

PACIFIC NATIONAL – PURCHASE ORDER TERMS AND CONDITIONS

1. CONTRACT

- 1.1 The **Contract** will be constituted by (in order of precedence from highest to lowest):
- a) these Terms and Conditions, which may be changed from time to time, with the latest version available at <https://pacificnational.com.au/suppliers/>;
 - b) the Purchase Order; and
 - c) any documents which have been expressly required or accepted by Pacific National and are attached to or which form part of this Contract.
- 1.2 A Contract will be created between Pacific National and the Supplier:
- a) by express acceptance if the parties exchange with each other written agreement of the terms of the Contract; or
 - b) by deemed acceptance if:
 - (i) Pacific National provides the Supplier a valid Purchase Order; and
 - (ii) the Supplier supplies, or begins to supply, the Deliverables.
- 1.3 The Contract will prevail over:
- a) any previous oral or written quotations, communications and negotiations not attached to or referred to in the Contract, including any terms or conditions implied from previous dealings between Pacific National and the Supplier; and
 - b) any terms or conditions contained in any documentation provided by the Supplier.
- 1.4 Notwithstanding clause 1.3, if there is an existing validly executed contract between the parties for the supply of the Deliverables, that contract will govern the supply of those Deliverables.
- 1.5 Pacific National:
- a) enters into the Contract for and on behalf of all entities (as defined in the *Corporations Act 2001* (Cth)), in which Pacific National Holdings Limited ABN 26 123 652 862 has an equity interest (direct or indirect) of 20% or more (“**Contracting Group**”); and
 - b) warrants that it has been duly authorised by the Contracting Group to enter into the Contract on their behalf.

- 1.6 Notwithstanding clause 1.5, the Supplier agrees to look only to Pacific National for the due performance of the Contract. Nothing contained in the Contract will entitle the Supplier to commence any proceedings against any member of the Contracting Group other than Pacific National.

2. QUALITY OF DELIVERABLES

- 2.1 Goods must be delivered in accordance with the following (unless Pacific National instructs otherwise):
- a) of acceptable quality;
 - b) fit for their intended purpose;
 - c) free from defects;
 - d) to the address nominated in the Purchase Order;
 - e) on the date of delivery listed in the Purchase Order; and
 - f) in accordance with any other Pacific National instruction issued from time to time.
- 2.2 Services must be supplied by the Supplier to Pacific National:
- a) diligently, faithfully and conscientiously;
 - b) with the same or higher level of care and skill as would reasonably be expected of a person qualified and experienced in the supply of the same or similar Services; and
 - c) in good faith and in a manner which is consistent with the maintenance of the business and goodwill of Pacific National.

3. INSPECTION AND REJECTION OF DELIVERABLES

- 3.1 Pacific National may (without prejudice to any of its other rights):
- a) inspect any of the Deliverables at any stage prior to or upon delivery;
 - b) reject any of the Deliverables which are defective, or which otherwise do not comply with the requirements of the Contract, including any Deliverables which are not delivered by the time specified in the Purchase Order (unless the parties agree otherwise);
 - c) reject any Deliverables delivered to Pacific National that were not requested by Pacific

National under the Purchase Order to the Supplier; and/or

- d) accept any of the Deliverables which Pacific National has not requested or has rejected, at a price agreed between the Supplier and Pacific National.
- 3.2 If requested by Pacific National, any of the rejected Goods must be:
- a) if delivered, be collected from Pacific National; and/or
- b) rectified or replaced by the Supplier at its own cost.
- 3.3 Any amount paid for any of the Deliverables which are subsequently rejected will be a debt due from the Supplier to Pacific National which is payable immediately.
- 3.4 Pacific National will not be liable for any of the Supplier's costs in connection with any inspection or work related to the Deliverables.
- 3.5 Any inspection of the Deliverables by Pacific National will not relieve the Supplier of any of its obligations under the Contract.

