

Terms and conditions of purchase

PLEASE NOTE that these terms and conditions do not apply if a contract/agreement has been executed with GMB Water in relation to the goods/works/services being provided, in which case, you will continue to be bound by those terms and conditions.

1. DEFINITIONS

In this agreement:

Background Intellectual Property means Intellectual Property rights in the Deliverables which were not specifically created as part of the Services (including the pre-existing Intellectual Property rights of the Provider and Intellectual Property rights of third parties).

Business Day means a day that is not a Saturday, Sunday, or public holiday in the State of South Australia.

Confidential Information means any documentation or information of a confidential nature supplied by either of the parties to the other in connection with this agreement and includes all scientific, technical, manufacturing, performance, sales, financial, commercial, contractual or marketing information possessed by each party, but specifically excludes any documentation or information which has been previously published or otherwise disclosed to the general public or is required to be disclosed by Law.

GMB Water means Mount Barker Region Wastewater Utility T/A GMB Water (ABN 89 773 163 682).

Deliverables means all documents, equipment, software, information, and data produced as part of the Services and supplied to GMB Water as part of the Services.

Fee means the fee specified in the Purchase Order.

Force Majeure Event means an unforeseeable and unknown event occurring after the date of this agreement beyond the reasonable control of the parties which precludes a party from performing on time an obligation under this agreement. Such circumstances include:

- a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires, and any natural disaster;
- b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution;
- c) a pandemic is declared by a Governmental Agency and measures are implemented by the Government Agency to address the pandemic; and/or
- d) a suspension or termination of services or works is necessitated by legislative requirement or is ordered by a Governmental Agency.

Governmental Agency means any government or any government, semi-governmental, administrative, fiscal, or judicial body, department, commission, authority, tribunal, agency, or entity including any self-regulatory organization established under statute or any stock exchange.

Intellectual Property means all rights conferred by statute, common law, or equity in relation to patents, inventions, registered and unregistered designs, registered and unregistered trademarks, trade names, logos and get up, confidential information, copyright and moral rights and all other rights resulting from intellectual activity in the industrial, scientific, literary, or artistic fields.

Product means the goods, works or services the subject of the Purchase Order.

Provider means the contractor, consultant or supplier engaged by GMB Water to supply and deliver goods,

undertake works or provide services as specified in the Purchase Order.

Purchase Order means the purchase order issued by GMB Water to which these Terms and Conditions are attached.

Reimbursable Expenses means the reimbursable expenses or disbursements specified in the Purchase Order.

Specifications means the specifications detailed in the Purchase Order.

Terms and Conditions mean these terms and conditions.

Variation means any change in the Product specified in the Purchase Order, including:

- a) any increase of, decrease in, or omission from such Product;
- b) any changes in the character, Specifications, quality, scope, origin and/or the materials for any such Product; or
- c) any additional supply of such Product.

Warranty Period means the warranty period specified in the Purchase Order.

- a) Expressions or terms used in the Purchase Order have the same meaning in these Terms and Conditions.

2. Interpretation

In this agreement, unless the context otherwise requires:

- 2.1 a reference to this agreement means the Purchase Order and these Terms and Conditions;
- 2.2 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 2.3 words importing persons shall include individuals, partnerships, bodies corporate or unincorporated; and
- 2.4 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it.

3. Application

This agreement:

- 3.1 applies to the Product provided by the Provider to GMB Water and the Provider is deemed to have read and agreed to the Purchase Order and Terms and Conditions prior to fulfilling any order for the Product; and
- 3.2 prevails over the Provider's terms and conditions of sale or any other documents provided by the Provider.

4. Supply

- 4.1 The Provider agrees to supply the Product, and GMB Water agrees to purchase the Product on the terms of this agreement.

