

Purchase Order Terms and Conditions

1. Order process

Urban Utilities will issue a Purchase Order which is an offer to the Supplier. The Supplier can accept this Purchase Order by notifying Urban Utilities, or by supplying the Goods or Services to Urban Utilities.

2. Scope

- (a) The Supplier will supply, and Urban Utilities will acquire and pay for, the Goods and/or Services in accordance with this Purchase Order.
- (b) The Supplier's appointment is non-exclusive. Urban Utilities may acquire similar Goods or Services from other persons or perform similar Services itself.

3. Supply of Goods

- (a) The Supplier will:
 - (i) pack the Goods so as to ensure their secure and safe delivery and will ensure that the packaging clearly displays the relevant Purchase Order number;
 - (ii) deliver the Goods to Urban Utilities at the Delivery Location by the Delivery Date and any documentation (including manuals, installation instructions and reference material) required to enable the Goods to be used by Urban Utilities; and
 - (iii) ensure that any delivery occurs within the times (if any) listed in the Purchase Order.
- (b) The Supplier must immediately notify Urban Utilities if it will be unable to deliver the Goods by the Delivery Date and advise Urban Utilities the reasons why the Supplier will not be able to deliver the Goods by the Delivery Date and the Supplier's proposed new Delivery Date for the Goods for Urban Utilities' approval. Any additional costs incurred by Urban Utilities taking delivery on a date other than the original Delivery Date set out in the Purchase Order, will be at the Supplier's expense, unless the change of Delivery Date is communicated by the Supplier and acknowledged by Urban Utilities.
- (c) Risk of loss or damage to the Goods remains with the Supplier while the Goods are in the possession of the Supplier. Title in the Goods passes to Urban Utilities upon delivery of the Goods.
- (d) Where Goods are delivered on pallets, the pallets must be standard, two-way entry wooden pallets (1165 x 1165 millimetres) in accordance with Australian Standard AS4068-1993. Goods delivered on non-standard pallets not in accordance with Australian Standard AS4068-1993 will not be accepted unless prior written approval is obtained from Urban Utilities. All Chep branded pallets will, where possible, be exchanged on a one-for-one basis at the time of delivery. The combined weight of the pallet and contents must be clearly labelled and must not exceed 2,000kgs. Goods must not overhang the pallet. All Goods delivered on pallets must be stacked in an interlocking or other appropriate manner to ensure stability (including stretch-wrapping and polypropylene strapping, where necessary). Labelling must be outwards facing to facilitate identification and checking of pallet contents.
- (e) If the packaging of Goods, an Invoice or a delivery note does not clearly display an official Purchase Order number, Urban Utilities may refuse delivery, refuse payment, or return the Goods to the Supplier.

4. Supply of Services

- (a) The Supplier will supply the Services punctually and with due care, skill and diligence, and otherwise in the manner Urban Utilities reasonably requires.
- (b) The Supplier warrants that it and its personnel have the necessary skills, qualifications, licences and expertise to perform the Services in accordance with the Purchase Order.
- (c) Unless otherwise agreed, the Supplier will provide all equipment, personnel, travel, accommodation and other resources the Supplier requires to perform the Services.
- (d) Urban Utilities may, in its reasonable discretion, require the Supplier to remove personnel from performing this Purchase Order. The Supplier will promptly, at no additional cost to Urban Utilities, arrange for the removal of those personnel and their replacement with personnel reasonably acceptable to Urban Utilities.

5. Compliance

The Supplier will:

- (a) comply with:
 - (i) applicable laws and standards, including safety data sheet requirements under WHS Legislation (where applicable); and
 - (ii) all Urban Utilities policies including the Supplier Code of Conduct, Health and Safety Policy, as well as the Drug and Alcohol Management Procedure, as amended from time to time, in relation to any activities performed in connection with this Purchase Order.
- (b) cooperate with Urban Utilities and comply with any reasonable direction given by Urban Utilities in relation to the supply of Goods or Services or any other matter that is relevant to the Purchase Order; and
- (c) provide Safety Data Sheets with the supply of any hazardous substances.