4. SAFETY OF DELIVERABLES

- 4.1 The Supplier must ensure the Goods supplied to Pacific National are:
- a) safe and free from any risk to health and safety;
- b) compliant with all relevant laws; and
- c) clearly and durably labelled identifying the Goods and providing any information in relation to use, maintenance and storage.
- 4.2 The Supplier agrees to supply the Goods with all the relevant information pertaining to the use, storage and maintenance of the Goods and any relevant technical information, including health and safety information.
- 4.3 If the Goods supplied are hazardous substances or materials, radiation substances or biological substances, the Supplier agrees to supply the Goods with clear and durable labelling, as well as with copies of all relevant technical information sheets including Material Safety Data Sheets, radiation safety data sheets and information data sheets (respectively).
- 4.4 If the Goods supplied are electrical equipment the Supplier is responsible for the initial electrical safety of the new equipment and the Goods will be provided tagged as tested.

- 4.5 The Supplier must ensure the Services are carried out at the relevant Pacific National site in compliance with the requirements set out in (which may be updated from time to time and can be provided upon request):
- a) Pacific National's Contractor Safety Management Handbook;
- b) all relevant laws and subordinate regulation; and
- c) any other Pacific National policy, procedure and direction.
- 4.6 The Supplier must use reasonable endeavours to comply with Pacific National's Supplier Code of Conduct (which can be found at <https://pacificnational.com.au/suppliers/>);
- 4.7 The Supplier must ensure that it complies with the Contract in a manner which does not pose a risk or cause damage to the health and safety of other persons or property.
- 4.8 The Supplier warrants that it:
- a) is (and any persons engaged by the Supplier are) qualified to provide the Services to Pacific National;
- b) will provide evidence of such qualification if requested by Pacific National; and
- c) will provide evidence of all relevant written safety documentation for the Services with the safe work method statements, job safety analysis, work assessments and worker training on request.
- 4.9 The Supplier agrees that Pacific National has a right to direct the suspension or termination of the supply of the Deliverables if they are provided in an unsafe manner.
- 4.10 The Supplier will take reasonable steps to identify and appropriately address any Modern Slavery in its operations or supply chain.

5. TITLE AND RISK

- 5.1 The Deliverables will be at the sole risk of the Supplier until delivery. On delivery title to and risk in the Deliverables will only pass to Pacific National if the Deliverables are accepted by Pacific National (regardless of whether Pacific National has paid the Supplier for the Deliverables). Title to and risk in any Deliverables rejected by Pacific National will remain with the Supplier.

6. WARRANTIES

- 6.1 The Supplier warrants that:
- a) it has good and complete title to the Deliverables;
 - b) the Deliverables do not breach any patent, trademark, copyright, Intellectual Property Right, or other third party right;
 - c) the Deliverables are free from all liens and encumbrances;
 - d) if the Deliverables (or supply chain for the Deliverables) are delayed for any reason the Supplier will at its own cost work to mitigate the effects of the delay;
 - e) the Supplier has obtained for Pacific National's benefit all the required manufacturers', suppliers' and other third-party warranties for the Deliverables;
 - f) any Intellectual Property Rights created under this Contract will either be assigned to or vest with Pacific National on creation;
 - g) the Deliverables comply with all applicable laws, subordinate legal instruments and any relevant Pacific National requirements (including Pacific National's directions, policies and procedures which may be updated from time to time and are available upon request);
 - h) any Pacific National facilities, equipment or property that the Supplier uses is kept in the same condition it was provided to the Supplier (excluding reasonable wear and tear);
 - i) where the Supplier deals with personal information when fulfilling its obligations under this Contract, it will comply with all relevant data privacy laws including but not limited to the *Privacy Act 1988*;
 - j) any person working on behalf of the Supplier to perform this Contract complies with all Pacific National policies and procedures; and
 - k) the Supplier (and any person working on their behalf) has and will maintain during the Term of this Contract all certifications required to perform this Contract.

7. CONFIDENTIALITY

- 7.1 Any information furnished to the Supplier by Pacific National for the purpose of the Contract, or any related purpose;
- a) is Confidential;

- b) must only be used by the Supplier in performance of the Contract;
- c) must not be disclosed to any third party without prior written consent by Pacific National, (unless such disclosure is compelled by law); and
- d) must be treated with the same (but no less than reasonable) care as the Supplier's own confidential information.

