

# PURCHASE ORDER TERMS AND CONDITIONS

## GOODS AND SERVICES



1. **Formation of Contract:**
  - 1.1 This Contract constitutes NIOA's offer to purchase Goods and/or Services from the Supplier and is strictly limited to the terms and conditions outlined herein. This Contract supersedes all prior oral and written communications by or on behalf of any of the Parties. This offer is deemed accepted upon the earlier of NIOA's receipt of written confirmation from the Supplier that it accepts the Contract, or the Supplier's full or partial performance of its obligations pursuant to this Contract (as the case may be).
2. **Contract and Precedence of Contract Parts:**
  - 2.1 The Contract is comprised of the following documents, collectively referred to herein as the 'Contract', and any inconsistency or ambiguity between the various parts of this Contract should be resolved giving precedence to the higher ranked document in the following order to the extent of the inconsistency:
    - (a) the face of Purchase Order, including any special conditions noted on the face of the Purchase Order;
    - (b) these Purchase Order Terms and Conditions; and
    - (c) any other document incorporated by express reference.
3. **Subcontracting:**
  - 3.1 The Supplier must not subcontract the whole of the works under this Contract.
  - 3.2 Subcontracting any part of Supplier's obligations under the Contract will not relieve the Supplier from any of its obligations under the Contract.
  - 3.3 The Supplier must make available to NIOA the details of all subcontractors engaged to provide any part of the Goods and/or Services under the Contract.
4. **Quality and Workmanship:**
  - 4.1 Without limiting any of the Supplier's obligations at law, the Supplier represents and warrants that all Goods will:
    - (a) correspond to the requirements of this Contract, be of merchantable quality and fit for purpose;
    - (b) not be subject to obsolescence unless agreed in writing, in advance, with NIOA;
    - (c) be free from all malware;
    - (d) be free from defects, faults and imperfections affecting appearance, form, design, function, or performance; and
    - (e) comply with the Contract, applicable laws, rules, ordinances, regulations, and government requirements, and any applicable codes or standards relevant to the Goods and/or Services.
  - 4.2 The Supplier represents and warrants that:
    - (a) it will at all times be suitably qualified, licensed and experienced to perform the Services; and
    - (b) it will not substitute any Goods, or component parts of the Goods, without prior written approval of NIOA, and it will not incorporate or deliver any used, counterfeit or refurbished goods; and
    - (c) it has an operational quality control system comparable to the requirements of the AS/NZS ISO standards for quality management systems, and the Goods and Services will be provided in accordance with this quality control system; and
    - (d) the Services will be performed in accordance with all applicable laws, government requirements, regulations and any applicable codes or standards; and
    - (e) the Services will be provided compliant to industry best practice standards.
5. **Delivery:**
  - 5.1 The Supplier must supply the Goods and/or perform the Services in accordance with and compliant to the requirements of the Contract, including providing the Goods and/or Services by the Due Date, unloaded at the Delivery Point, unless otherwise agreed in writing with NIOA. The parties agree that time is of the essence with respect to performance of the Contract.
  - 5.2 All Goods must be delivered with an original equipment manufacturer's certificate of conformance, unless otherwise agreed in writing by NIOA.
  - 5.3 Within three (3) Business Days of becoming aware that the Supplier will be unable to provide all or part of the Goods and/or Services by the Due Date, the Supplier must notify NIOA in writing. Within a further three (3) Business Days the Supplier must advise NIOA when it will be able to meet its delivery obligations under the Contract, noting that the Supplier must take all reasonable steps to minimise and mitigate the effects of any delay. In the event that the Supplier is unable to meet NIOA's delivery date requirements, NIOA may, at its sole discretion, terminate the Contract in accordance with N15.1(b).
  - 5.4 Goods must be delivered free from any security interest (registered or unregistered).
  - 5.5 The Supplier must comply with all NIOA packaging and markings requirements communicated to the Supplier.