6. Price, payment and GST

- (a) Unless otherwise agreed, the Price includes all delivery costs, other expenses, Government taxes, duties and charges, except GST. The Supplier must invoice Urban Utilities within seven (7) days after delivery of the Goods or completion of the Services. All invoices will:
- (i) be made out to Urban Utilities;
 - (ii) be a proper tax invoice;
 - (iii) be sent via email to accounts.payable@urbanutilities.com.au ;
 - (iv) include the Purchase Order number which corresponds with the invoice;
 - (v) identify the Goods and Services for which payment is being invoiced;
 - (vi) specify the amount due for payment in accordance with the Purchase Order; and
 - (vii) otherwise comply with Urban Utilities' invoice and payment guidelines, available at <https://urbanutilities.com.au/about-us/information-for-suppliers/invoice-and-payment-guidelines> .
- (b) If GST is payable on the supply of the Goods or Services under a Purchase Order, Urban Utilities will pay the Supplier an amount equal to the amount of GST payable on that supply. Subject to the receipt of a valid GST tax invoice, the GST is payable at the same time the Price is payable.
- (c) Urban Utilities will pay invoices within 30 days after receipt of a correctly rendered invoice. Urban Utilities is not liable to pay for Goods or Services which Urban Utilities reasonably determines as not being supplied in accordance with this Purchase Order, including any rejected Goods. Where Urban Utilities queries or disputes an amount included in an invoice, Urban Utilities does not have to pay the invoice until the query or dispute is resolved.

7. Quality

- (a) Where the Goods or Services are Defective, Urban Utilities may, without prejudice to any other rights and remedies, at its option:
- (i) reject the Goods or Services;
 - (ii) require the Supplier to re-supply the Goods or Services; or
 - (iii) accept the Goods or Services on terms acceptable to Urban Utilities (including a reasonable reduction to the Price).
- (b) The Supplier will promptly collect any rejected Goods from Urban Utilities and refund all amounts paid by Urban Utilities in respect of rejected Goods or Services.

8. Urban Utilities Property

Urban Utilities Property remains the property of Urban Utilities. Risk of loss or damage to Urban Utilities Property passes to the Supplier when the Supplier takes possession of the Urban Utilities Property. The Supplier will not use or modify Urban Utilities Property except in the proper performance of this Purchase Order. The Supplier will take reasonable care of Urban Utilities Property and hand over to Urban Utilities any Urban Utilities Property when it is no longer required by the Supplier for the purposes of this Purchase Order, or in any case within 7 days of a request by Urban Utilities.

9. Confidentiality

- (a) The Supplier will treat as confidential all information provided by or obtained from Urban Utilities in relation to this Purchase Order which is not in the public domain, and will not disclose such information to any person except:
- (i) to its personnel and advisors on a need to know basis;
 - (ii) with Urban Utilities' consent; or
 - (iii) if required by law.
- (b) Urban Utilities may disclose any information provided by or obtained from the Supplier:
- (i) to any person for the purpose of the operations of Urban Utilities;
 - (ii) to any Minister and their personal and departmental advisers;
 - (iii) to any participating local government for Urban Utilities; and
 - (iv) where disclosure is required to be made in accordance with law, established governmental policies, procedures or for public accountability purposes.

10. Privacy

The Supplier acknowledges that it is a contracted service provider within the meaning of section 34 of the Information Privacy Act and agrees, in respect of all Personal Information collected, used, disclosed or otherwise handled by or on behalf of the Supplier or under or in connection with this Purchase Order, to:

- (a) comply, and ensure that all personnel also comply, with:

- (i) the Information Privacy Act, as if the Supplier or relevant personnel was Urban Utilities; and
 - (ii) all other Privacy Laws, in respect of that Personal Information; and
- (b) comply with any reasonable request, direction or inquiry made by the Urban Utilities in relation to Personal Information or the Privacy Laws.

11. Audit

The Supplier will, upon 7 days' notice, permit and provide persons nominated by Urban Utilities, supervised access to the Supplier's premises and records to verify compliance by the Supplier with its obligations under this Purchase Order. The Supplier will do all things reasonably necessary to facilitate a prompt and efficient audit.