8. INDEMNITY

- 8.1 The Supplier will indemnify and keep indemnified Pacific National and all of its Associates from and against any:
- a) loss or damage that Pacific National or its Associates may suffer, incur or sustain; and
 - b) all liability in respect of any action or claim or proceeding which may be taken, made or filed against Pacific National or any of its Associates by any person; and
 - c) in connection with any breach of this Contract or any willful, deliberate or negligent act or omission of the Supplier or any of the Supplier's related bodies corporate, employees, agents or subcontractors related to this Contract,
- except to the extent caused by the negligence or willful misconduct of Pacific National or any breach by Pacific National of this Contract.

9. TAX INVOICES

- 9.1 The Supplier must (within a timeframe agreed by the parties) provide Pacific National with a tax invoice for the Deliverables provided and accepted under this Contract.
- 9.2 A valid tax invoice must conform with *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and, in addition, contain the:
- a) Purchase Order number;
 - b) date;
 - c) address nominated on the Purchase Order;
 - d) fully itemised list of the Deliverables delivered or provided, including any amounts of tax payable on those Deliverables; and
 - e) Pacific National legal entity as "Pacific National Executive Services ABN 81 126 912 981".
- 9.3 Pacific National will not be held liable for any of the Supplier's costs or losses (whether at law or

equity) where a valid tax invoice has not been issued in compliance with clause 9.1 and 9.2.

10. PRICES AND PAYMENT

- 10.1 Price adjustments for any variations notified by Pacific National will be at the prices or rates included in the Contract or, if there are no applicable prices or rates, they will be agreed between the Supplier and Pacific National in writing.
- 10.2 All prices or rates included in the Contract are inclusive of GST, unless specified otherwise.
- 10.3 Subject to clause 15 and to the receipt of a properly rendered tax invoice, Pacific National will pay the value of the Deliverables supplied by reference to the price set out in the Contract or as otherwise agreed under clause 3.1d), within 45 days after the last day of the month in which the invoice was received by Pacific National.
- 10.4 Pacific National may refuse payment of any tax invoice if Pacific National reasonably disputes the tax invoice, until the dispute is resolved.

11. SUBCONTRACTING AND ASSIGNMENT

- 11.1 The Supplier will not, without the prior written consent of Pacific National, subcontract the delivery or provision of any of the Deliverables. Any such consent will not relieve the Supplier of any of its obligations under this Contract.
- 11.2 The Supplier will not, without Pacific National's prior written consent, assign, charge, or encumber any of the Deliverables, rights and obligations under this Contract, or any part of this Contract.

12. DEFAULT

- 12.1 If the Supplier is:
- a) in breach of any warranty or material term or condition of the Contract;
 - b) becomes insolvent;
 - c) is unable to pay its debts when they fall due;
 - d) is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act 2001 (Cth);
 - e) has imposed on it any arrangement for the benefit of its creditors or a receiver, receiver and manager, agent for a mortgagee, administrator, controller; or

- f) provisional liquidator is appointed with respect to the Supplier or any part of its property or undertaking;

then Pacific National may (without prejudice to any other rights it may have):

- g) cancel the Contract; and/or
- h) cease payments and recover as a debt due any sums paid for undelivered Deliverables and any extra costs, losses, expenses or damages it may suffer or incur in purchasing similar deliverables from alternative suppliers.

- 12.2 No waiver of a breach of any provision of the Contract will constitute a waiver of any other breach or any other provision.

- 12.3 Pacific National acknowledges that its rights under this clause 12 are subject to a stay from enforcement in certain circumstances under section 415D of the *Corporations Act 2001* (Cth).

