

Purchase Order Terms and Conditions – Services

1. DEFINITIONS

In this Agreement:

Agreement means this agreement and the Purchase Order (including any Purchase Order special conditions and any other annexure or schedule).

Commencement Date means the date stated in the Purchase Order.

Completion Date means the date on which MMG certifies in writing to the Contractor that the Contractor has complied with all of its obligations under this Agreement.

Contractor Event of Default means each of the following:

- (a) the Contractor failing to perform the Services in accordance with the requirements under this Agreement, including by providing defective Services;
- (b) any representation or warranty made by the Contractor under clause 7 being untrue or misleading in any material respect; and
- (c) the Contractor being in breach of any of its obligations under this Agreement.

Direct or **Direction** means any instruction, decision, demand or determination given by MMG to the Contractor.

ERS System means the "Evaluated Receipt Settlement System", under which MMG automatically creates an invoice at the time that a claim for payment is made using the Contractor's payment claim number as the invoice number, and then making payment to the Contractor against the ERS System invoice based on the payment terms.

Expiry Date means the date stated in the Purchase Order.

Fee means the fee stated in the Purchase Order for the Services.

GST/VAT means any tax imposed under any GST/VAT Law and includes GST/VAT within the meaning of the applicable law, regulation or similar provision governing the operation of the law.

GST/VAT Law means the GST/VAT laws of the jurisdiction which apply to this Agreement.

Input Tax Credit means a credit a taxpayer is entitled to claim to offset its GST/VAT liability in accordance with the relevant GST/VAT Law of the applicable jurisdiction.

Legislative Requirements includes any:

- (a) federal, state or local acts, ordinances, regulations, by-laws, orders, awards, proclamations; and
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the performance of the Services.

MMG Policies and Procedures includes any policy, standard, procedure, publication or guideline which MMG is subject to (as amended from time to time) and that is:

- (a) publicly available and relevant to this Agreement; or
- (b) notified by MMG to the Contractor from time to time.

Purchase Order means an order issued from the SAP System by MMG to the Contractor for the performance of the Services.

RCTI means a "Recipient Created Tax Invoice", being a Tax Invoice created by MMG, which is delivered to the Contractor when payments are processed by the ERS System.

SAP System means any computer software ordering, logistics and sales invoicing system programs owned or licensed by MMG or its related bodies corporate.

Services means the services stated in the Purchase Order and any other services not described in this Agreement if those services should reasonably have been anticipated by an experienced and competent Contractor as being necessary for the performance of the Services or which were otherwise capable of inference from this Agreement.

Taxes means all forms of taxes, duties, imposts, charges, withholdings, rates, levies and any other governmental impositions of whatever nature and by whatever authority imposed, assessed or charged together with all costs, charges, interest, penalties, fines, expenses and other additional statutory charges, incidental or related to the imposition.

Tax Invoice means an invoice which entitles the recipient of goods or services for GST/VAT purposes to a tax credit in compliance with the provisions of the relevant GST/VAT Law.

Term means the period commencing on the Commencement Date and ending on the Expiry Date or as otherwise agreed by the parties in writing.

Warranty Period means the period stated in the Purchase Order commencing on the Completion Date.

2. AGREEMENT AND PERFORMANCE

- (a) The Contractor must perform the Services during the Term.
- (b) MMG and the Contractor agree that all services, tasks and advice performed prior to the Commencement Date by the Contractor relevant to the Services, if any, will be taken to have been performed or provided pursuant to this Agreement.
- (c) The Contractor must in carrying out this Agreement comply with all relevant Legislative Requirements, including, but not limited to:
 - (i) those Legislative Requirements in relation to occupational health and safety; and
 - (ii) anti-bribery and corruption and anti-money laundering laws.
- (d) The Contractor must in carrying out this Agreement comply with all MMG Policies and Procedures.

3. DIRECTIONS

MMG may give Directions to the Contractor in respect of the Services from time to time. A Direction may be given orally or in writing. The Contractor must comply with all Directions.

4. COMPLETION OF SERVICES

MMG may require the Contractor to provide evidence, acceptable to MMG, that the Services are in accordance with this Agreement and the Contractor must provide such evidence within the time prescribed in the request.

