

## 1. Basis of Purchase Order

1.1 These Terms of Purchase shall be deemed to be accepted by the Supplier for the supply of the Goods and/or Services identified in the Purchase Order from the earlier of:

- a. The Supplier signing and returning a copy of the Purchase Order to Pensar; or
- b. The Supplier's commencement of work relevant to the supply of the Goods and/or Services after receipt of the Purchase Order.

1.2 The acceptance of the Purchase Order by the Supplier is on the basis that:

- a. These Terms of Purchase are the sole basis of the sale of the Goods and/or Services to the exclusion of any other conditions of sale appearing on any document of the Supplier; and
- b. Modification of these Terms of Purchase expressed in any document of the Supplier does not apply to the Purchase Order unless expressly accepted in writing by Pensar.

## 2. Goods & Services

2.1 The Goods and or Services to be supplied by the Supplier are described in the Purchase Order and together with these Terms of Purchase contains the entire agreement between the parties.

2.2 The Supplier warrants that the Goods and/or Services shall:

- a. Comply with any drawings, specifications and/or any other technical documents included with and/or identified in the Purchase Order or otherwise provided by Pensar, including details defined in associated quotations or tenders and/or agreements in relation thereto;
- b. Comply with all relevant standards and statutory requirements;
- c. Be new (unless stated otherwise), of good merchantable quality, free of defects and fit for their intended purpose;
- d. Upon delivery to Pensar, be free of all liens, charges and other encumbrances; and
- e. Be supplied to Pensar strictly in accordance with the terms of the Purchase Order except to the extent that Pensar may agree or direct otherwise in writing.

2.3 The Supplier shall allow Pensar and other persons authorised by Pensar access at all reasonable times to:

- a. Any place where the Goods or Services are being manufactured, stored or prepared; and/or
- b. Any quality assurance records or technical documentation relevant to the Goods or Services.

2.4 The Supplier indemnifies Pensar and where relevant the Principal against any action, suit, claim, demand, cost, loss, expense or damage arising out of or in any way connected with:

- a. the infringement of any intellectual property rights relevant to or in any way connected with the Goods and/or Services including the use of those Goods and/or Services;
- b. any false, misleading, deceptive or misdescriptive representation or statement made by the Supplier to Pensar for or in respect of the Goods and/or Services;
- c. any non-performance, breach, wilful misconduct or abandonment of its obligations under this Purchase Order.

This indemnity survives the term of the Purchase Order.

2.5 The Supplier shall be responsible for the care of the Goods and/or Services until their delivery to and acceptance by Pensar.

If loss or damage occurs to the Goods and/or Services while the Supplier is responsible for their care, the Supplier shall promptly make good the loss or damage.

2.6 The Supplier warrants that during the delivery of the Goods and/or the performance of the Services to be supplied against the Purchase Order the Supplier and its employees, sub-contractors

and agents will comply with all requirements of the Pensar project management plan, including the site specific safety plan, environmental management plan and traffic management plans.

2.7 The Supplier shall ensure that it complies with the right of entry provisions of relevant legislation, including the Workplace Health and Safety Act 1995 (Queensland), in the event that any union representative approaches it to gain entry to the Project site. The Supplier shall immediately notify Pensar of any such approach.

### **3. Delivery**

3.1 The Date for Delivery shall be the date stated in the Purchase Order as may be extended by Pensar pursuant to clause 4.

3.2 The Supplier shall liaise with Pensar prior to the Date for Delivery to confirm the arrangements for the delivery of the Goods and/or Services and at the Supplier's cost:

- a. Label the Goods and/or Services as directed by Pensar;
- b. Store the Goods and/or Services until the date and time arranged with Pensar for the delivery of the Goods and/or Services;
- c. Deliver the Goods and/or Services packaged as reasonably required by Pensar; and
- d. Deliver the Goods and/or Services to the Delivery Address on the date and at the time arranged with Pensar.

3.3 Unless agreed otherwise in writing by Pensar, ownership of the Goods and/or Services shall pass to Pensar upon their delivery to and acceptance by Pensar.

3.4 At the time of delivery the Supplier shall provide Pensar with a delivery docket in duplicate setting out the details of the Goods and/or Services delivered and accepted by Pensar, for signature by Pensar and the Supplier shall retain one copy so signed.

