



Purchase order terms and conditions

1. Definitions and interpretation

- 1.1. In these Conditions, except to the extent that the context otherwise requires:
- "Agreement" means the agreement constituted under conditions;
 - "Authorised Officer" means those persons who have been formally delegated the authority to commit Buyer to expenditure.
 - "Business Day" means a day on which banks (as the term is defined in the Banking Act 1959 (Cth)) are open for business in Queensland;
 - "Buyer" means The Southern SEQ Distributor-Retailer Authority trading as ALLCONNEX WATER. ABN 80 769 308 350;
 - "Goods" mean the goods and ancillary services specified in the Purchase Order or in a schedule attached to the Purchase Order and any ancillary goods and services required in supplying the Goods;
 - "Principal Contractor" means the principal contractor of the location where the Goods or Services are to be supplied, as defined in the Work Health and Safety Act 2011;
 - "Purchase Order" means an approved Allconnex Water Purchase Order which has been duly ratified by an Authorised Officer (to be confirmed by the Supplier to the extent Queensland Law provides) and refers to these Terms and Conditions;
 - "Services" means the services and ancillary goods specified in the Purchase Order or in a schedule attached to the Purchase Order and ancillary services and goods required in performing the Services;
 - "Standard Contract" means a contract or agreement contained in Buyer's procurement precedents, which the offer or tender by Buyer states will apply to the Goods or Services which are to be supplied;
 - "Supplier" means the person specified in the Purchase Order as the supplier;
 - "Terms and Conditions" means these terms and conditions, which form part of the Purchase Order.
- 1.2. Where the Supplier comprises two or more persons an agreement or obligation to be performed or observed by the Supplier binds those persons jointly and severally, and a reference to the Supplier includes a reference to any one or more of those persons.
- 1.3. A reference to the Supplier or Buyer includes its respective successors and permitted assigns.
- 1.4. In the interpretation of this Agreement, headings shall be disregarded.

2. Terms of the agreement

- 2.1. Acceptance by the Supplier of an order for the Goods or Services placed by Buyer on or

accompanied by a ratified Purchase Order constitutes an agreement by the Supplier to supply the Goods or Services to Buyer on these Terms and Conditions.

- 2.2. Acceptance by the Buyer, on or accompanied by a Purchase Order, of an offer or tender by the Supplier (whether or not it was on or accompanied by a Purchase Order) to supply the Goods or Services, constitutes an agreement by the Supplier to supply those Goods or Services to Buyer on these Terms and Conditions.
- 2.3. For the purposes of clauses 2.1 and 2.2, a Purchase Order applies to the exclusion of all other terms and conditions imposed in any manner by the Supplier at any time, unless otherwise agreed in writing by both the Supplier and Buyer. By supplying the Goods or Services to Buyer, the Supplier confirms its acceptance of this condition.
- 2.4. Where the Purchase Order is accompanied by, or is specified as being subject to or to be read with, one of Buyer's Standard Contracts, or is sent to the Supplier after the Supplier has executed or is obligated to execute a Standard Contract for the supply of the Goods or Services (whether or not the Standard Contract is included with or mentioned in the Purchase Order), the terms of the Standard Contract will form part of the Purchase Order and will prevail over these Terms and Conditions to the extent of any inconsistency.

3. Supply of goods or services

- 3.1. The Supplier agrees to supply to Buyer and Buyer agrees to accept from the Supplier, on these Terms and Conditions, the Goods or Services.
- 3.2. Where this Agreement relates to Goods, then unless otherwise agreed in writing by both the Supplier and Buyer, the Goods supplied must conform with all relevant Australian Standards which relate to the Goods and must, subject to clause 3.4, correspond with either:
 - (a) the sample of the Goods which have been produced to and examined by employees of the Buyer, except to the extent that variations from the sample are expressly permitted or required by the description of the Goods set out in the Purchase Order or in a schedule attached to the Purchase Order; or
 - (b) where no sample has been so produced and examined, the description of the Goods set out in the Purchase Order or in a schedule attached to the Purchase Order or, if no such description is set out, the description of the Goods provided by the Supplier.
- 3.3. Where this Agreement relates to Services, then unless otherwise agreed in writing by both the Supplier and Buyer, the Services provided must, subject to clause 3.4, correspond with the description of the Services set out in the Purchase Order or in a schedule attached to the Purchase Order, or if no such description is set out, the description of the Services provided by the Supplier and be to any standard or level or service which may be so specified.
- 3.4. Despite any other provision of these Terms and Conditions, the Goods supplied and the Services provided must at all times be fit for the purposes for which such Goods are supplied or Services are provided.
- 3.5. No goods or services except the Goods or Services shall be supplied unless they are previously approved of in writing by an Authorised Officer of Buyer and, except as otherwise agreed in writing by the Supplier and Buyer, any such additional or substituted goods or services shall be supplied on these Terms and Conditions.
- 3.6. Except in clause 5.1 the expressions "Goods" and "Services" shall where relevant include respectively any other goods and services approved under clause 3.5.
- 3.7. If Goods are hazardous substances, relevant material safety data sheets must be supplied.

