date of acceptance of the Agreement.

4.4 No variation of this Agreement will be effective unless such variation is in writing and signed by the Customer.

5. Delivery

5.1 The delivery of the Goods must be made in accordance with this Agreement and, in particular, within any time and/or method and to such place as the Customer may nominate.

5.2 If the Supplier is late in delivering any of the Goods or if any materials and equipment forming part of the Goods are delivered in excess of the quantity ordered by the Customer, then the Customer shall be entitled to return the Goods to the Supplier and all costs incurred by the Customer in returning the Goods shall be a cost to the Supplier and the purchase price shall be adjusted accordingly.

- 5.3 Delivery shall not be regarded as having been completed until the Goods are fully installed (if applicable), tested and commissioned and the Customer has given its final acceptance. Signed delivery dockets shall not mean acceptance by the Customer of Goods delivered but only the number of packages or cartons delivered.
- 5.4 Goods shall be appropriately packaged to prevent damage during transit, unloading and storage. The Supplier shall ensure that it obtains clarity on storage conditions from the Customer prior to shipping Goods to the Customer which may be damaged by unprotected open air storage.

6. Title and risk

- 6.1 The Supplier expressly waives any and all liens of any kind or nature to which the Supplier may otherwise be entitled, whether statutory or otherwise, and the Supplier hereby waives any and all rights of lien against any of Goods or any work of which the Goods form part or the Site (or part thereof), to the fullest extent consistent with the law. The Supplier agrees to indemnify and forever hold harmless the Customer against any claims from any third parties against the Supplier affecting directly or indirectly the Goods. In any event if a third party, or an employee of the Supplier, or a Sub-supplier or a worker employed by them, institutes action to place a lien on the Site (or part thereof), the Supplier shall take whatever action is necessary to avoid the lien being registered or to have the lien removed forthwith (as the case may be), and shall indemnify York against any costs, losses or damages whatsoever, that York may suffer as a result of the registration or proposed registration, of such lien.
- 6.2 The Goods are at the Supplier's risk until delivery is completed in accordance with the Agreement.

7. Warranties

- 7.1 The Supplier represents and warrants to the Customer that the Goods will:
- (a) be new unless stated on the Purchase Order and free from any defects in design, manufacturing, materials and workmanship
 - (b) be fit for their intended purpose;
 - (c) will comply with the requirements of all relevant Australian standards, statutory and regulatory requirements, and any other contractual obligations of the Customer to a third party (as disclosed to the Supplier by the Customer); and
 - (d) conform with all specifications, drawings, samples or other description furnished by the Customer to the Supplier.
- 7.2 The Supplier shall ensure that all warranties applicable to the Goods are provided to the Customer and made in favour of the Customer and the Client including those warranties applicable to Goods procured by the Customer from a third party.

8. Insurance

- 8.1 In addition to any insurance which the Supplier is by law obliged to effect, the Supplier shall procure and maintain at its own expense and with a reputable insurance company, such policies of insurance which may reasonably be required by the Customer having regard to the nature of Goods being supplied. In any event, the Supplier shall maintain relevant and prudent insurance cover for its liabilities covering all events that may cause loss of or damage to property or injury or death of a person in the performance of the Agreement. Such insurance shall at least include Workers Compensation, Public Liability and Goods in Transit until the Goods are delivered to York.
- 8.2 The Supplier shall, on request, produce copies of Certificates of Currency for each and any relevant insurance policy pertaining to its industry.

9. Defective Goods and Refunds

- 9.1 All Goods ordered are subject to final inspection and approval by the Customer. In the event that the Goods (or any part) fail (in the Customer's absolute opinion) to conform to the Supplier's obligations, then the Customer may reject the Goods. The Supplier shall refund the purchase price forthwith together with an amount to cover the Customer's inspection, handling, transportation and other reasonable charges or expenses.
- 9.2 Where the Customer rejects the Goods which are already installed, the Supplier shall immediately upon written direction from the Customer, remove the defective Goods, replace same and make good any damage to other property occasioned in such removal to the satisfaction of and at no cost to the Customer.
- 9.3 Acceptance of or payment for all or part of the Goods shall not be deemed to be a waiver on the part of the Customer of its contractual, statutory or other rights in respect of the Goods
- 9.4 Without prejudice to any other right or remedy available to York, if any Goods are not supplied in accordance with the Agreement or York is liable to make good or rectify any Goods, or a defect appears in the Goods during the Warranty Period (whether or not as a result of a breach of warranty or any other undertaking or condition or otherwise), then York shall be entitled:
- (a) to require the Supplier to repair or replace the defective Goods in accordance with the Agreement within seven (7) days; or
 - (b) at York's sole option, and whether or not York has previously required the Supplier to repair or replace the Goods or Works:
 - (i) to accept the defective Goods, and be entitled to recover from the Supplier, the greater of all damages, losses, costs and expenses suffered or incurred by York, as a result of such defective Goods, or the benefit to the Supplier (including any sub-supplier) of not having to rectify the defective Goods, or
 - (ii) where the Supplier fails to repair or replace the defective Goods as required by paragraph (a) above, to treat the Agreement as repudiated by the Supplier's breach and to terminate the Agreement and require the repayment of any part of the Price which has been paid, and compensation for all damages, losses, costs and expenses suffered or incurred by York.