3.5 Delivery and acceptance of Goods or Services by Pensar does not constitute approval of the Goods or Services.

### **4. Delay**

4.1 The Supplier shall give immediate notice to Pensar upon becoming aware of any event or circumstance likely to delay delivery of the Goods and/or Services by the Date for Delivery.

4.2 Pensar:

- a. Shall be entitled at any time to grant an extension of time to the Date for Delivery; but
- b. Shall not be obliged to grant an extension of time to the Date for Delivery except to the extent that a delay to the Date for Delivery is caused by an act, default or omission by Pensar.

4.3 The Supplier shall:

- a. Take all practical steps to avoid or minimise delay to the Date for Delivery; and
- b. Where a delay does not cause the Date for Delivery to be extended, take whatever action is necessary to deliver the Goods and/or Services by the Date for Delivery.

### **5. Cancellation of Order**

Pensar reserves the right to cancel the Purchase Order if the Goods and/or Services ordered are not delivered to the destination specified in the Purchase order by the Date for Delivery. If Pensar does cancel the Purchase Order, the Supplier does not have and may not prosecute any claim whatsoever at law or in equity against Pensar for its cancellation of the Purchase Order.

### **6. Payment**

6.1 The rates stated in the Purchase Order are deemed to include for everything necessary (including labour, plant, equipment, delivery to the destination stated in the Purchase Order and the offloading of the Goods by the Supplier at the point of destination and execution of the works) for the Supplier to

supply the Goods and/or Services and to fulfil all of its obligations under the Purchase Order. Accordingly, the value of the Goods and/or Services (determined solely at Pensar's discretion) delivered to and accepted by Pensar shall be:

- a. An amount calculated by multiplying the relevant quantity and rate for the Goods and/or Services stated in the Purchase Order; less
- b. The reasonable costs incurred by Pensar in remedying any default by the Supplier of its obligations under the Purchase Order; and/or less
- c. The amount of any costs, losses or damage suffered by Pensar if the Supplier does not fulfil its obligations under the Purchase Order or otherwise.

6.2 Unless stated or agreed otherwise by Pensar, payment for the Goods and/or Services shall only be made for those Goods and/or Services delivered to and accepted by Pensar and for which the Supplier has submitted a payment claim setting out the value of those Goods and/or Services as described in clause 6.1.

6.3 Subject to clauses 6, 7, 8 and 9, unless stated otherwise, payment shall be made no later than 45 days from the end of the month quoted in the Supplier's payment claim provided that the Goods and/or Services detailed in that payment claim satisfy all requirements for those Goods and/or Services defined in the Purchase Order.

6.4 At Pensar's discretion, payment shall be made by electronic funds transfer or by cheque. The date of payment shall be regarded as the date on which the funds are cleared by Pensar for payment, the funds being available to the Supplier within 2 business days thereafter.

#### **Goods & Services Tax (GST)**

7.1 Each claim for payment for the Goods and/or Services under the Purchase Order shall be a tax invoice that complies with the requirements of the relevant GST legislation.

7.2 The aggregate amount of all amounts paid and due under the Purchase Order must be covered by one or more tax invoices prepared in compliance with the relevant GST legislation.

#### **8. Default**

Without limiting Pensar's rights under clause 9, if the Supplier fails:

- a. To supply the Goods and/or Services to meet the requirements of the Purchase Order;
- b. To supply Goods and/or Services within the time required by the Purchase Order;
- c. To remove rubbish or other items belonging to the Supplier; and/or
- d. To comply with any other obligation it has under the Purchase Order;

then:

- e. Pensar may, at its discretion, and without obligation, remedy that failure on behalf of the Supplier and the cost of so doing shall be valued under clause 6.1(b); and
- f. Any cost, loss and/or damage that Pensar has incurred or is likely to incur as result of the Supplier's default shall be valued under clause 6.1(c).

#### **9. Termination**

9.1 In the event that:

- a. The Supplier fails to comply with its obligations under the Purchase Order (including, without limitation, failure to comply with its obligations in a timely manner);
- b. Pensar wish to terminate for convenience;
- c. The Supplier is insolvent or bankrupt; and/or
- d. The Supplier dies, then Pensar, may at its sole discretion, terminate the Purchase Order.