12. Warranty

- (a) The Supplier warrants that:
- (i) all representations, warranties, declarations, statements, information and documents ("information") made or provided by the Supplier in connection with the Purchase Order are complete, accurate, up-to-date and not misleading in any way. The Supplier must immediately inform Urban Utilities if any information is or becomes incomplete, inaccurate, out-of-date or misleading in any way;
 - (ii) during the Warranty Period the Goods or Services are not Defective;
 - (iii) the Goods are new and have not been previously used, unless otherwise specified in this Purchase Order;
 - (iv) at the time title in the Goods passes to Urban Utilities, the Goods are free from all liens, charges and encumbrances;
 - (v) the Services, any deliverables provided as part of performing the Services, and use of the Goods by Urban Utilities will not infringe another person's Intellectual Property Rights;
 - (vi) the Services will be of a standard reasonably expected of an appropriately qualified contractor and will be fit for Urban Utilities' purpose as notified to the Supplier;
 - (vii) it has the necessary skills and expertise to properly perform the Purchase Order, and all its Personnel performing duties in relation to this Purchase Order are competent and have the necessary skills and expertise to properly perform the duties allocated to them concerning this Purchase Order;
 - (viii) the Goods and Services comply with applicable laws and Australian Standards;
 - (ix) it has obtained all required authorisations and licences (as applicable) to be able to provide the warranties contained in this clause 12;
 - (x) neither it nor its Personnel have been convicted of an offence under the Criminal Code where one of the elements of the offence is that the person is a participant in a criminal organisation within the meaning of section 60A(3) of the Criminal Code; or are subject to an order under, or have been convicted of an offence under the Criminal Organisation Act 2009 (Qld); and
 - (xi) neither it, nor its Personnel, have engaged in any collusive, anti-competitive or similar conduct in connection with the Purchase Order or any actual or potential contract with any entity for goods and services similar to the Goods and Services.
- (b) Without limiting clause 7, if the Goods or Services are Defective during the Warranty Period, Urban Utilities may advise the Supplier and the Supplier will arrange for the repair or replacement (as necessary) of the Goods, or to rectify the Defective aspects of the Services, at no cost to Urban Utilities.

13. WHS Legislation

- (a) As soon as practicable, the Supplier will report to Urban Utilities:
- (i) any relevant breach of the WHS Legislation; or
 - (ii) any notifiable incident under the WHS Legislation, that occurs in relation to the supply of Goods or Services.
- (b) The Supplier is responsible for notifying the regulator about any notifiable incidents in accordance with the WHS Legislation. The Supplier will reasonably consult, cooperate and coordinate activities with Urban Utilities in relation to any matters which may have relevance to this Purchase Order under the WHS Legislation, including where there are mutual obligations. Unless Urban Utilities notifies the Supplier otherwise, when carrying out the Services, the Supplier is a PCBU responsible for management or control of the workplace.

14. Intellectual Property

- (a) The operation of this Purchase Order will not affect ownership of any Intellectual Property Rights held by either party prior to the commencement of this Purchase Order.
- (b) All Intellectual Property Rights which are created in the performance of this Purchase Order will vest solely in Urban Utilities and the Supplier warrants that there is no impediment (including but not limited to the infringement of third-party Intellectual Property Rights) to Urban Utilities' ownership of such rights.

- (c) If any Intellectual Property Rights belonging to the Supplier existed prior to the commencement of the Purchase Order and are incorporated into the Services, the Supplier will grant to Urban Utilities a royalty-free, perpetual, irrevocable, and worldwide licence to use such intellectual property, which may be assigned or sub-licensed, to the extent necessary for Urban Utilities to receive the full benefit of the Services.

15. Indemnity

The Supplier indemnifies and will defend Urban Utilities against all claims, liabilities, losses, damages, costs and expenses made or awarded against, or suffered or incurred by, Urban Utilities arising from or incurred in connection with a breach of this Purchase Order, negligence, any act or omission which is unlawful or contravenes any legislative requirement, or infringement of Intellectual Property Rights or moral rights, relevant to this Purchase Order, by the Supplier. However, any indemnity provided under this clause will not apply to the extent of any negligent or unlawful act or omission by Urban Utilities. In conducting a claim, suit or action in respect of which the Supplier indemnifies Urban Utilities, the Supplier will, at the Supplier's expense, comply with the reasonable directions of Urban Utilities.

16. Insurance

The Supplier must maintain, at the Supplier's cost, workers' compensation insurance (as required by law), public liability and products insurance for the sum of not less than \$10 million per claim, or such other amounts and insurances as specified by Urban Utilities in this Purchase Order.

17. Changes and cancellation

If the Supplier becomes aware of a matter which is likely to affect the ability of the Supplier to perform this Purchase Order, it will immediately notify Urban Utilities of it. Urban Utilities may cancel any Purchase Order for Goods by providing written notice to the Supplier at any time prior to the delivery of the Goods. Urban Utilities may change, suspend or cancel a Purchase Order for Services by providing written notice to the Supplier. Where Urban Utilities changes the Services, the Price may be subject to a reasonable adjustment where justified. Where Urban Utilities suspends the Services, payment for Services not yet performed will be suspended until Urban Utilities notifies the Supplier to resume the Services. Where Urban Utilities cancels the Services under this clause 17 after the Supplier has commenced performing them, Urban Utilities will pay the Supplier a reasonable price for the Services performed and reimbursement for reasonable expenses incurred as a result of cancellation (which collectively, together with any amounts already paid, will not exceed the Price).

