

## Purchase Order Terms and Conditions

Acknowledgement of receipt or fulfilment of a Purchase Order by the Supplier will be deemed to be the Supplier's acceptance of these Purchase Order Terms and Conditions.

1. **Definitions and Interpretation**
- 1.1 Terms defined in the Purchase Order have the meaning expressed in the Purchase Order.
- 1.2 "Australian Consumer Law" means Schedules 1 and 2 of the *Competition and Consumer Act 2010* (Cth) and any other relevant provisions contained in that Act.
- 1.3 ""Boral" means the Boral Group Member specified on the face of the Purchase Order or, if no entity is specified, Boral Shared Business Services Pty Ltd ABN 31 000 373 660.
- 1.4 "Boral Group Member" means Boral Limited ABN 13 008 421 761 and each of its related bodies corporate (as that term is defined in the *Corporations Act 2001* (Cth))
- 1.5 "Confidential Information" means any information relating to the business of the Boral that is not in the public domain.
- 1.6 "Consequential Loss means loss of revenue, loss of profits, loss of anticipated savings or business, loss of data, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss and any form of consequential, special, indirect, punitive or exemplary loss or damages, however it arises (including as a result of negligence).
- 1.7 "Contract" means these Terms and Conditions, the Purchase Order, any Procurement Agreement and any other document attached to or incorporated by reference in the Purchase Order, these Purchase Order Terms and Conditions, or any applicable Procurement Agreement.
- 1.8 "Delivery Point" means the place for delivery specified on the Purchase Order.
- 1.9 "Goods" means the goods identified in the Purchase Order.
- 1.10 "Price" means the price set out in the Purchase Order which is exclusive of GST (unless otherwise stated), but inclusive of all other costs and charges.
- 1.11 "Procurement Agreement" means any procurement agreement or supply agreement prepared by Boral, and executed by a Boral Group Member and the Supplier in connection with supply to Boral by the Supplier.
- 1.12 "Purchase Order" means the order issued by Boral to the Supplier for the supply of the Goods and/or Services.
- 1.13 "Purchase Order Terms and Conditions" means these terms and condition of supply.
- 1.14 "Services" means the services identified in the Purchase Order.
- 1.15 "Supplier" means the supplier named on the face of the Purchase Order or, if no supplier is named, the supplier supplying the Goods and/or Services.
- 1.16 Headings are for reference only and must not be used in the interpretation of the Contract.
2. **Supply and Payment**
- 2.1 The Supplier must supply and deliver the Goods and/or perform the Services in accordance with the terms of the Contract.
- 2.2 Boral will pay the Supplier the Price for accepted Goods and/or Services within 62 days of the end of the month in which Boral receives the Supplier's tax invoice (which must include any additional information and supporting documentation required by Boral), or within such lesser time as provided under any applicable law.
- 2.3 The Supplier must in supplying the Goods or performing the Services comply with and ensure all the Supplier's employees, agents and sub-contractors are aware of and comply with:
  - (a) all applicable laws and regulations;
  - (b) all applicable Boral site standards, policies and procedures; and
  - (c) any lawful directions and orders given by a Boral representative.
- 2.4 The Supplier must in supplying the Goods or performing the Services ensure that any of the Supplier's employees, agents and sub-contractor's entering Boral's premises are appropriately skilled and qualified for the safe performance of the Services.
3. **Contract**
- 3.1 The Contract supersedes all other communications and negotiations (whether oral or written) between the Supplier and Boral in relation to the Goods and/or Services and constitutes the entire terms of the Contract unless otherwise agreed in writing by Boral, and will prevail over the terms of any documents provided to Boral by the Supplier (such as quotations, delivery dockets, invoices, packing slips or other confirmations), unless agreed in writing by an authorised officer of Boral.
- 3.2 A valid Purchase Order number must be quoted by the Supplier on all documentation relating to a supply of Goods and/or performance of Services.
- 3.3 If there is any conflict, ambiguity or inconsistency between the documents comprising the Contract, the following order of precedence shall prevail: Procurement Agreement, Purchase Order, Purchase Order Terms and Conditions.
- 3.4 The Supplier must not, without the prior written approval of Boral, assign, subcontract, encumber or transfer any of its rights or obligations under the Contract. Any such approval will not relieve the Supplier of its obligations under the Contract.
4. **GST**
- 4.1 If the Supplier becomes liable for GST for any supply made under the Contract, the Supplier may add this GST to the amount otherwise payable under the Contract and will issue a tax invoice to Boral as a precondition for being paid this GST. The Supplier will pass onto Boral the benefits of any abolition or reduction in prices brought about by any amendment to the GST.
- 4.2 The Supplier acknowledges that if supplies are to be made under a recipient created tax invoice then a recipient created tax invoice agreement between the Supplier and Boral is required.
- 4.3 In this clause, the terms GST, supply, tax invoice and recipient created tax invoice have the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
5. **Delivery, Risk and Title**
- 5.1 The Supplier must deliver the Goods to the Delivery Point by the delivery date provided in the Purchase Order or the Contract.
- 5.2 Packages must be marked with the Purchase Order number, destination, contents, date and weight of each package.
- 5.3 The Supplier must perform the Services by the date specified in the Purchase Order or the Contract.