5. DEFECTIVE SERVICES

- (a) At any time during the Term and the Warranty Period, MMG may give notice to the Contractor that the Services, or any part of the Services, are defective.
- (b) If MMG determines that the Services, or any part of the Services, are defective, MMG may withhold payment of the Fee, or the part of the Fee that relate to the defective Services, until such time as the defective Services have been rectified to MMG's satisfaction.
- (c) The Contractor is not entitled to any payment for rectification of defective Services.

6. MMG NOT BOUND TO ORDER

This Agreement is not evidence of, nor does it create an exclusive relationship between MMG and the Contractor in respect of the Services. The Contractor acknowledges that MMG may engage Services or services similar to the Services from any contractor at all times during the Term of this Agreement.

7. CONTRACTOR'S WARRANTIES

The Contractor warrants that it:

- (a) has examined and considered all information made available by MMG to the Contractor for the purpose of performing the Services;
- (b) has taken all reasonable measures to ensure that no conflict of interest presently exists or is likely to arise in the performance of its obligations under this Agreement;
- (c) will remain fully responsible for all Services and all information created or developed, or required to be created or developed, under this Agreement provided by the Contractor irrespective of any review or acceptance of those Services or information by MMG;
- (d) will not in the performance of the Services, infringe any intellectual property rights;
- (e) the Services will comply with all relevant Legislative Requirements;
- (f) will make fully aware, educate and train its employees, subcontractors and agents in relation to MMG Policies and Procedures;
- (g) will pay all Taxes due in connection with the Services under this Agreement;
- (h) has, or will be able to obtain all the necessary consents, permits or authorisations necessary in order for the Contractor to perform the Services;
- (i) will effect and maintain all relevant insurances during the Term of this Agreement in relation to the performance of services;
- (j) has not relied upon any representation or information provided by MMG which is not expressly stated or included in this Agreement; and
- (k) has not suffered an insolvency event.

The Contractor acknowledges that MMG has relied upon such warranties in entering into this Agreement.

8. INDEMNITY BY CONTRACTOR

To the maximum extent permitted by law, the Contractor indemnifies MMG against all actions, claims, costs, charges, damages, expenses, liabilities, losses or damages (including legal costs on an indemnity basis whether incurred by or awarded against MMG) that MMG may incur or sustain arising out of or in relation to the performance or non-performance by the Contractor of its obligations under this Agreement including in the performance of the Services.

9. FEE

MMG must pay the Contractor the Fee for the performance of the Services. The Fee is inclusive of all costs and expenses of the Contractor whether foreseen or unforeseen, including all insurances and Taxes (other than GST) (if any) which must be paid by the Contractor.

10. GOODS & SERVICES TAX ("GST") / VALUE ADDED TAX ("VAT")

- (a) Words or expressions used in this clause 10 which are defined in the applicable GST/VAT Law have the same meaning in this clause 10.
- (b) The Contractor warrants that the Contractor is registered for GST/VAT when the Contractor enters into this Agreement; and will notify MMG if it ceases at any time to be registered for GST/VAT.
- (c) MMG warrants that MMG is registered for GST/VAT when MMG enters into this Agreement; and will notify the Contractor if it ceases to be registered for GST/VAT.
- (d) Any consideration to be paid or provided to the Contractor for the provision of Services made by the Contractor under or in connection with this Agreement, unless otherwise stated, is exclusive of GST/VAT.
- (e) Despite any other provision in this Agreement, if a party (**Supplying Party**) makes a taxable supply or transaction under or in connection with this Agreement on which GST/VAT is imposed:
 - (i) the consideration payable or to be provided for that supply or transaction under this Agreement but for the application of this clause 10(e) (**GST/VAT Exclusive Consideration**) is increased by, and the recipient of that supply (**Receiving Party**) must pay to the Supplying Party, an amount equal to the GST/VAT payable by the Supplying Party to the tax authorities on that supply; and
 - (ii) the amount by which the GST/VAT Exclusive Consideration is increased must be paid to the Supplying Party by the Receiving Party without set off, deduction or requirement for demand, at the same time as the GST/VAT Exclusive Consideration is payable or to be provided, but not before a Tax Invoice is issued by the Supplying Party.
- (f) Provided the Receiving Party is registered for GST/VAT, the gross up amount for GST/VAT in clause 10(e) is only payable to the Supplying Party if the Supplying Party issues a Tax Invoice for that supply or transaction within the time limits set out in the GST Law that will allow the Receiving Party to claim an Input Tax Credit.
- (g) To the extent that it is permitted under the GST/VAT Law, MMG reserves the right to create and issue a Tax Invoice in relation to Services provided under this Agreement.
- (h) If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any Input Tax Credit to which that party is entitled for that loss, cost or expense.