6. **Acceptance:**
  - 6.1 NIOA may reject the Goods and/or Services within the Acceptance Period if the Goods and/or Services do not comply and conform with the Contract. The Supplier acknowledges and agrees that failure to provide an original equipment manufacturer's certificate of conformance constitutes reasonable grounds for NIOA to reject Goods. The Supplier acknowledges and agrees that NIOA may inspect and test the Goods prior to acceptance.
  - 6.2 If during the Acceptance Period circumstances outside NIOA's reasonable control cause a delay in NIOA's evaluation of the compliance of the Goods and/or Services with the Contract, NIOA may give the Supplier a notice before the end of the original Acceptance Period, setting out the reason for the delay and the revised Acceptance Period date (which must be reasonable having regard to the circumstances causing the delay).
  - 6.3 If NIOA does not notify the Supplier of rejection within the Acceptance Period (as extended if applicable), NIOA will be taken to have accepted the Goods and/or Services, though NIOA may accept the Goods and/or Services sooner.
  - 6.4 If NIOA rejects the Goods and/or Services, NIOA must issue a notice clearly stating the reason for rejection and the remedy NIOA requires. No payment will be due for rejected Goods and/or Services until their acceptance. Any such withholding of payment shall not constitute a breach of these Terms.
7. **Defects:**
  - 7.1 Notwithstanding acceptance by NIOA of Goods and/or Services pursuant to clause 6 [Acceptance] and unless an alternative period is agreed in writing with NIOA prior to delivery, the Supplier provides a warranty period for the Goods and/or Services of twenty-four (24) months commencing from NIOA's acceptance, wherein it must remedy at its cost any defect, fault, malfunction or omission identified at any time during this warranty period.
  - 7.2 Without limiting the Supplier's obligations, the Supplier shall promptly notify NIOA where it becomes aware of a defect or fault, malfunction or omission with the Goods and/or Services during the warranty period set out within clause 7.1.
- 7.3 The Supplier must give NIOA the full benefit of and assign any original equipment manufacturer warranties, including any that exceed the 24-month period outlined in clause 7.1. Furthermore, the Supplier shall ensure that the original equipment manufacturer's warranty allows for pass through and assignment from NIOA to the end-user.
- 7.4 The Supplier will be responsible for all rectification costs, including removing the Goods, delivering replacement or repaired Goods, reperformance of Services, and all other associated and incidental costs of remedying a defect.
- 7.5 If the Supplier does not remedy a defect to NIOA's reasonable satisfaction, NIOA may remedy the defect and recover from the Supplier all costs (including incidental costs) it incurs in remedying the defect.
8. **Ownership & Risk:**
  - 8.1 Risk of loss of or damage to the Goods resides with the Supplier until the Goods have been accepted by NIOA in accordance with clause 6 [Acceptance].
  - 8.2 For any Goods returned to the Supplier for defect remedy in accordance with clause 7 [Defects], risk in the Goods is born by the Supplier from the collection point nominated by NIOA.
  - 8.3 Ownership of Goods and/or Services will pass to NIOA upon payment of the relevant Valid Invoice in accordance with clause 13 [Supplier Payments].
9. **Licences and Approvals:**
  - 9.1 Prior to shipment of the Goods or commencing the Services, the Supplier shall notify NIOA of all permits, licences or other approvals required for the lawful provision of the Goods and/or Services.
  - 9.2 Unless otherwise advised by NIOA in writing, the Supplier must obtain and maintain in full force all permits, licences or other approvals (including any import and export approvals) required for the lawful provision of the Goods and/or Services to NIOA and any end-user at no additional cost to NIOA.
  - 9.3 The Supplier must notify NIOA within two (2) Business Days of receiving notification that a permit, license or other approval is refused, revoked or qualified. The Supplier must provide to NIOA, within three (3) Business Days of receiving a request, a copy of any licence or other approval relating to this Contract.
10. **Intellectual Property Rights:**
  - 10.1 The Supplier assigns to NIOA, immediately upon creation, ownership and all Intellectual Property Rights in any material, formulae or data created in connection with this Contract, and incorporated within the Goods and/or Services or required by NIOA for delivery.