5. Delivery of Goods (Goods Only)

- 5.1 The Provider must provide the Product on or before the date/s specified in the Purchase Order.
- 5.2 Unless otherwise specified in this agreement, "delivery" occurs as soon as the Product is:
 - 5.2.1 off-loaded at the delivery address specified in the Purchase Order; and



- 5.2.2 inspected by GMB Water and accepted as being in accordance with this agreement.
- 5.3 Title to and property in the Product passes to GMB Water on delivery of the Product.
- 5.4 Risk in the Product passes on delivery of the Product.
- 5.5 No liability to pay for the Product arises until delivery or completion.

6. Payment

- 6.1 Unless otherwise specified in the Purchase Order, GMB Water must pay the Fee and any Reimbursable Expenses by electronic funds transfer within thirty (30) days from the invoice date of a correctly rendered tax invoice from the Provider. The invoice cannot be issued until after the Product has been provided.
- 6.2 A tax invoice is correctly rendered when it:
 - 6.2.1 describes the Product provided and the period to which the Product relates;
 - 6.2.2 displays the terms of payment of the Fee and any Reimbursable Expenses described in the invoice;
 - 6.2.3 displays GMB Water's Purchase Order number;
 - 6.2.4 sets out in reasonable detail the manner and basis of the calculation of the Fee and Reimbursable Expenses, including the component of GST; and
 - 6.2.5 is emailed to accounts@gmbwater.au.

7. Service Standards (Works and Services Only)

The Provider must:

- 7.1 deliver the Product in a professional and competent manner with due care, skill and diligence and within the timeframe specified in the Purchase Order;
- 7.2 comply fully and promptly at its own cost with all laws, applicable standards, codes of practice, by-laws, orders and regulations at present or in the future relating to the provision of the Product and with all requirements, notices or orders in respect of anything affected by the provision of the Product;
- 7.3 provide at its own cost all supervision, labour, materials plant, tools and equipment, transport and temporary works required for the provision of the Product;
- 7.4 be responsible for the care, storage and protection of unfixed items, items provided to the Provider by GMB Water, and items brought onto the relevant site by any sub-contractors; and
- 7.5 provide, erect and maintain all barricades, guards, fences, signs, lighting and temporary roadways and footpaths necessary for the protection of the Product, other property and for the safety and convenience of the public in accordance with accepted standards or codes of practice and shall remove them when no longer required.

8. Warranties by Provider

The Provider warrants that the Product will:

- 8.1 consist of materials/products that are of good merchantable quality and fit for their purpose;
 - 8.1.1 consist of new materials, unless otherwise notified in writing by the Provider;
 - 8.1.2 conform with the description and the Specifications in the Purchase Order; and
 - 8.1.3 throughout the Warranty Period, operate in accordance with any specifications set out in the Purchase Order, and otherwise in accordance with the operation of similar products.
- 8.2 Where the Product is works, a defects liability period of 12 months will apply from the date of completion of the works (**Works Only**).
- 8.3 If the Product is found to be defective or does not comply with clauses 8.1 to 8.1.2 and GMB Water notifies the Provider of the defect during the Warranty Period or any defects liability period, the Provider must, at its own cost, promptly replace the Product and deliver it to GMB Water, or promptly rectify any defects in the Product.
- 8.4 Failing replacement or rectification by the Provider to GMB Water's reasonable satisfaction within a reasonable time, GMB Water may replace the Product or rectify defects in the Product at the cost of the Provider, which cost will be recoverable from the Provider as a debt due.

9. Variations

- 9.1 General
 - No Variation invalidates this agreement.
- 9.2 No unauthorised Variation
 - The Provider must not, and is not authorised to, make any Variation of the Product except:
 - 9.2.1 a Variation instructed by GMB Water; and/or
 - 9.2.2 a Variation requested by the Provider, which has been approved by GMB Water.
- 9.3 Execute Variations
 - The Provider must provide any Variation instructed by GMB Water.
- 9.4 Variations in Writing
 - All Variations must be documented in writing and must be signed by a representative of both GMB Water and the Provider.
- 9.5 Adjustment of Price
 - For the purpose of any adjustment to the price for a Variation:
 - 9.5.1 if practicable, the value of a Variation must be agreed by the Provider and GMB Water before the Provider commences to execute the Variation; or
 - 9.5.2 if the value of the Variation is not agreed by the Provider and GMB Water, the value must be determined by GMB Water by application of rates accepted by GMB Water; and
 - 9.5.3 if GMB Water gives the Provider a written instruction that a matter is so urgent that the Provider should proceed

with the Variation before it is valued, the Provider may proceed with the Variation and GMB Water and the Provider will then jointly negotiate a reasonable value for the Variation, provided a Variation is valued as soon as practicable, and the Provider promptly and diligently supplies to GMB Water all relevant information to the valuation.