10. Assignment and Subcontracting

The Supplier shall not assign or subcontract the work or any payment or any other right, benefit or interest without the prior written consent of the Customer.

11. Proprietary Information

- 11.1 The Supplier warrants that it is the owner of or, where appropriate, is the registered user of, any patents, licenses, trademarks, copyright, data or trade secrets connected directly or indirectly to the Goods and the Supplier agrees to indemnify and forever hold harmless the Customer against any actions arising from any breach of this warranty (including legal costs).
- 11.2 The Customer shall at all times retain title to the copyright or any other intellectual property rights in any plans, designs, sketches, drawings, blue prints, patterns, models, tools, dyes, moulds, special appliances, materials and patents and in any other document or material furnished by the Customer (whether furnished by the Customer in connection with this Agreement or produced by the Supplier for the purposes of this Agreement) ("Customer IP"). During the term of this Agreement the Customer IP shall be deemed to be held by the Supplier on consignment or as a bailee only and at the Supplier's sole risk.

- 11.3 Customer IP shall only be used by the Supplier in the production for the Customer of the Products or the performance of related work.
- 11.4 This Agreement shall not be construed as being an implied or an express assignment or licence of any of the Customer IP or the rights therein. The Supplier shall not be entitled to any lien, charge or other form of attachment whatsoever in respect of the Customer IP.
- 11.5 The Supplier shall not disclose Customer IP to others except where, prior to disclosure, the Customer so agrees in writing. Customer IP shall not include matters or things known to the general public or to the Supplier prior to the date of this Agreement and such knowledge was not the result of a breach of any other confidentiality obligation of the Supplier.
- 11.6 The Supplier shall return all property of the Customer upon receipt of demand and the Supplier shall not under any circumstances whatsoever make any unauthorised copies of any information provided to the Supplier by the Customer, including the Customer IP.
- 11.7 Any intellectual property created during the performance of this agreement shall be the property of York and the Supplier shall have a revocable, non-exclusive and royalty free right to use it for the purposes of the Agreement

12. Confidentiality

- 12.1 The Supplier undertakes not to divulge or communicate to any person, firm or company any Confidential Information without the prior written consent of York except:
- (a) to employees, agents or Sub-suppliers who are engaged in the performance of the Agreement and (if requested by York) have signed a Confidential Undertaking having the same effect as the provisions contained in this Clause, and then only to the extent necessary for the performance of the Agreement;
 - (b) to any related body corporate, provided the recipient agrees to act consistently with this clause; or c) as required by any Law or stock exchange.
- 12.2 The Supplier shall take all reasonable precautions in dealing with any Confidential Information so as to prevent any unauthorised person from having access to such Confidential Information.
- 12.3 The Supplier shall simultaneously with delivery or handover of the Goods, at its own expense, deliver up to York all documents, papers and property containing any Confidential Information which may be in the possession or under the control of the Supplier, its employees, agents or Sub suppliers.
- 12.4 The Supplier shall not disclose the existence of the Agreement or mention York's name or that of the Client, in any publicity release or announcement or publicity material or other similar communication without York's prior written consent.
- 12.5 Nothing in this clause derogates from the Supplier's obligations under any provisions of this Agreement.
- 12.6 The provisions of this Clause shall survive the termination or expiry of this Agreement for any reason.

13. Indemnity

The Supplier indemnifies the Customer against any loss, damage, liability or claim, whether arising under contract, at common law, in equity or under any statute, which the Customer suffers or incurs arising out of or in connection with the supply or delivery of the Goods by the Supplier.