  - 10.2 Ownership in Intellectual Property Rights pre-existing at the time this Contract was entered into will not change as a result of this Contract and the Supplier grants NIOA, or shall ensure NIOA is granted, an irrevocable, world-wide, fully paid up, perpetual licence (including the right to sub-license) sufficient to allow NIOA and its Customers full use of the Goods and/or Services for their intended purpose and end-use.
  - 10.3 The Supplier represents and warrants that Intellectual Property Rights of a third party will not be infringed by the performance of this Contract, the supply of the Goods and/or Services under the Contract, the use of those Goods by NIOA or a sublicensee, or NIOA's exercise of its rights pursuant to clause 10.1 and 10.2.
  - 10.4 The Supplier represents and warrants that the use of the Goods and/or Services by NIOA, the Customer or a sublicensee will not infringe the 'moral rights' (as defined in the Copyright Act 1968 (Cth) and equivalent in other applicable jurisdictions) of the Supplier's personnel or any third party, and the Supplier warrants that it has obtained the relevant waivers of all Moral Rights from its personnel.
11. **Dispute Resolution:**
  - 11.1 In the event a dispute arises in connection to the Contract, a written notice providing all pertinent details of the dispute must be provided to the other party.
  - 11.2 Prior to referring the dispute to any external dispute resolution mechanism or litigation, the parties agree that they shall attempt to settle by good faith negotiation all disputes arising in connection to or out of this Contract by way of escalating the matter to senior representatives within their respective organisations who have authority to direct a resolution.
  - 11.3 Notwithstanding clause 11.2, the parties may commence legal proceedings to obtain urgent interlocutory relief at any time.
  - 11.4 The parties shall continue to perform obligations pursuant to this Contract, notwithstanding the existence of a dispute, settlement negotiations or proceedings.
12. **Insurance:**
  - 12.1 The Supplier must effect and maintain all appropriate insurances on such terms and conditions as a prudent, professional supplier aligning with industry best practices providing the Goods and/or Services would procure and maintain (including transit insurance sufficient to cover the Goods through to the Delivery Point). For the avoidance of doubt, the terms of this clause do not alter the allocation of risk or liability between the Parties as provided for under any other clause of these Terms and Conditions.
13. **Supplier Payments:**
  - 13.1 Subject to clause 6 [Acceptance], NIOA must pay the Supplier within thirty (30) days of receipt of a Valid Invoice. Risk in payment passes upon payment by NIOA (not upon receipt by Supplier). Risk in payment passes upon NIOA making such payment.
  - 13.2 The Supplier must promptly provide to NIOA such supporting documentation and other evidence reasonably required by NIOA to substantiate full performance of the Contract by the Supplier.
  - 13.3 For the avoidance of doubt, payment of any invoice by NIOA does not substantiate performance of the Contract and does not constitute acceptance in accordance with clause 6 [Acceptance].
  - 13.4 If the Supplier owes to NIOA any amount, NIOA may offset that amount, or part of it, against its obligation to pay any Valid Invoice.
14. **Taxation:**
  - 14.1 Unless agreed to by NIOA in writing, the Contract Price is firm and fixed, and inclusive of all taxes imposed or levied in Australia or overseas, duties, excises, freight and packaging costs, levies, insurances (including transit insurance), import fees and all other charges to deliver the Goods & Services (as applicable) to the Delivery Point.
15. **Termination for Cause:**
  - 15.1 NIOA may immediately terminate or reduce the scope of the Contract if:
    - (a) the Supplier does not, or will be unable to, deliver the Goods and/or Services as specified in the Contract;
    - (b) the Supplier does not, or will be unable to, deliver the Goods and/or Services by the Due Date specified by NIOA pursuant to clause 5 [Delivery] and the parties are unable to agree on a revised Due Date;

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- (c) NIOA rejects the Goods and/or Services in accordance with clause 6 [Acceptance] and the Goods and/or Services are not remedied as required by the notice of rejection;
- (d) the Supplier breaches the Contract and in NIOA's reasonable opinion, it is not capable of remedy;
- (e) the Supplier fails to remedy a breach of the Contract within the period specified by NIOA in a notice of default; or
- (f) the Supplier:
- is unable to pay its debts when they become due;
  - has a liquidator, receiver, administrator, controller or equivalent appointed; or
  - if an individual – becomes bankrupt or enters into an arrangement under Part IX or Part X of the *Bankruptcy Act 1966* (Cth) or equivalent in another relevant jurisdiction.