10. Extension of Time

- 10.1 Extension
 - 10.1.1 If the provision of the Product is delayed by a cause beyond the control of the Provider (other than for a Force Majeure Event), the Provider may, subject to clause 0, request a fair and reasonable extension of the time for the provision of the Product.
 - 10.1.2 Any request by the Provider for an extension must be in writing and made within seven days after the commencement of the delay and must state with particularity the cause of the delay and include an estimate (if practicable) of the extent or likely extent of the delay in providing the Product.
- 10.2 Conditions precedent

The Provider is entitled to a time extension only if the Provider took reasonable steps to minimise the delay.
- 10.3 GMB Water's determination

GMB Water must determine what (if any) fair and reasonable extension of time should be allowed to the Provider in respect of each request and must give written notice of every such determination to the Provider, and the date and time for the provision of the Product must be extended accordingly.
- 10.4 Documentation

All extensions of time must be in writing and must be signed by a representative of both GMB Water and the Provider.
- 10.5 No costs or damages

The Provider accepts the risk of all costs, losses and expenses incurred because of a delay in the provision of the Product. The Provider's sole remedy for such a delay is an extension of time approved by GMB Water under this clause. No costs or damages are payable by GMB Water in respect of such a delay.

11. Insurance

- 11.1 Where the Product is the supply of goods or completion of works the Provider must maintain at all times public and product liability insurance for the amount of \$20,000,000 in respect of any one incident arising during or in consequence of the provision of the Product.
- 11.2 Where the Product is the provision of professional services that involves designing, certifying or managing finances or projects or the provision of advice the Provider must maintain professional indemnity insurance for the amount of \$2,000,000 during the provision of the Product and for at least two years following receipt of the Product.

- 11.3 The Provider must provide copies of certificates of currency in respect of the Provider's insurances to GMB Water upon request.

12. Work Health & Safety and Return to Work SA

If applicable:

- 12.1 the Provider must comply with the *Work Health and Safety Act 2012*, any regulations made under it and any associated policies adopted by GMB Water, and must ensure that its employees and contractors comply with all regulations, notices and codes of practice having application to this agreement;
- 12.2 the Provider must comply with the *Return to Work Act 2014* (SA) and any regulations made under it;
- 12.3 the Provider must comply with all reasonable directions and procedures relating to security and work health and safety as required by GMB Water; and
- 12.4 the Provider must immediately notify GMB Water of any incident or accident arising from the performance of this agreement, including any incident or accident involving the public.

13. Indemnities

The Provider must indemnify GMB Water against all actions, proceedings, claims, demands, charges, penalties, expenses and all other liabilities arising from or in relation to the performance or non-performance of any of the Provider's obligations under this agreement. This indemnity is reduced by the extent to which the GMB Water contributes to the event giving rise to the claim for the indemnity.

14. Intellectual Property

- 14.1 The Provider warrants that that the Deliverables will not infringe the Intellectual Property rights of any person. The Provider fully indemnifies GMB Water against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of a claim by a third party against GMB Water alleging the Deliverables infringe any such Intellectual Property rights.
- 14.2 Title to all Intellectual Property rights in the Deliverables will vest in GMB Water upon their creation.
- 14.3 The Provider hereby grants GMB Water a perpetual, royalty-free, non-exclusive licence of any Background Intellectual Property owned by the Provider and used by the Provider in the creation of the Deliverables, with a right to grant sub-licences, to the extent necessary for GMB Water to use or reproduce in any way the Deliverables.
- 14.4 The Provider must do all such things and execute all such forms and documents as are necessary to permit or facilitate the performance of the transactions contemplated by this clause 14.