14. Invoice & Payment

- 14.1 The purchase price, unless otherwise expressly stated, shall be inclusive of delivery charges, packaging, freight, assembly costs, installation costs, insurance or any statutory, sales, excise, goods and services or other taxes, duties or imposts.
- 14.2 The Suppliers claim for payment claim must:
- (a) be in the form of a Tax Invoice and contain a Tax Invoice number
 - (b) state the Suppliers registered business name and where applicable its trading name;
 - (c) state the Suppliers ABN;
 - (d) state the date of the claim;
 - (e) be addressed to the Customer (York Civil Pty Ltd)
 - A. by mail to: PO Box 2094, Regency Park SA 5942, or
 - B. by fax to: 08 8340 5330, or
 - C. by email to: accounts.#@yorkcivil.com.au where '#' is the first letter of the Suppliers name;
 - (f) be received by the Customer no later than the 2nd Business Day of the month following the month in which the Goods were supplied. A claim for payment received earlier than the 2nd Business Day will be deemed to be received on the 2nd Business Day;
 - (g) state the Customers Purchase Order Number;
 - (h) identify the project or site to which the claim relates;
 - (i) be based on the rates and prices set out in the Customers purchase order;
 - (j) identify the gross amount claimed;
 - (k) identify any deductions or adjustments that are to be made pursuant to the purchase order;
 - (l) identify the amount, in \$A the Supplier claims to be due.
- 14.3 Subject to 14.2, the Customer shall pay the amount due to the Supplier within 14 days after the end of month in which the invoice is received in accordance with clause 14.2(g) or otherwise in accordance with the Customer's credit arrangement with Supplier.
- 14.4 The Supplier agrees that the Customer is entitled to exercise a right of set off to the extent the Supplier is indebted to the Customer against any monies due by the Customer to the Supplier on this or any other account.

15. Goods and services tax

- 15.1 In this clause 15, expressions which are not defined, but which have a defined meaning in the GST Law, have the same meaning.
- 15.2 Unless otherwise provided in this Agreement, the Supplier must pay all Tax due in connection with the Goods.
- 15.3 If any supply made under this Agreement is, or becomes, subject to GST, and the consideration for the supply is not expressed to be GST-inclusive, the party to whom the supply is made (Recipient) must pay to the party making the supply (Supplier), an additional amount on account of GST, such amount to be calculated by multiplying the consideration payable in respect of the supply by the applicable rate of GST.
- 15.4 Subject to the Supplier issuing a valid Tax Invoice in accordance with clause 14.2 to the Recipient any amount in respect of GST payable must be paid to the Supplier at the same time as payment for the taxable supply is required to be made in accordance with this Agreement.
- 15.5 If any party is required to reimburse or indemnify the other party for any cost, loss, expense, damage or liability incurred by the other party (Reimbursable Expense), the amount of that Reimbursable Expense for the purpose of this Agreement is the amount

of the Reimbursable Expense incurred, less the amount of any input tax credit or refund of GST, which the party incurring the Reimbursable Expense is entitled to claim in respect of the Reimbursable Expense.

16. SOP ACT

- 16.1 The Subcontractor will keep York Civil advised of the progress of any adjudication arising out of the SOP Act relating to the WUS and will provide any information reasonably requested by York Civil.
- 16.2 If the Sub-subcontractor of the Subcontractor suspends its supply in accordance with its rights under the SOP Act ("**Suspended Works**") then:
- (a) York Civil may immediately engage an alternative supplier to carry out the Suspended Works;
 - (b) York Civil may engage the sub contractor suspending its works directly to carry out or complete some or all of the Suspended Works;
 - (c) All costs, fees and expenses incurred by York Civil in exercising its rights under subclause (a) and/or (b) ("**Suspension Costs**") will be a debt owed by the Subcontractor to York Civil and may be, at York Civil's election, be set-off against any claim made by the Supplier;
 - (d) Without limiting in any way the rights of York Civil, the suspension of the works by the Supplier or the Sub-subcontractor will constitute a substantial breach of the Agreement by the Supplier which will entitle York Civil to immediately terminate this Agreement and in which event the Supplier shall not be entitled to any further payment under this Agreement;
 - (e) The Supplier will indemnify York Civil in respect of all costs, expenses, damages and loss arising out of Suspended Works.
- 16.3 Any payment claim made in accordance with the SOP Act shall be served by registered mail, addressed as follows:
Group Commercial Manager
York Civil Pty Ltd
27 Tikalara Street
Regency Park SA 5010

17. Correspondence, Notices and Documentation

- 17.1 All documentation, notices and correspondence relating to the Agreement, including delivery orders, invoices, packing lists, containers, delivery notes, airway bills and bills of lading, shall show the Customers' purchase order number shown in the Instrument of Agreement. Documentation, notices and correspondence shall be transmitted to the address, facsimile number or email shown on the Purchase Order or if no address is identified, in accordance with clause 14.2 **Error! Reference source not found.** or as otherwise advised in writing.
- 17.2 Any notice to be given to a party under the Agreement must be in writing. Notice is deemed to have been given at the time it would have been received in the normal course of post if sent by post, or if otherwise given at the time it was actually received.
- 17.3 The Supplier acknowledges and agrees that York may provide a copy of this Agreement to its Client.