- 16. Compliance with Laws:**
- 16.1 The Supplier must comply with, and ensure its officers, employees, agents and subcontractors comply with all applicable laws, sanctions, policies, rules and regulations from time to time in force in any jurisdiction in which any part of the Contract is performed.
- 16.2 If the Supplier becomes aware of any actual or suspected breach of the Contract and/or any applicable laws, sanction, regulations, or policy, it must:
- immediately report it to NIOA and provide a written report on the matter within five (5) Business Days; and
  - comply with any directions by NIOA in relation to any investigation or further reporting of the actual or suspected breach.
- 16.3 The Supplier must, throughout the term of the Contract, take all reasonable actions to identify, assess, address and remove modern slavery practices from within its operations and supply chains.
- 16.4 The Supplier represents and warrants that it has not been convicted of any bribery or corruption related offence in any jurisdiction in the last seven (7) years, and shall not directly or indirectly solicit, receive or offer any form of bribe, kickback, or other corrupt payment or thing of value to or from any person or organization, including government agencies or officials, companies or personnel of those companies throughout the term of this Contract.
- 17. Access and Audit:**
- 17.1 The Supplier must maintain proper business and accounting records relating to the Goods and/or Services, compliance and performance of the Contract.
- 17.2 If requested by NIOA, the Supplier must provide NIOA, or its nominee, access to the Supplier's, or its subcontractor's, premises, personnel, accounts, documents and other records and material, and provide all assistance reasonably requested, for any purpose associated with the Contract. The Supplier acknowledges and agrees that NIOA's access and audit rights pursuant to this clause include the right to copy any such material, records or documents associated with or related to the Contract.
- 18. Privacy:**
- 18.1 In providing the Goods and/or Services, the Supplier agrees to comply, and to ensure that its officers, employees, agents and subcontractors comply with the *Privacy Act 1988* (Cth) and not to do anything that would breach an Australian Privacy Principle as defined in that Act. The Supplier must immediately notify NIOA if it becomes aware of a breach or possible breach of any of the obligations outlined within the *Privacy Act 1988* (Cth) or otherwise referred to in this clause 18.
- 19. Confidential Information:**
- 19.1 The Supplier agrees and undertakes to store, handle and protect Confidential Information provided to it (whether directly or indirectly) in connection to this Contract from unauthorised use or access, and only use the Confidential Information for the sole purpose of performance under the Contract. The Supplier acknowledges and agrees that it shall not reverse engineer or reproduce Confidential Information, nor disclose Confidential Information to any person, other than NIOA, without the prior written approval from NIOA.
- 19.2 The Supplier shall store and handle all Confidential Information provided in connection to the Contract in a manner to protect it from any unauthorised use or access, and at a minimum, to the same standard of care that it would store, handle and protect its own Confidential Information.
- 19.3 The obligation under clause 19.1 will not be breached where the Supplier is required by law to disclose the relevant information, where the Supplier discloses the information to its legal adviser, insurer, financier or accountant to the extent required to enable them to perform those roles, or where the relevant information is publicly available other than as a result of the Supplier's negligence or breach of this Contract.
- 20. Asbestos and Hazardous Substances:**
- 20.1 The Supplier shall not supply Goods containing asbestos, hazardous materials, problematic substances or problematic sources, unless:
- the presence of asbestos, hazardous materials, problematic substances or problematic sources within the Goods has been declared and disclosed to NIOA and NIOA has provided its written consent;
  - the Supplier has provided to NIOA the relevant safety data sheet; and
  - the Supplier has obtained all necessary approvals in accordance with clause 9 [Licenses and Approvals].