- 5.4 Property and risk in the Goods will pass to Boral upon delivery to, and acceptance of, the Goods by Boral at the Delivery Point. Title will pass to Boral upon payment.
- 5.5 The Supplier must insure the Goods against all risk of loss and damage for the full replacement value until delivery to and acceptance of the Goods by Boral at the Delivery Point.
- 5.6 The Supplier must effect and maintain for the life of the Contract, public and product liability insurance with a limit of indemnity of not less than \$10,000,000.
- 5.7 Where the Services include professional services (including design activities), the Supplier must effect and maintain for 7 years following completion of the Services, professional indemnity insurance with a limit of indemnity of not less than \$5,000,000.
- 5.8 The Supplier must take out workers compensation insurance as required by law.
6. **Warranties**
- 6.1 The Supplier warrants:
  - (a) from the time the Goods are delivered to the Delivery Point, Boral will be entitled to clear title to the Goods, free from any liens, charges and encumbrances, and to quiet possession of the Goods;
  - (b) the Goods will be free from defects, and be new and of merchantable quality;
  - (c) the Goods and/or Services will match any description in the Contract, any relevant specifications and any samples provided by the Supplier;
  - (d) the Goods and/or Services will be fit for the purpose for which Goods of the same kind are commonly supplied, or for which those types of Services are commonly provided, and for any other purpose which Boral makes known to the Supplier;
  - (e) the Goods and/or Services will comply with any other warranties or guarantees contained in the Contract or ordinarily supplied by the Supplier and/or the manufacturer of the Goods and/or Services;
  - (f) the Goods and/or Services will comply with the provisions of any relevant legislation, industry standards and standard of the Standards Association of Australia; and
  - (g) the Goods and/or Services will be free from any right or claim of a third party.
- 6.2 The Supplier warrants that it has all intellectual property rights (including, without limitation, any patents, trade marks and copyrights) necessary to supply the Goods and/or Services in accordance with the Contract and indemnifies Boral against any losses, costs, damages or expenses incurred by Boral as a consequence of any claim by a third party that it has a right to any intellectual property in the Goods or that the Goods or Services infringe their intellectual property rights.
- 6.3 The warranties in clause 6.1 are in addition to any conditions, guarantees and warranties which are or may be implied under any State or Federal legislation applicable to the Goods and/or Services and their supply or performance, except that all of the terms of the United Nations Convention on Contracts for the International Sale of Goods (adopted in Vienna Austria on 10 April 1980) are expressly excluded from the Contract.
7. **Defective Goods**
- 7.1 If Boral discovers that the Goods and/or Services do not comply with any warranty given under clause 6, or are otherwise defective or unacceptable to Boral, Boral may (at its option):
  - (a) have the defect(s) rectified and the cost to Boral of so doing will be a debt due from the Supplier to Boral;
  - (b) request the Supplier to rectify any defect(s) at the Supplier's expense;
  - (c) request the Supplier to replace the Goods or re-perform the Services at the Supplier's expense; and
  - (d) reject the Goods, in which case the Supplier must arrange to collect the Goods immediately at the Supplier's expense.
- 7.2 Nothing in this clause limits or excludes any other rights or remedies available to Boral, whether provided elsewhere in the Contract or provided by law (and including in relation to defects which are discovered or become apparent after the expiry of any warranty period).
8. **Termination**
- 8.1 Boral may terminate the Purchase Order or part of the Purchase Order by giving written notice to the Supplier for its convenience or due to Supplier default. In such circumstances, the Supplier's only entitlement shall be to receive payment for all Goods supplied to Boral or Services performed in accordance with this agreement up until the date of termination.
- 8.2 Where this Purchase Order is a "consumer contract" or "small business contract" as those terms are defined in the Australian Consumer Law and Boral terminates the Purchase Order for convenience, then Boral will pay all monies due under the Purchase Order for Goods or Services provided up to the date of termination, and will reimburse the Supplier for any reasonable, direct and unavoidable costs incurred (acting reasonably in anticipation of supplying the Goods or Services) prior to receipt of notice of termination. Such reimbursement will be subject to the Supplier doing all things reasonably necessary to mitigate any loss, including cancelling any orders, and will not include any costs and expenses for which liability was assumed after the notice of termination.
- 8.3 To the maximum extent permitted by law, neither party will be liable for any Consequential Loss.
9. **Confidentiality**
- The Supplier must not, and must ensure that its subcontractors, employees and agents do not without prior written approval, disclose any information about the Contract or any Confidential Information.
10. **Miscellaneous**
- 10.1 No waiver by Boral of a breach of the Contract by the Supplier will constitute a waiver for any subsequent or continuing breach by the Supplier.
- 10.2 Boral may deduct from any amount owing to the Supplier under the Contract any amount owing by the Supplier to Boral under the Contract.
- 10.3 The law of the Contract will be the law of the State of the Delivery Point of the Goods or performance of the Services, and the parties submit to the jurisdiction of the courts of that State.