9.2 Upon termination under clause 9.1:

- a. Pensar shall be liable only for those amounts which become payable for the Goods and/or Services delivered to and accepted by Pensar as at the date of termination; and

b. Any cost, loss and/or damage that Pensar has incurred or is likely to incur as result of the Supplier's default shall be valued under clause 5.1(c).

#### **10. Variations**

Pensar may vary the terms of the Purchase Order by written notice to the Supplier. The Supplier will advise Pensar of any impact to delivery time frames and/or cost, and not proceed until such time as Pensar have agreed in writing.

#### **11. Warranty**

The Supplier warrants that the Goods and/or Services:

- a. Are compliant with any mandatory Regulations or Australian Standards;
- b. Do not infringing any intellectual property rights;
- c. Are new (unless agreed otherwise);
- d. Are free of any encumbrances;
- e. Comply with the requirements of the Addendum to Purchase Order provided by Pensar;
- f. Pass on any third party manufacturer warranty.

#### **12. Insurance**

The Supplier must:

- a. Carry all insurance required by law or specifically set out in the Addendum to the Purchase Order;
- b. Provide evidence of insurance prior to commencement;
- c. Maintain insurance for the duration of the Purchase Order and for six (6) years beyond;
- d. Have \$20m of Public Liability insurance.

#### **13. Defects**

Where any Goods and/or Services are non-compliant with any agreed scope or specifications, Pensar will determine (at its sole discretion) whether the Supplier is to repair, replace, refund or have the work carried out by others (with that cost set off against any amount owing to the Supplier). Pensar will provide reasonable notice of the appropriate remedy.

#### **14. Intellectual Property**

- a. The Supplier warrants that in the provision of its Goods and/or Services, nothing infringes any other intellectual property or moral rights.
- b. Any designs, manuals, data, operating instructions or collateral material emanating from the supply of the Goods and/or Services will become the property of Pensar.
- c. The Supplier indemnifies Pensar from any intellectual property claims.

#### **15. Workplace Health and Safety**

- a. The Supplier will comply with all relevant WHS Regulations and Legislation in force at the time.
- b. The Supplier indemnifies Pensar for any breach of its obligations at 17.1.
- c. The Supplier will adhere to any Pensar specific WHS procedures or requirements, including any special obligations in the Addendum to Purchase Order.

#### **16. Modern Slavery**

The Supplier must take all reasonable endeavours to ensure that no practice that could be deemed to be modern slavery exists in the supply of the Goods and/or Services. It also warrants:

- a. That no-one in the supply chain has been convicted of a moder slavery offence;
- b. That it has made reasonable enquiries of the same to any secondary suppliers;

- c. It will notify Pensar of any actual or suspended breaches, and the approach to remedy immediately.

#### 17. General

- a. The Supplier shall not assign, novate nor subcontract any of its rights or obligations under the Purchase Order without Pensar's prior written approval.
- b. Unless stated otherwise, the Purchase Order shall be governed by the laws of Queensland.
- c. The failure by Pensar to enforce the provisions of the Purchase Order or to exercise any rights expressed in the Purchase Order is not a waiver of such provisions or rights and does not affect the enforcement of the Purchase Order.

**18. Other Terms and Special Conditions**  
In the event that the terms above conflict with any other terms stated in the Purchase Order including any Special Conditions then such other terms or Special Conditions shall take precedence to the extent of the conflict.

#### 19. Definitions

Date for Delivery means the Date for Delivery specified as the date required in the Purchase Order.

Pensar means the entity within the Pensar group of companies listed below that is identified on the Purchase Order and includes its successors and assigns –

Pensar Building Pty Ltd ABN 44 111 529 278

Pensar Utilities Pty Ltd ABN 51 159 247 631.

Pensar Structures Pty Ltd ABN 71 622 157 466

Pensar Water Pty Ltd ABN 75 622 157 484

Pensar Project Infrastructure Pty Ltd ABN 49 626 424 842

Pensar Construction Group Pty Ltd ABN 63 159 082 498

Gold Coast Water Collective Pty Ltd ABN 13 651 366 648

Purchase Order means the Purchase Order issued by Pensar and which defines the goods and/or services to be provided by the Supplier.

Supplier means the Supplier named as the creditor on the Purchase Order.

Terms of Purchase means the Terms of Purchase set out in clauses 1-11 (inclusive).