- 20.2 Where NIOA has provided its consent for the Goods to contain asbestos, hazardous materials, problematic substances or problematic sources pursuant to clause 20.1, the Supplier must comply with all laws, requirements and regulations pertaining to the manufacture, storage, transport and support of such Goods.
- 21. Security and Safety:**
- 21.1 The Supplier must ensure that its officers, employees, agents and subcontractors are aware of, and comply with all security and safety requirements notified to the Supplier, or of which the Supplier is, or should reasonably be aware, and notify NIOA immediately of any changes to circumstances which may affect the Supplier's ability to provide the Goods and/or Services in a manner compliant with NIOA and/or its Customer's security and safety requirements.
- 21.2 The Supplier must ensure that all information, material and property provided by NIOA for the purposes of the Contract is protected at all times from unauthorised access, use by unauthorised third parties, misuse, damage and destruction, and is returned or destroyed as directed by NIOA.
- 21.3 The Supplier will comply with all requirements by NIOA and relevant governments regarding information and personnel security (including any clearance or permission requirements). This includes any government in the Supplier's home country, and any country the Goods and/or Services are delivered to or transit through.
- 22. INTERPRETATION AND GOVERNANCE:**
- 22.1 **Governing Law and Jurisdiction** - This Contract will be governed by the laws of Queensland, Australia and it expressly excludes the application of the UN Convention on Contracts for the International Sale of Goods. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland, Australia.
- 22.2 **Measurements and Units** - All communication, notices and other documentation must be provided in the English language. Measurements of physical quantity must be in Australian legal units as prescribed under the *National Measurement Act 1960* (Cth) unless otherwise agreed in writing with NIOA.
- 22.3 **Currency** - Unless expressly stated otherwise on the Purchase Order, the applicable currency for the Contract will be Australian Dollars (AUD).
- 22.4 **Further Assurance** - Each party will do all things, including executing all documents, necessary or desirable to give full effect to this Contract.
- 22.5 **Public Statements** - The Supplier will not make a public statement about this Contract without the prior written consent of the NIOA.
- 22.6 **No Relationship** - This Contract does not create a joint venture, partnership, employee, or agency Contract between the Parties, nor is the Supplier authorised to bind or represent the other party. The Supplier must ensure that its officers, employees, agents and subcontractors do not represent themselves as being an officer, employee, partner or agent of NIOA or a Customer.
- 22.7 **No Exclusivity** - The Supplier acknowledges and agrees that the Contract and any Purchase Orders are not to be interpreted as the Supplier having the right to be the sole provider of the Goods and/or Services, or any part of the Goods and/or Services, to NIOA, nor is NIOA being prevented from seeking the Goods and/or Services from any other third party.
- 22.8 **No Assignment Without Consent** - A party may not assign, transfer or novate this Contract or any of its rights under this Contract without the prior written consent of the other party which may not be unreasonably withheld.
- 22.9 **Notices and Variations** - All Contract notices must be in writing and delivered to NIOA Contracts [contracts@nioa.com.au](mailto:contracts@nioa.com.au). Standard communications regarding the order are to be directed to the contact officer identified within the Purchase Order and [govtsales@nioa.com.au](mailto:govtsales@nioa.com.au). Notices are deemed to be delivered if successfully sent to the other party electronically, however the burden of proof for delivery is borne by the sending party. A provision of this Contract or a right created under it may not be varied except in writing, signed by the parties to be bound. Appending generic or specific terms and conditions to an invoice and payment of the invoice will not constitute a variation.
- 22.10 **Waiver** - A party's failure or delay to exercise, or its partial exercise, of a power, right or remedy under this Contract or at law, does not operate as a waiver of the power, right or remedy; nor does it preclude its future exercise of, or the exercise of any other, power, right or remedy. A waiver or consent given by a party under this Contract is only effective and binding on that party if it is given or confirmed in writing.
- 22.11 **Severability** - If any part of any clause of this Contract is invalid or unenforceable at law, the part of the clause is excised to the extent of the inconsistency and the remainder of the Contract continues in full force.
- 22.12 **No Merger** - Nothing in this Contract merges, extinguishes, postpones or otherwise prejudicially affects any right, power or remedy that a party may have against another party or person at any time.