18. Ethical Supplier Threshold and Modern Slavery

- (a) The Supplier will comply with the Ethical Supplier Threshold. If, at any time during the Term, Urban Utilities reasonably suspects that the Supplier is in breach of this clause 18, Urban Utilities may issue a written notice requesting the Supplier to show cause as to why the Supplier is not in breach of clause 18. If the Supplier has not, within 14 days of receipt of that notice demonstrated in writing to the reasonable satisfaction of Urban Utilities that the Supplier is in compliance with the Ethical Supplier Threshold, Urban Utilities may terminate this Purchase Order immediately by written notice to the Supplier.
- (b) Urban Utilities is subject to the Modern Slavery Law. Accordingly, the Supplier warrants and agrees that:
- (i) It has not, and will not, engage in any Modern Slavery practices;
 - (ii) It will comply with all laws relating to Modern Slavery; and
 - (iii) It has taken reasonable steps to investigate its labour and business practices, and those of its subcontractors and direct suppliers, to ensure there is no Modern Slavery used anywhere in its operations or supply chain or in the operations or supply chain of any of its subcontractors or direct suppliers.
- (c) At Urban Utilities' request, the Supplier must:
- (i) cooperate with, and provide all reasonable information and assistance to Urban Utilities in order for it to comply with its reporting obligations under the Modern Slavery Law; and
 - (ii) notify Urban Utilities immediately of any suspected or actual Modern Slavery offence committed in its operations or supply chain.
- (d) In the event of an actual or suspected Modern Slavery offence and without limiting any other available right or remedy, Urban Utilities may immediately suspend or terminate this Purchase Order.

19. Complaints

If at any time the Supplier considers that they have been unreasonably or unfairly treated and the Supplier has not been able to resolve the issue with the Urban Utilities' representative, the Supplier can make a complaint regarding a procurement activity, in accordance with the procedure set out on the Urban Utilities website <https://urbanutilities.com.au/about-us/information-for-suppliers/make-a-complaint>.

20. Disputes

In the event of a dispute arising under this Purchase Order, senior representatives of each party must meet in an attempt to resolve the matter. If a resolution cannot be reached, the parties agree to refrain from commencing court proceedings against each other (except where necessary for urgent interlocutory relief) without first engaging in mediation. All correspondence from the Supplier in relation to a dispute must be directed to the Urban Utilities purchasing officer c/o quugroupprocurement@urbanutilities.com.au.

21. General

- (a) The Supplier will not assign its rights under this Purchase Order without the prior written consent of Urban Utilities.
- (b) The Supplier warrants that to the best of its knowledge, information and belief, no conflict of interest exists or is likely to arise in the performance of this Purchase Order, and it will notify Urban Utilities if any conflict of interest arises.
- (c) Urban Utilities may set off money due to Urban Utilities from the Supplier, or damages, costs or expenses recoverable by Urban Utilities from the Supplier, against money due to the Supplier under this Purchase Order or another contract between the parties.
- (d) If any part of this Purchase Order is or becomes illegal, void or unenforceable, this does not invalidate the rest of this Purchase Order.
- (e) The parties agree that clauses 7 to 14, 16, and 18 to 20, will survive the cancellation or completion of this Purchase Order, but are not intended to form an exhaustive list of the parties' surviving rights and obligations.
- (f) This Purchase Order constitutes the entire agreement between Urban Utilities and the Supplier in relation to its subject matter. Any terms printed on the Supplier's invoice or other Supplier documentation do not apply. Any references to a Supplier quote are not to be construed as acceptance of terms and conditions which are not contained in this Purchase Order and is used only for the purposes of further defining the scope of Goods and/or Services being obtained under this Purchase Order.
- (g) This Purchase Order is governed by and construed in accordance with Queensland law and the parties submit to the jurisdiction of the Courts of Queensland.
- (h) This Purchase Order may only be varied as agreed in writing between the parties.
- (i) Failure or omission by a party to require strict or timely compliance with any provision of this Purchase Order will not affect any right of that party to remedies it may have in respect of any breach of a provision.
- (j) The Supplier may not subcontract its obligations without Urban Utilities' prior written consent.