13. SUSPENSION

- 13.1 Pacific National may direct the Supplier to suspend its performance of the Contract in whole or part for such time as Pacific National thinks fit, if Pacific National is of the opinion that it is necessary:
- a) because of an act, default or omission by the Supplier or its employees, consultants, agents or other contractors (including those not employed by the Supplier);
 - (i) for the protection or safety of any person or property; or
 - (ii) to comply with the law (including a court order).
- 13.2 Suspension of the Contract in whole or part by Pacific National will not give rise to an obligation for either party to comply with the Dispute provisions of clause 16.
- 13.3 If Pacific National becomes aware that the reason for the suspension pursuant to clauses 13.1 or 13.2 no longer exists, Pacific National will (within a reasonable time) direct the Supplier to recommence the suspended Contract as soon as reasonably practicable. After receiving notice from Pacific National the Supplier must recommence the suspended Contract as soon as reasonably practicable.
- 13.4 The Supplier will bear the cost of any suspension pursuant to clauses 13.1 or 13.2.

13.5 Notwithstanding any other provision of this Contract, during the period of any suspension pursuant to clause this clause 13, Pacific National will not be in breach of (and, accordingly, will not be liable under) this Contract.

14. TERMINATION FOR CONVENIENCE

- 14.1 Pacific National may terminate the Contract at any time for any reason regardless of whether the Supplier is in default, by providing the Supplier 14 days' written notice of termination.
- 14.2 In the event that the Supplier is not in default, the Supplier will, in full settlement of any claim in respect of the termination, be entitled to payment of:
- a) the amount which, but for the termination, would have been payable for the Goods delivered or the Services provided and accepted up to the date of termination (after taking into account any previous payments, and moneys due to Pacific National);
 - b) the cost of materials, goods or services reasonably ordered and which the Supplier is legally liable to accept, provided the materials, goods or services become the property of Pacific National upon payment; and
 - c) any other costs reasonably incurred by the Supplier in expectation of completing the supply of the whole of the Deliverables;
- 14.3 Payment under clause 14.2 will only be made by Pacific National if the sum of payments under clause 14.2 plus any previous payments will not exceed the total price of this Contract.
- 14.4 The Supplier must use its best endeavours to use any materials, goods or services ordered in relation to this Contract but no longer required due to termination of this Contract in accordance with clause 14.1 in relation to another one of the Supplier's orders or part of its business, and otherwise mitigate any costs it may incur in accordance with clause 14.2b) and 14.2c).

15. RECOVERY OF MONEYS

15.1 Any debt due from or moneys payable by the Supplier to Pacific National whether under this Contract or otherwise may be deducted by Pacific National from any moneys due or to become due to the Supplier under this Contract.

15.2 Pacific National will be entitled to recover from the Supplier any balance that remains owing after deduction.

16. DISPUTE

- 16.1 Subject to clauses 10.4 and 13 or unless Pacific National directs otherwise, where a dispute arises between the parties, the parties must continue to perform their obligations under the Contract.
- 16.2 Without affecting either parties' rights at law, the parties agree that within 14 days of one party notifying (in accordance with clause 24.4) the other party of a dispute, the parties must select a Pacific National representative and Supplier representative to negotiate the dispute. Within 14 days of selection of a Pacific National representative and a Supplier representative the representatives shall endeavour to settle the dispute in good faith.
- 16.3 The parties acknowledge that no dispute or difference giving rise to a cause of action will be deemed to have arisen until the procedures set out in this clause 16 have been exhausted, unless urgent interlocutory relief is required.

17. LAW

17.1 The terms and conditions of the Contract will be governed by the laws in force in the State or Territory in which the Goods are to be delivered or the Services are to be provided or as may otherwise be agreed by the parties in writing.

18. LIMITATION OF LIABILITY

18.1 To the extent permitted by law Pacific National's maximum aggregate liability to the Supplier for any and all claims taken together is limited to and must not exceed the amount equal to the fee payable by Pacific National to the Supplier under the relevant Purchase Order under which the claim arises.