- 22.13 **Electronic Transactions** - The Parties acknowledge and accept conducting business using electronic transactions and exchanging information by electronic means.
- 22.14 **Survival** - Any provisions of the Contract which expressly or by implication from the context are intended to survive the termination or expiration of this Contract, and any rights arising on termination or expiration, will survive including those relating to IP, confidentiality and privacy, audit, security, warranties, liabilities, indemnities, insurances and any other rights to recover money.
- 22.15 **Indemnification** - The Supplier shall indemnify and hold harmless NIOA, its officials and employees against all claims, damages (including legal costs and expenses on a solicitor/own client basis), loss, cost and expense arising in connection with any breach of law or Contract, privacy or data breach, any injury, disease, sickness, illness or death to persons or any loss of or damage to property and any third-party claim in respect to an infringement or alleged infringement of intellectual property rights, caused by the wilful misconduct, negligence or omission of the Supplier or its subcontractors. The Supplier's obligation to indemnify NIOA, its officials and employees will reduce proportionally to the extent that any negligent act or omission, on the part of NIOA, contributed to the claim, loss or damage. Any Loss claimed pursuant to this Indemnity can be collected as a debt due and payable by the Supplier to NIOA.
- 23. Glossary:**
- 23.1 **'Acceptance Period'** means 20 Business Days after the delivery of Goods and/or Services to the Delivery Point.
- 23.2 **'Business Day'** means any weekday between, and including Monday and Friday, between 9.00am and 5.00pm AEST but not if that day is a Public Holiday or Bank Holiday or falls between 24 December and 5 January.
- 23.3 **'Confidential Information'** means information (in any form) that is commercially sensitive (not generally known or ascertainable), its disclosure would cause unreasonable detriment to the owner of the information, or another party, and it was provided with an express or implied understanding that it would remain confidential or the receiving party knew or ought to have known that it should remain confidential.
- 23.4 **'Contract Price'** means the total order price specified in the Purchase Order.
- 23.5 **'Customer'** means any customer (including any commercial entity, military, law enforcement or any other government function) of NIOA anywhere in the world.
- 23.6 **'Delivery Point'** means the location specified in the Contract for the provision of Goods and/or Services.
- 23.7 **'Due Date'** means the date and time specified in the Contract by which:
- Goods must be delivered to NIOA at the Delivery Point; and
  - Services must be successfully completed.
- 23.8 **'Goods'** means the goods specified in the Purchase Order including an operating or user manual and warranty documentation (as applicable) to be provided by the Supplier and any incidental items or parts supplied by the Supplier as part of providing any Services.
- 23.9 **'Intellectual Property Rights' or 'IP'** means all intellectual property rights in all present and future copyright, neighbouring rights and all rights in relation to inventions (including patent rights and circuit layouts), registered and unregistered trademarks (including service marks), registered and unregistered designs, and any other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields recognised in domestic law anywhere in the world, whether or not they are registered or capable of being registered.
- 23.10 **'Latent Defect'** means any defect not discoverable by reasonable test, inspection or other methods of assurance as the case may be.

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- 23.11 '**NIOA**' means NIOA NOMINEES PTY LTD ACN 010 108 086 T/F BILL NIOA FAMILY TRUST ABN 11 646 964 149.
- 23.12 '**Purchase Order**' means the order for Goods and/or Services issued by NIOA to the Supplier in accordance with this Contract.
- 23.13 '**Services**' means the services specified in the Purchase Order (if any).
- 23.14 '**Supplier**' is the party the Purchase Order is issued to and includes its employees, officers, agents, representatives, and subcontractors.
- 23.15 '**Valid Invoice**' means an invoice that:
- (a) is correctly calculated in accordance with the Contract;
  - (b) is properly addressed and only relates to Goods and/or Services that have been accepted by NIOA;
  - (c) includes the relevant Purchase Order number;
  - (d) is for an amount that, when combined with all other Valid Invoices under this Contract, does not exceed the Contract Price; and
  - (e) is a valid tax invoice in accordance with the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).