4. Delivery, inspection and rejection

- 4.1. Where this Agreement relates to Goods, the Supplier shall deliver the Goods during normal business hours to the location and in accordance with the delivery timetable set out in the Purchase Order or in a schedule attached to the Purchase Order. For delivery to

be effective, the Supplier must obtain the signature of a receiving officer of Buyer acknowledging receipt of the Goods.

- 4.2. Where this Agreement relates to Services, the Supplier shall supply the Services to the location and in accordance with the delivery timetable set out in the Purchase Order or in a schedule attached to the Purchase Order.
- 4.3. The time for delivery of the Goods or supply of the Services is of the essence in this Agreement.
- 4.4. If Buyer reasonably considers that all or any of the Goods and Services are unsatisfactory because of a breach of the Purchase Order, Buyer may notify the Supplier in writing, within five Business Days of the delivery or performance of the relevant Goods or Services, setting out reasons for Buyer's opinion and the conditions or basis upon which Buyer will accept the Goods or Services, if any.
- 4.5. If Buyer does not notify the Supplier in accordance with clause 4.4, Buyer shall be deemed to have accepted that the Goods or Services comply with the terms of this Agreement. Such acceptance will not, however, constitute a waiver of any right which but for the acceptance, Buyer would have had arising from any defect in or want of compliance with the specifications for the Goods or Services later discovered by Buyer.
- 4.6. If:
 - (a) Buyer notifies the Supplier in accordance with clause 4.4 that the Goods or Services are unsatisfactory; or
 - (b) the Supplier has not delivered the Goods or supplied the Services to Buyer within the time limits prescribed in the Purchase Order, Buyer may do any one or more of the following:
 - (c) reject or accept all or some of the Goods or Services;
 - (d) negotiate with the Supplier the alteration of any provision of this Agreement, including without limitation the price for the Goods and Services, the timing of delivery or supply, the quantity of Goods to be delivered and the extent of the Services to be supplied;
 - (e) terminate this Agreement;
 - (f) sue the Supplier for damages; or
 - (g) avail itself of any other remedy at law or in equity.
- 4.7. Termination of this Agreement under clause 4.6 relieves the Supplier of the obligation to deliver the Goods or supply the Services, but does not relieve the Supplier from the consequences of any breach by the Supplier of these Terms and Conditions which occurred before the Agreement was terminated.
- 4.8. If any of the Goods are rejected by Buyer under clause 4.4, the Supplier shall at its own cost within seven days of rejection collect the rejected Goods from Buyer during normal business hours. The Supplier acknowledges that:
 - (h) buyer is not at any time the bailee of the Goods for the Supplier;
 - (i) if the rejected Goods are not collected by the Supplier within that 7 day period, Buyer may return them to the address of the Supplier shown in the Purchase Order; and
 - (j) any cost incurred by Buyer in so doing will be paid by the Supplier to Buyer upon demand.
- 4.9. If any of the Services are rejected by Buyer under clause 4.4, the Supplier shall at its cost carry out such rectifications and restorations concerning the rejected Services within such reasonable time as is specified by Buyer in its notice given under clause 4.4, or if not specified in that notice, at a later point in time.

5 Price and payment

- 5.7 The price for the Goods or Services shall be the price:
 - 5.7.1 set out in the Purchase Order;

- 5.7.2 which has been agreed to in writing by Buyer and which is set out in the offer, tender or other documentation which accompanies a Purchase Order or to which a Purchase Order relates; or
- 5.7.3 where some of the Goods or Services have been rejected and the Supplier and Buyer have renegotiated the price under clause 4.6(d), that renegotiated price.
- 5.8 The price for any goods or services approved under clause 3.5 shall be as agreed in writing by the Supplier and Buyer.
- 5.9 After the end of the period specified in clause 4.4, the Supplier shall give to Buyer an invoice for such of the Goods delivered or the Services supplied as have not been rejected.
- 5.10 Buyer shall pay for the Goods or the Services invoiced under clause 5.3 within 30 days from the end of the month in which the Supplier's invoice was dated or received, whichever is the later.
- 5.11 Property in and title to the Goods shall pass to Buyer when Buyer accepts or is deemed to have accepted the Goods, and from that date the Goods shall be at the risk of Buyer.
- 5.12 Where the effect of any law is that a lien over any of the Goods in favour of the Supplier is implied or given and it is not lawful to exclude the lien, then such lien shall (but only to the extent required by law) apply to this Agreement, but otherwise the right to any lien is excluded from this Agreement or waived by the Supplier.