18. Disputes

In the event of any dispute, controversy or differences of any kind whatsoever arising out of or in connection with the Agreement (including the validity, enforceability of the Agreement or any part thereof) or the carrying out of the Agreement, either party may notify the other in writing that a dispute has arisen and giving full details of the dispute. The parties shall first attempt to resolve the same between them before proceeding to litigation or arbitration as the case may be.

19. Continued Performance

Notwithstanding the existence of a claim or dispute, both Parties must continue to fulfil their obligations in relation to the Agreement unless a notice has been issued requesting the other Party to do otherwise.

20. Termination for Default

- 20.1 If the Supplier:
- (a) breaches any of its obligations under the Agreement and such breach is not rectified within seven (7) days of receipt of notice from the Customer to rectify such breach; or
 - (b) is adjudged bankrupt or if it shall make a general assignment for the benefit of its creditors; or
 - (c) has a receiver, liquidator, administrator or other controller of property appointed to the Supplier on account of its solvency or ability to pay its debts as they fall due;
- then, the Customer may, without prejudice to any other rights or remedies it may have hereunder, terminate this Agreement, forfeit any retention, take possession of any premises, materials, tools and appliances and finish the work by whatever means it may deem expedient.
- 20.2 The Customer shall not be liable to pay the Supplier any further payments until all Goods are completed and in the possession of York.
- 20.3 Upon termination for breach, the Supplier shall be liable for all damages, loss, costs and expense which may be suffered or incurred by York arising out of such termination of the Agreement and shall indemnify York against all liabilities, damages, costs and other compensation awarded against or paid by York in connection with any third party claims and all legal expenses and costs incurred by York in the defence or settlement of any such claims, arising out of, or as a result of, or in connection with, such termination. York's only liability to the Supplier, subject to York's right of set-off, shall be to make payment of (or allow as credit) the Price of all Goods delivered or handed over to York in accordance with the Agreement.
- 20.4 If York gives the Supplier a notice terminating the Agreement under this clause, the Supplier must:
- (a) comply with all York instructions in the dealing of the goods;
 - (b) properly secure the Goods, if on Site, and leave the Site in a safe condition; and
 - (c) hand over all documentation and information to York which are:
 - (i) the property of York or the Goods of the Supplier under this Agreement;
 - (ii) in the possession, custody or control of the Supplier or its employees, agents or Sub-supplier, and
 - (iii) otherwise required to complete the Works or to use or operate the Goods.

21. Survival of Terms

The termination or cessation otherwise of the Agreement howsoever caused shall be without prejudice to any obligations or rights of either party which have accrued prior to such termination or cessation and shall not affect any provision of the Agreement which is expressly or by implication provided to come into effect on or to continue in effect after such termination or cessation.

22. Building Code

The Supplier acknowledges that the Building Code applies to this Agreement and:

- (a) if the value stated on the purchase order is less than \$25,000, by agreeing to supply the Goods the Supplier will be taken to have read and to agree to comply with the Building Code; or
- (b) if the value stated on the purchase order is greater than \$25,000 the Supplier warrants that it will comply with the Building Code as set out in the document available at www.yorkcivil.com.au/Subcontractors&Suppliers.

23. Approval Does Not Relieve Supplier of Liability

23.1 No consent or approval of York shall relieve the Supplier of any liability arising out of or in connection with the performance or its obligations under this Agreement.

23.2 Except as provided at law or in equity or elsewhere in the agreement, none of the terms of the Agreement shall be varied waived or discharged except by written consent of the parties, which shall not constitute waiver, discharge or release of any other item.

24. Miscellaneous

24.1 The fact that the Customer fails to do, or delays in doing, something it is entitled to do under the Agreement, does not amount to a waiver of its right to do it. Any waiver must be agreed in writing by the Customer.

24.2 The Goods are for use of or re-sale by the Customer and may be incorporated in any products. In no event shall any claim for royalties or other additional compensation be made by the Supplier by reason of such use, re-sale or manufacture.

24.3 If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from these Terms and Conditions of Purchase, but the rest of the Agreement is not affected.

24.4 The Customer shall not be liable for any failure to fulfil or any delay in fulfilling any obligation arising from the Agreement if the failure or delay has been caused directly or indirectly by any act of God, war or other civil commotion, strikes, lockouts, stoppages and restraints of labour, breakdown of machinery, inability to obtain raw materials or fuel, fire or explosion, any government action or any other cause beyond the reasonable control of the Customer and not a consequence of the Customer's negligence.

24.5 If the Supplier consists of two or more persons then they shall be bound jointly and severally.