19. INSURANCE

- 19.1 The Supplier must enact and retain for the Term of the Contract public and product liability insurance with a minimum indemnity limit of \$10,000,000 (Australian Dollars) for each occurrence of a public or product liability claim made in relation to the Contract for a claim of any of the following:
- a) personal injury or death;
 - b) property damage; and

- c) transit damage.
- 19.2 The Supplier must also enact and retain for the Term of the Contract the following insurance:
- a) if relevant, compulsory third party liability motor vehicle insurance as required by law; and
 - b) Worker's compensation insurance as required by law.
- 19.3 If the Supplier is required to provide Pacific National any Services or professional advice to satisfy the requirements of the Purchase Order, then the Supplier must enact and retain professional indemnity insurance:
- a) for the Term of the Contract;
 - b) for at least 3 years after termination of the Contract or completion of the Supplier's obligations under the Contract; and
 - c) must have a minimum indemnity limit of \$1,000,000 (Australian Dollars) for each occurrence of a professional indemnity claim made in relation to the Contract for a claim of any of the following:
 - (i) negligent acts; and
 - (ii) errors or omissions in the professional advice or Services provided by the Supplier.
- 19.4 The Supplier agrees to provide Pacific National any evidence required by Pacific National to ensure the Supplier has and continues to comply with clauses 19.1 and 19.4.

20. CONTRACTOR PREQUALIFICATION PROGRAM

- 20.1 The Supplier agrees to register onto Pacific National's contractor prequalification program by:
- a) providing any information;
 - b) completing any forms;
 - c) paying any fees related to this registration (including any ongoing fees); and
 - d) complying with the requirements of the prequalification program (as amended from time to time).
- 20.2 The Supplier must ensure that this registration occurs before the Supplier begins performance of this Contract and that the Supplier otherwise meets any timeframes for the delivery of the Deliverables as directed by Pacific National.

- 20.3 Information and requirements regarding this program may be updated from time to time by Pacific National and is available at: <https://pacificnational.com.au/suppliers/>.
- 20.4 The Supplier will bear all costs associated with compliance with the program.

21. AUDIT

- 21.1 During the Term and for seven (7) years after the end of this Contract the Supplier must:
- a) keep all financial and other records related to this Contract;
 - b) if requested provide any such records (including extracts or copies) to Pacific National, in the form requested, able to be read, inspected and audited by Pacific National;
 - c) provide the requested documents at a location set by Pacific National within seven (7) days of a request being made by Pacific National;
 - d) ensure it has obtained for Pacific National's benefit the above audit rights in relation to any records related to this Contract created or held by the Supplier's employees, agents, assigns, successors and subcontractors; and
 - e) respond to all reasonable requests for information from Pacific National within a reasonable time frame providing accurate and complete information.

22. NO REPRESENTATIONS OR WARRANTIES

- 22.1 The Supplier acknowledges and agrees that, other than the express representations and warranties given in this Contract or any Purchase Order and to the extent permitted by law, no representation has been made and no warranty is or has been expressly or impliedly given by or on behalf of Pacific National in respect of any matter relating to this Contract.

23. VARIATIONS

- 23.1 Pacific National may vary the Purchase Order at any time prior to the delivery of the Deliverables by providing the Supplier 7 days' written notice of a variation.
- 23.2 Subject to clause 23.3 and 23.4, the Supplier must perform any Purchase Order varied under clause 23.1.