11. WITHHOLDING FOR PAYMENT AND TAXES

- (a) MMG may, in relation to any payment it is required to make to the Contractor, withhold from that payment any amount it is required to withhold as Tax under a Legislative Requirement.
- (b) If any consideration paid to the Contractor by MMG under or in connection with this Agreement is paid free of withholding Tax, and at any time after such payment, MMG becomes aware (either by notification from a regulatory authority or otherwise), that an amount of Tax should have been withheld from such payment, MMG will be entitled to recover from the Contractor that amount of Tax and any subsequent amount MMG may be required to pay to a regulatory authority for failing to withhold (including any amounts required to be withheld). Such payments must be paid to MMG within 30 days of receipt of notice from MMG.

12. ERS SYSTEM

- (a) If the Purchase Order states that the ERS System is to apply, MMG and the Contractor agree that in relation to the taxable supplies the Contractor makes:
 - (iii) MMG will issue a RCTI in respect of those taxable supplies; and
 - (iv) the Contractor will not issue a Tax Invoice in respect of those taxable supplies.
- (b) If the Purchase Order states that the ERS System is not to apply, the Contractor must submit Tax Invoices to MMG. MMG will have no obligation to pay any other amount due under this Agreement until it receives a Tax Invoice for the relevant amount.

13. TERMS OF PAYMENT

- (a) All payments of a RCTI will be made at the end of the month following the month in which completion of the Services takes place.
- (b) Where a Tax Invoice is required to be delivered by the Contractor, payment will not be made until the end of the month following the month in which the Tax Invoice is delivered.
- (c) Payment of a Tax Invoice or RCTI will not be construed as evidence or an admission that the Services have been supplied in accordance with this Agreement but is a payment on account only.

14. CONFIDENTIALITY

- (a) The Contractor must not disclose or use any information relating to MMG or its related bodies corporate (including the terms of this Agreement and the fact of its existence) which is not in the public domain and comes into the Contractor's possession during the Term of this Agreement (**Confidential Information**).
- (b) The Contractor may only disclose Confidential Information either with MMG's prior written consent or if required by Legislative Requirements.

15. TERMINATION

- (a) MMG may, without cause and at any time, by giving 7 days' written notice to the Contractor, terminate this Agreement (in whole or in part) prior to the Completion Date.
- (b) Upon termination under clause 15(a), MMG will pay the Contractor such reasonable sum commensurate with the amount of Services rendered by the Contractor up to the date of termination (which amount will not include any amount in respect of any loss of profit and will not be in excess of the Fee payable if this Agreement had not been terminated).
- (c) Upon termination, MMG may engage alternate contractors to perform the same Services.
- (d) If a Contractor Event of Default occurs, MMG may give the Contractor a notice requiring the relevant failure, misrepresentation or breach to be remedied within a specified time not less than 5 business days.
- (e) If the Contractor fails to remedy the relevant failure, misrepresentation or breach or, if the relevant failure, misrepresentation or breach is not capable of remedy, MMG may, by written notice to the Contractor, terminate this Agreement.

16. INTELLECTUAL PROPERTY

All intellectual property generated from the Services will vest in MMG immediately on creation.

17. SITE SAFETY & HEALTH REQUIREMENTS

The Contractor acknowledges that all MMG sites have specific conditions of entry to site and agrees that these conditions should be read in conjunction with this Agreement and prior to entry to site. Without limiting the obligations under any other provision of this Agreement, the Contractor must comply with all site conditions.

18. SURVIVAL

Clauses 1, 5, 8, 14, 15 and 16 survive the termination or expiration of this Agreement.

19. GOVERNING LAW

This Agreement is governed by and must be construed according to the applicable jurisdiction stated in the Purchase Order and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that jurisdiction.