

Purchase Order Terms and Conditions

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Purchase orders for subcontract transport are subject to the terms and conditions of the Transport Subcontract Agreement entered into by the parties.

Purchase orders for subcontract labour are subject to the terms and conditions of the Labour Subcontract Umbrella Agreement and the Labour Subcontract Short Form Agreement entered into by the parties.

All other purchase orders are subject to the following terms and conditions:

- 1 The term "purchaser" as hereinafter used refers to Waco Kwikform Limited and its subsidiaries, including Kwikform Industrial Services Pty Limited (ABN 88 165 660 551) and Kwikform Maintenance Services Pty Limited (ABN 74 622 981 202). The term "supplier" means the person, firm or company (incorporated or not) from whom the goods or services described within the purchase order have been ordered. Goods means the goods and/or services the subject of the purchase order.
- 2 By accepting the purchase order or commencing the supply of the Goods the supplier irrevocably accepts that these terms and conditions will apply to the supply of the Goods. No terms or conditions proposed by the supplier will apply to the supply of the Goods including without limitation, terms stated by the supplier in accepting or acknowledging a purchase order, terms on any delivery note or terms on the supplier's invoices for the Goods.
- 3 The Goods supplied by the supplier must:
 - a. Match the description in the Purchase Order and comply with any specifications or plans supplied by the purchaser.
 - b. Comply with any laws, regulations, licences, permits, approvals or Australian Standards applicable to the Goods.
 - c. Be new, of merchantable quantity and free from defects in materials and workmanship and fit for purpose.
 - d. Be free from all liens, charges and encumbrances of any nature whatsoever.
 - e. Be delivered on the dates specified and to the site described in the purchase order.
- 4 Time shall be of the essence of this contract unless such requirement is waived in writing by the purchaser. Should any change in delivery date (or dates) be proposed by the supplier for whatever reason, immediate written notice shall be given to the purchaser who may in its absolute discretion accept or reject such proposal.
- 5 If the supplier fails to deliver the Goods to the delivery site nominated by the purchaser by the date and/or dates specified herein or fails to comply with any condition contained herein, the purchaser may at any time thereafter and without prejudice to any of its other rights refuse goods delivered to or left at the delivery site in respect of which property therein has not passed to it and may procure similar goods elsewhere and the supplier shall be liable for any additional costs incurred by the purchaser as a consequence thereof and any incidental losses whatsoever nature incurred as a consequence of such default.
- 6 The property in the Goods delivered to or left at the delivery site nominated by the purchaser shall remain at the risk of the supplier until the purchaser has accepted the same after inspection.
- 7 Where, upon inspection by the purchaser, the Goods are not acceptable to the purchaser, the purchaser may at the supplier's expense either convert such goods into a condition acceptable to the purchaser or return such goods to the supplier and may, at its election, deduct from any money payable to the supplier, under the purchase order or any other contract or agreement between the parties, the cost of such repair or return.
- 8 Entry to a site by the supplier and the supplier's officers, employees, agents, servants and others engaged to supply the Goods is at their own risk. To the extent permitted by law the purchaser will not be responsible for any loss of or damage to property or for any personal injury or death to the supplier's personnel while on the site. When accessing the site, the supplier must comply with all policies and procedures relating to the site.
- 9 The supplier indemnifies the purchaser and its employees and agents from all claims, actions, proceedings, costs, expenses, losses and damages incurred in connection with or arising out of:
 - a. Any loss of or damage to real or personal property caused by the supplier or its employees, agents and contractors; or
 - b. Personal injury or death of any of the supplier's personnel arising out of or in connection with the purchase order or
 - c. Personal injury or death caused by the supplier or its personnel or
 - d. Loss or damage to any plant, equipment, tools, appliances or other property used by the supplier in relation to the purchase orderexcept to the extent caused by the negligence of the purchaser or its employees or agents.
- 10 The purchaser will pay the supplier the price specified in the purchase order. The price is inclusive of all costs relating to the supply of the Goods or services in accordance with the terms of the purchase order including insurance, transport and delivery charges and taxes other than GST.

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- 11 The supplier must provide the purchaser with a tax invoice which must include:
- The purchase order number
 - A detailed description of the Goods supplied
 - The price payable for the Goods supplied
 - Evidence of delivery in the form of a delivery receipt signed by an authorised representative of the purchaser
- Unless agreed otherwise in writing, the purchaser will pay the amount set out in the tax invoice issued by the supplier **30 days from the last day of the month in which the tax invoice is received by the purchaser** except where the invoice is in dispute in which case the purchaser will pay the undisputed part of the invoice.
- 12 No prices listed on the purchase order are subject to escalation unless specifically stated to be so.
- 13 If the supplier (being a person or, being a partnership or a member thereof) becomes bankrupt or assigns his estate for the benefit of his creditors or (being a company) goes into liquidation (other than for amalgamation or reconstruction) or has a Receiver or Official Manager or Provisional Liquidator or Administrator appointed of its affairs, or enters into a Deed of Arrangement or Composition with its Creditor then the purchase order will be automatically cancelled and the purchaser will be under no liability for payment of any Goods not then delivered to or accepted by the purchaser.
- 14 The supplier warrants that the Goods delivered to the purchaser are free of all liens charges and encumbrances, that the seller has title to the same, and that such Goods are of good merchantable quality and fit for the purpose for which they are delivered to the purchaser. Any special warranty or service guarantee stated in the purchase order is not revoked or varied by this clause.
- 15 The supplier must effect and maintain the following insurance policies at its own cost and provide the purchaser with evidence of such insurance whenever requested by the purchaser:
- Public and product liability insurance to cover all sums that the supplier may be liable for consequent upon the death or personal injury to any person or the loss of or damages to any property caused by the supply of the Goods or services. The policy must be for not less than an amount of \$20 million and such policy must **include a principal's indemnity and cross liability clause.**
 - Workers Compensation insurance as required by law.
- 16 In the event that any of the provisions of Clauses 1 to 15 hereof (inclusive) shall conflict with a clause contained in the purchase order then the terms of the purchase order shall prevail to the extent of such inconsistency.
- 17 For avoidance of doubt the laws of the place where the Purchase Order is signed by the Purchaser shall apply to the contract herein constituted.