- 23.3 The Supplier must immediately notify Pacific National in writing if any variation to a Purchase Order may or will affect:
- the Supplier's ability to meet the terms of the Purchase Order;
 - any warranties provided by the Supplier;
 - the fees payable by Pacific National to the Supplier under the Purchase Order; or
 - any other Supplier or Pacific National rights or obligations under the Contract.
- 23.4 A Purchase Order subject to clause 23.3 must not be performed by the Supplier until Pacific National has provided the Supplier the direction that:
- Pacific National has received the Supplier's clause 23.3 notice; and
 - Pacific National consents to the Supplier performing the varied Purchase Order in accordance with the notice provided under clause 22.3.
- 23.5 The Supplier will not be entitled to payment for the performance of a varied Purchase Order if the Supplier did not comply with this clause 22 before the Supplier undertook performance of the varied Purchase Order.
- 24. GENERAL**
-
- 24.1 This Contract does not provide the Supplier with any rights of exclusivity in relation to the provision of any goods or services to Pacific National.
- 24.2 If Pacific National is a "consumer" under the ACL nothing in this Contract limits Pacific National's rights under the Australian Consumer Law, including but not limited to, the Consumer Guarantees.
- 24.3 The Supplier agrees that Pacific National is not required to provide any form of credit worthiness documentation for performance of this Contract.
- 24.4 All notices from the Supplier to Pacific National in connection with this Contract must be in writing and sent to the Pacific National contact person and their email address as notified by Pacific National to the Supplier from time to time.
- 24.5 Except as expressly provided elsewhere in this Contract, a copy of a notice of approval, consent, or event effecting the performance of this Agreement from the Supplier to Pacific National must also be sent by email at the same time to:
- procurement_pn@pacificnational.com.au; and
 - pnlegal@pacificnational.com.au.
- 24.6 A right may only be waived by Pacific National when it is in writing and has been signed by the party giving the waiver. No other conduct of a party operates as a waiver of the right. A waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again.
- 24.7 Nothing in this Contract constitutes any relationship of employer and employee, principal and agent, or partnership between Pacific National and the Supplier or Pacific National and any of the Supplier's Personnel.
- 24.8 In the Contract a reference to a person includes:
- a corporation or other entity;
 - the singular includes the plural and vice versa; and
 - if the Supplier is more than one person then all of the persons comprising the Supplier shall be jointly and severally bound by the terms and conditions of the Contract.
- 24.9 Nothing in the Contract will have the effect of or be taken to have the effect of excluding, restricting or modifying the provisions of any relevant or applicable statute.
- 24.10 If it is determined that a word, phrase, sentence, paragraph or clause is unenforceable, illegal or void then it will be severed, and the other provisions of the Contract will remain operative.
- 25. DEFINITIONS**
-
- 25.1 "ACL" means the Australia Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2010*.
- 25.2 "Associates" means any:
- bodies corporate related to Pacific National or the Contracting Group; and
 - Pacific National's or the Contracting Group's employees, agents and sub-contractors.
- 25.3 "Contract" has the meaning given in clause 1.1.
- 25.4 "Contracting Group" means any entities (as defined in the *Corporations Act 2001* (Cth)), in which Pacific National Holdings Limited ABN 26 123 652 862 has an equity interest (direct or indirect) of 20% or more.

- 25.5 “Deliverables” means the Goods and/or Services described and to be supplied by the Supplier in the Purchase Order.
- 25.6 “Goods” means the goods described and to be supplied by the Supplier in the Purchase Order and includes any documentation, acts or further work the Supplier must undertake or provide to meet its obligations under the Purchase Order.
- 25.7 “Intellectual Property Rights” means copyright and neighbouring rights (including moral rights), all rights in relation to inventions (including patents), registered and unregistered trademarks, business names, domain names, registered and unregistered designs, circuit layouts, confidential information, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.
- 25.8 “Modern Slavery” means any activity, practice or conduct that would constitute an offence in relation to slavery, forced labour, involuntary servitude, debt bondage, human trafficking, and other slavery-like exploitation or any conduct prohibited under Division 270 and 271, Schedule 1 of the *Criminal Code Act 1995*.
- 25.9 “Pacific National” means Pacific National Executive Services Pty Ltd ABN 81 126 912 981.
- 25.10 “Purchase Order” means the relevant purchase order that describes the Goods and/or Services that are being supplied under the Contract.
- 25.11 “Services” means the services described and to be supplied by the Supplier in the Purchase Order and includes any documentation, acts or further work the Supplier must undertake or provide to meet its obligations under the Purchase Order.
- 25.12 “Supplier” means the Supplier as described in the Purchase Order.
- 25.13 “Term” means the period between the dates when the Contract commences and ends. The Contract commences and ends on the dates stated in the Purchase Order. If no such dates are stated then the Contract commences when clause 1.2 is satisfied and ends when Pacific National states that the Contract has been completed by the Supplier or the Contract is terminated under clause 14.