22. Interpretation

In this Purchase Order:

- (a) clause headings are inserted for convenience only and do not affect interpretation;
- (b) to the extent of any inconsistency between these clauses and the details on the Purchase Order, these clauses prevail;
- (c) "includes" in any form is not a word of limitation;
- (d) a reference to the agreement means the agreement formed pursuant to this Purchase Order; and
- (e) the Price is in Australian currency and an obligation to pay money is an obligation to pay in Australian dollars; and the following terms are defined:

Australian Consumer Law means schedule 2 of the *Competition and Consumer Law Act 2010* (Cth).

Defect means that the Goods or Services:

- (a) do not conform to the Specifications;
- (b) have an error, defect or malfunction;
- (c) are not fit for the purpose made known by Urban Utilities or are not of acceptable quality (as defined in section 54 of the Australian Consumer Law);
- (d) do not conform with the description or a sample or test item provided by the Supplier; or
- (e) otherwise do not comply with the requirements of this Purchase Order.

Defective means that the Goods or Services have a Defect.

Delivery Date means the delivery date specified in the Purchase Order or, if no date is specified, a reasonable time after the date of this Purchase Order.

Delivery Location means the location for delivery of the Goods or performance of the Services specified in the Purchase Order or as otherwise notified by Urban Utilities.

Drug and Alcohol Management Procedure means Urban Utilities drug and alcohol management procedure PRO499 as amended from time to time.

Ethical Supplier Threshold means the Ethical Supplier Threshold described in Section 3.2, Clause 19 of the Queensland Procurement Policy (as amended from time to time).

Goods means the items of goods specified in the Purchase Order.

GST has the meaning given to that term under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Health and Safety Policy means all Urban Utilities' policies, procedures and standards related to health and safety, available at <https://urbanutilities.com.au/about-us/information-for-suppliers/health-and-safety-at-urban-utilities> and as otherwise notified to the Supplier by Urban Utilities.

Information Privacy Act means the *Information Privacy Act 2009* (Qld).

Intellectual Property Rights includes all rights in registered or unregistered intellectual property, whether in relation to copyright, trade mark, design, patents or other proprietary rights, existing in Australia or elsewhere, but excludes moral rights;

Modern Slavery has the meaning given to it in the Modern Slavery Law.

Modern Slavery Law means the *Modern Slavery Act 2018* (Cth).

PCBU means a 'Person Conducting a Business or Undertaking' as defined in section 5 of the *Work Health and Safety Act 2011* (Qld).

Personal Information has the meaning given to it in the Information Privacy Act.

Purchase Order means a purchase order issued to the Supplier by Urban Utilities and includes a cover sheet as well as these terms.

Price means the price specified in the Purchase Order, or such other price as the parties agree in writing.

Privacy Laws means the Information Privacy Act, the *Privacy Act 1988* (Cth) and any other applicable law, statute, regulation, ordinance, code, standard or requirement of any government, governmental or semi-governmental body which relates to privacy or the use or protection of information about individuals.

Safety Data Sheet means a safety data sheet as defined in the *Health and Safety Regulation 2011* (Qld).

Services means the service specified in the Purchase Order.

Specifications means:

- (a) specifications in, or referred to in, the Purchase Order;
- (b) the documentation provided under clause 3; and
- (c) for Goods, includes the current applicable specifications published generally by the manufacturer of the Goods.

To the extent of any inconsistency between these specifications, the specifications listed earlier in this definition prevail over those listed later.

Supplier means the person identified in the Purchase Order as the supplier.

Supplier Code of Conduct means Urban Utilities' Supplier Code of Conduct available at: <https://urbanutilities.com.au/about-us/information-for-suppliers/supplier-code-of-conduct> .

Urban Utilities Property means any property or information of Urban Utilities in the custody or control of the Supplier or its personnel.

Warranty Period means the period commencing on delivery of the Goods to Urban Utilities or completion of the Services (if both Goods and Services are supplied under the Purchase Order, whichever date is later), and continuing for the period of:

- (a) 12 months;
- (b) such longer period specified in the Purchase Order; or
- (c) for Goods supplied under this Purchase Order with a manufacturer's warranty which would otherwise exceed the Warranty Period, the duration of the manufacturer's warranty.

WHS Legislation means the *Work Health and Safety Act 2011* (Qld) and the *Work Health and Safety Regulation 2011* (Qld), any relevant codes of practice, guidelines and advisory standards.