6 Liabilities, indemnities and termination

- 6.1 All obligations and assurances which are or may be imposed upon a supplier of goods or services and all rights and benefits which are or may be conferred upon the recipient of goods or services by any law shall, to the extent they are not inconsistent with these conditions, apply to the Supplier and Buyer respectively unless (but then only to the extent specified) otherwise agreed in writing between the Supplier and Buyer.
- 6.2 Buyer may terminate this Agreement by written notice to the Supplier if:
 - a) the Supplier fails to remedy any breach of its obligations under this Agreement within seven days after written demand for remedy has been made by Buyer;
 - b) the Supplier becomes insolvent, goes into liquidation or is wound up or dissolved or a receiver, receiver and manager, official manager, trustee, provisional liquidator or similar officer is appointed over any of its assets, or the Supplier enters into a scheme of arrangement, composition or compromise with or assignment for the benefit of any of its creditors or any inspector of all or any part of its affairs is appointed or if any steps or proceedings are taken against the Supplier for any such purpose;
 - c) the Supplier commits an act of bankruptcy, becomes bankrupt or unable to pay its debts or suspends payment of its debts within the meaning of the Bankruptcy Act 1966 of the Commonwealth or enters into a personal insolvency agreement;
 - d) the Supplier commits any criminal offence which affects or compromises its ability to satisfactorily perform its obligations under this Agreement, or fails to observe the standards of a reasonable supplier (as defined at Queensland law);
 - e) the Supplier becomes a person of unsound mind or a person whose person or estate is liable to be dealt with in any way under any law relating to mental health; or
 - f) execution, distress or other legal process is levied against any property of the Supplier and such process is not satisfied within 30 days of being levied.
- 6.3 The Supplier shall indemnify Buyer against all losses, claims, liabilities, costs, demands and expenses, whether direct, indirect or consequential, sustained or incurred by Buyer arising out of or in any way connected with this Agreement.
- 6.4 The Supplier shall pay, and shall indemnify Buyer against, all duties, taxes, levies, charges and impositions of whatever nature (whether parliamentary, municipal or otherwise) which may now or at any time be imposed or levied in respect of supply of the Goods or Services and all fines, penalties, losses, claims, costs, demands and expenses sustained or incurred by Buyer concerning any of them.

- 6.5 Despite any other clause in this Agreement, Buyer may, by notice in writing to the Supplier, terminate this Agreement at its discretion at any time and for any reason. Other than as set out in this Agreement, Buyer will have no obligation to compensate the Supplier in any way for such termination.

7 Workplace health and safety

- 7.1 The Supplier shall comply with all requirements under the Work Health and Safety Act 2011 that are applicable to this Agreement and the supply of the Goods or the performance of the Services, including, without limitation, its obligations as an employer.
- 7.2 Prior to delivering the Goods or supplying the Services, the Supplier must enquire of Buyer whether there is a Principal Contractor responsible for the location to which the Goods are to be delivered or the Services supplied, as set out in the Purchase Order. The Supplier must comply at its cost with all directives given by the Principal Contractor when delivering the Goods or supplying the Services.
- 7.3 The Supplier must indemnify and keep indemnified Buyer against all costs, damages or liabilities which may be imposed under, or which may arise out of enforcement of, any section of the Work Health and Safety Act 2011 or its regulations, or any breach of this clause by the Supplier.

8 Insurance

- 8.1 Before the Supplier commences the supply of the Goods or the Services, the Supplier shall obtain adequate and sufficient insurance to protect the interests of the Supplier and Buyer under this Agreement, including without limitation public liability insurance (with a minimum cover of \$10 million for any one occurrence) and workers' compensation insurance. The Supplier shall maintain such insurances for the duration of this Agreement, and if necessary thereafter for such time as is reasonable.
- 8.2 The Supplier shall effect and maintain any other insurances as Buyer may reasonably instruct, including without limitation, professional indemnity or any other insurance.
- 8.3 The Supplier must produce on demand by Buyer, evidence satisfactory to Buyer that the insurances referred to in clauses 8.1 and 8.2 have been obtained and are being maintained by the Supplier. If the Supplier fails to produce such evidence, Buyer may itself effect the insurance and the premium of such policies shall be a debt due and owing from the Supplier to Buyer.
- 8.4 If Buyer requests evidence of insurance from the Supplier under clause 8.3, no money shall be payable to the Supplier under this Agreement until such time as the request under clause 8.3 has been complied with by the Supplier.