15. Force Majeure

- 15.1 If a Force Majeure Event causes delay or failure by a party to perform its obligations under this agreement:
 - 15.1.1 neither party is liable for such delay or failure; and
 - 15.1.2 all obligations of a party under this agreement are suspended until the



- Force Majeure Event ceases to apply.
- 15.2 A party which is, by reason of a Force Majeure Event, unable to perform any obligation or condition required by this agreement must:
- 15.2.1 notify the other party as soon as possible giving:
- 15.2.1.1 reasonably full particulars of the Force Majeure Event;
- 15.2.1.2 the date of commencement of the Force Majeure Event and an estimate of the time required to enable it to resume full performance of its obligations; and
- 15.2.1.3 where possible, the means proposed to be adopted to remedy or abate the Force Majeure Event;
- 15.2.2 use all reasonable diligence and employ all reasonable means to remedy or abate the Force Majeure Event as soon as possible;
- 15.2.3 resume performance as soon as possible after termination of the Force Majeure Event or after the Force Majeure Event abates to an extent which permits resumption of performance;
- 15.2.4 notify the other party when the Force Majeure Event terminates or abates to an extent which permits resumption of performance; and
- 15.2.5 notify the other party when resumption of performance occurs.
- 15.3 If a delay or failure under this clause exceeds sixty (60) days, GMB Water may immediately terminate this agreement by written notice to the Provider (**Termination Date**).
- 15.4 In the event of GMB Water terminating this agreement pursuant to clause 0:
- 15.4.1 GMB Water remains liable to pay the Provider any unpaid invoice already issued to GMB Water; and
- 15.4.2 Within twenty (20) Business Days of the Termination Date the Provider must give GMB Water a final progress claim for money owing up to and including the Termination Date and not the subject of a prior progress claim.
- 15.5 GMB Water will not otherwise be liable to the Provider for any cost, loss, expense, or damage incurred by the Provider in connection with the exercise by GMB Water of its rights under clause 0 including, without limitation, any claim relating to loss of anticipated profits or unperformed works (if relevant).

16. Termination

- 16.1 GMB Water may immediately terminate this agreement by giving notice to the Provider if the Provider:
- 16.1.1 becomes an externally administered body corporate or an insolvent under administration;

- 16.1.2 ceases to carry on business or becomes otherwise unable to perform its obligations under this agreement; or
- 16.1.3 breaches a material provision of this agreement and fails to remedy the breach within a specified reasonable time after receiving notice requiring it to do so.
- 16.2 Termination of this agreement under this clause does not affect any accrued rights or remedies of either party.

17. Confidential Information and Freedom of information

- 17.1 Each party agrees that it will not use any Confidential Information of the other party or allow any Confidential Information of the other party to be used for any purpose, except for the purposes of and in the manner contemplated by this agreement, and agrees that it will:
- 17.1.1 keep confidential;
- 17.1.2 take reasonable steps to ensure that the party's officers and employees do not disclose to a third party;
- 17.1.3 maintain proper and secure custody of; and
- 17.1.4 not use or reproduce in any form, any Confidential Information belonging to the other party. Any departure from a party's obligations pursuant to this clause may only be with the written consent of the other party or as required by law or the terms of this agreement.
- 17.2 The Provider consents to any disclosures made as a result of GMB Water complying with its obligations under the *Freedom of Information Act 1991* (SA) (**FOI Act**), subject to any legally required consultation.
- 17.3 For the purposes of the FOI Act, the terms specified confidential in the Purchase Order are confidential.

18. Audit

The Provider must keep GMB Water fully and regularly informed as to all matters relating to the Product and must provide to GMB Water any information reasonably requested by GMB Water for the purposes of monitoring the performance of the Provider's obligations under this agreement.