9 Industry Change

- 9.1 The Buyer may by written notice to the Supplier assign, novate or otherwise transfer:
- (a) the Purchase Order; or
 - (b) all or any part or portion of:
 - (i) the Purchase Order; or
 - (ii) its rights or obligations under the Purchase Order,

to any one or more of Gold Coast City Council, Logan City Council, Redland City Council or any other entity or entities formed for the purposes of conducting or assuming the conduct of all or any part of the water and wastewater business within the geographic boundaries of any or all of Gold Coast City Council, Logan City Council or Redland City Council areas.

- 9.2 If the Buyer gives notice under clause 9.1, the Supplier must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to the Buyer) required by law or reasonably requested by the Buyer to give

effect to the assignment, novation or transfer of the [Purchase Order](#) to the entity specified in the notice under clause 9.1.

9.3 Where as part of a restructure of the water and wastewater industry within South East Queensland, there is, or is proposed to be, a change to any part of the water and wastewater business within the geographic boundaries of Gold Coast City Council, Logan City Council or Redland City Council areas which has or will have an impact on the ability of the Buyer to:

- (a) carry out its obligations under the Purchase Order;
- (b) comply with the Purchase Order; or
- (c) enjoy the benefit of the Purchase Order,

the Buyer may by written notice to the Supplier terminate the Purchase Order with effect on the date specified in that notice (being a date not less than 21 days after the date the notice is given).

9.4 The Buyer has no liability to the Supplier for any loss, liability or damage suffered or incurred by the Supplier as a result of the termination under clause 9.3.

9.5 Without limiting the scope of clause 9.4, the Supplier is entitled to payment for all work performed and accepted by the Buyer in accordance with the [Purchase Order](#) up to the date of termination.

10 General

10.1 Neither the Supplier nor Buyer shall assign or purport to assign this Agreement or any right under this Agreement without the prior written consent of the other.

10.2 This Agreement is governed by and is to be construed in accordance with the laws of the State of Queensland.

10.3 The failure of the Supplier or Buyer at any time to require full or partial performance of any provision of this Agreement shall not affect in any way its full right to require that performance subsequently. The waiver by either the Supplier or Buyer of a breach of a provision of this Agreement shall not be deemed a waiver of all or part of that provision or of any other provision or of its right to avail itself of its rights subsequently. Any waiver of a breach of this Agreement shall be in writing signed by the party granting the waiver and shall be effective only to the extent specifically set out in the waiver.

10.4 This Agreement may only be altered in writing signed by both the Supplier and Buyer.

10.5 If any part of this Agreement is rendered invalid by any law or is held to be invalid or unenforceable, then that part shall be deleted but, to the extent the remainder is capable of being performed, neither the invalidity or unenforceability nor the deletion shall affect the validity or enforceability of the remaining parts of this Agreement.

10.6 If upon receipt of a Purchase Order, the Supplier is unable to supply any or all of the goods by the delivery date, telephone or written advice shall be furnished without delay. Failing such advice, Buyer reserves the right to cancel any order or part thereof not supplied by the delivery date.

10.7 Despite any other provision, the Buyer is entitled to publish on the Queensland Government Chief Procurement Office website or by any other means, details of the Purchase Order which may include but is not limited to, the name and address of the Buyer and the Supplier, a description of the Goods or Services, Agreement commencement date or award date, the value of the Purchase Order, the procurement method used and (where the total value of the Purchase Order is \$10 million or more) invitation details, Agreement overview and reasons for non-disclosure of procurement results (if applicable).

11 GST and PAYG

- 11.1 In this clause the expressions "adjustment note", "consideration", "GST", "input tax credit", "supply", "tax invoice", "recipient" and "taxable supply" have the meaning given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999.
- 11.2 Unless otherwise stated, all amounts payable under this Agreement include GST at the rate of 10%.
- 11.3 If the rate of GST is varied, the consideration payable for any supply under this Agreement will be varied to reflect the change of rate and any reduction in any other tax, duty or statutory charge connected with the rate change.
- 11.4 If this Agreement requires a party to reimburse or indemnify the other party for any expense, loss or outgoings ("reimbursable expense") the amount required to be paid by the first party will be the sum of:
 - 11.4.1 The amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense ("**net amount**"); and
 - 11.4.2 If the other party's recovery from the first party is a taxable supply, any GST payable in respect of that supply.
- 11.5 If a GST inclusive price is charged or varied, the supplier will deliver to the recipient a valid tax invoice or adjustment note at or before the time of payment. The recipient can withhold payment of the GST until the supplier provides a valid tax invoice or adjustment note as appropriate.
- 11.6 "Pay As You Go" withholding amounts will be deducted from payments to be made to the Supplier if at the time of payment the Supplier has not provided to the Buyer a valid Australian Business Number or if the Buyer otherwise reasonably forms the view that deductions are required to be made under Part 2-5 of *Taxation Administration Act 1953*.