19. Disputes

- 19.1 A party must not commence arbitration or court proceedings (except for urgent equitable or injunctive relief) in respect of a dispute under this Agreement unless it first attempts to resolve the dispute by negotiation and mediation under this clause.
- 19.2 A party claiming that a dispute has arisen under this Agreement must give written notice to the other party specifying the nature and details of the dispute.
- 19.3 On receipt of that notice by the other party, the parties must negotiate in good faith to resolve the dispute.



- 19.4 If the parties are unable to resolve the dispute within ten (10) Business Days, they must promptly refer the dispute:
- 19.4.1 in the case of GMB Water to the Chief Executive; and
- 19.4.2 in the case of the Provider to a representative of the Provider.
- 19.5 Those persons must meet to resolve the dispute and must be authorised to resolve the dispute.
- 19.6 Where a dispute or difference remains, it may be referred to an arbitrator agreed by the parties or in the absence of agreement appointed by the Chairperson for the time being of the South Australian Chapter of the Institute of Arbitrators and Mediators Australia.

20. Relationship

This agreement does not create a relationship of employment, agency, or partnership between the parties.

21. Miscellaneous

- 21.1 Special conditions
- If there is an inconsistency between a special condition set out in the Purchase Order and the rest of this agreement, the special condition governs to the extent of the inconsistency.
- 21.2 Alteration
- This agreement may be altered only in writing signed by each party.
- 21.3 Assignment (**Goods Only**)
- 21.3.1 The Provider must not assign this agreement or any right under it without the prior written consent of GMB Water.
- 21.3.2 In any application for such consent, the Provider must provide all information required by GMB Water, including evidence that the proposed assignee is capable of providing the Product.
- 21.4 Assignment (**Works and Services Only**)
- The Provider must not assign this agreement or any right or obligation under it without the prior written consent of GMB Water, which may be granted or withheld in GMB Water's absolute discretion.
- 21.5 Waiver
- A waiver of a provision of or right under this agreement must be in writing signed by the party giving the waiver and is effective only to the extent set out in the written waiver.
- 21.6 Exercise of power
- 21.6.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this agreement is not a waiver of that power or right.
- 21.6.2 An exercise of a power or right under this agreement does not preclude a further exercise of it or the exercise of another right or power.
- 21.7 Survival
- Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of this agreement, remains in force

after the expiration or termination of this agreement.

21.8 Governing law

21.8.1 This agreement is governed by the law in South Australia.

21.8.2 The parties irrevocably submit to the exclusive jurisdiction of the courts in South Australia.

21.9 Ombudsman

The Provider acknowledges that the *Ombudsman Act 1972 (SA)* empowers the Ombudsman to investigate matters in the public interest. The Provider must ensure compliance with all obligations arising under that or any other legislation, as regards this agreement.

21.10 ICAC

The Provider acknowledges and agrees that by entering into this agreement with GMB Water the Provider will be considered to be a public officer for the purposes of the *Independent Commissioner Against Corruption Act 2012 (SA) (ICAC ACT)* and is obliged to comply with the ICAC Act and the Directions and Guidelines issued pursuant to the ICAC Act, as regards this agreement.

21.11 GST

The total amounts payable under the Purchase Order are exclusive of GST, if applicable.

Notwithstanding any other provision of this agreement, GMB Water need not make any payment for a taxable supply made by the Provider under this agreement until the Provider has given GMB Water a tax invoice in respect of that taxable supply.

21.12 Notices

21.12.1 A notice, demand, consent, approval, or communication under this agreement (**Notice**) must be:

- a) in writing, in English and signed by a person authorised by the sender; and
- b) hand delivered or sent by pre-paid post or electronic communication to the recipient's address specified in the Purchase Order, as varied by any Notice given by the recipient to the sender.

21.12.2 A Notice is deemed to be received:

- a) if sent by prepaid post, two (2) Business Days after posting (or seven (7) Business Days after posting if posting to or from a place outside Australia); or
- b) if sent by electronic communication, at the time deemed to be the time of receipt under the *Electronic Transactions Act 2000 (SA)*.