

1. **Definitions and Interpretation**
  - 1.1 In the Purchase Order and these General Conditions for Supply of Goods, unless the context otherwise requires:
    - 'Claim' includes any claim, demand, proceeding, suit, litigation, action or cause of action in contract, tort (including in negligence), in equity, under statute or otherwise.
    - 'Goods' means the items specified in the Purchase Order.
    - 'GST Act' means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended).
    - 'GST' means goods and services tax under the GST Act.
    - 'Price' means the price per unit of Goods inclusive of packaging, delivery, freight, insurance and other related or incidental costs or charges.
    - 'Purchase Order' means Frankpile's written order for the supply of Goods.
    - 'Purchase Order Conditions' means the terms and conditions in the Purchase Order and these General Conditions for Supply of Goods.
    - 'Supplier' means the supplier named in the Purchase Order.
    - 'Frankpile' means Frankpile Australia Pty Ltd ABN 37 000 842 240
  - 1.2 In Purchase Orders and the Purchase Order Conditions, unless the context otherwise requires:
    - (a) one gender includes the others;
    - (b) the singular includes the plural and vice versa;
    - (c) a person includes a firm, body corporate, partnership, joint venture, unincorporated body or association or statutory or government body or agency;
    - (d) "includes" and similar expressions are not words of limitation;
    - (e) headings are for convenience only and do not affect interpretation.
  - 1.3 No provision in the Purchase Order or the Purchase Order Conditions will be construed adversely to a party on the ground, irrespective of whether or not it is the only ground, that the party was responsible for the preparation of the provision.
2. **Application of Purchase Order Conditions**

If there is any inconsistency between a term or condition in the Purchase Order Conditions and any term or condition of the Supplier that has been notified by the Supplier to Frankpile prior to the issue of the Purchase Order, the provision in the Purchase Order Conditions shall prevail to the extent of the inconsistency.
3. **GST**
  - 3.1 Unless stated otherwise in the Purchase Order the Price is exclusive of GST.
  - 3.2 In relation to any GST that is payable in respect of a taxable supply (as defined in the GST Act) pursuant to the Purchase Order, Frankpile must pay to the Supplier the applicable GST subject to the Supplier providing a tax invoice (as defined in the GST Act) to Frankpile.
4. **Documents**
  - 4.1 The Supplier must include the Purchase Order number and delivery address on all invoices, packing slips, correspondence and other documents relating to the Purchase Order.
  - 4.2 Every delivery of Goods pursuant to the Purchase Order must be accompanied by a completed packing slip containing an accurate description of the Goods delivered including the quantity and any applicable materials safety data sheet and safety and environmental impact documentation.
5. **Fabrication of Goods**
  - 5.1 This clause shall apply if the Purchase Order specifies that the Supplier is responsible for fabricating the Goods or any part of them.
  - 5.2 The Supplier shall not commence fabrication of the Goods until:
    - (a) shop drawings for the Goods to be fabricated have been submitted to Frankpile and Frankpile has consented to their use; and
    - (b) an inspection and test plan for the fabrication work that complies with the requirements specified in the Purchase Order has been provided to Frankpile.
  - 5.3 The Supplier agrees that:
    - (a) the requirement to obtain Frankpile's consent to the use of shop drawings is solely to allow Frankpile an opportunity to consider the drawings and is not to be taken to impose on Frankpile any obligation in respect of the drawings;
    - (b) neither Frankpile's consent to the use of the shop drawings nor any comment or failure to comment upon, review or non-review of or rejection or non-rejection of the shop drawings will relieve the Supplier from any of its obligations in respect of the drawings or fabrication of the Goods.
  - 5.4 The Supplier shall grant to Frankpile, or procure the grant to Frankpile, of an irrevocable, royalty free, assignable licence to use the shop drawings for any purpose associated with the Goods.
  - 5.5 The Supplier shall effect professional indemnity insurance which must be:
    - (a) for an amount not less than the amount specified in the Purchase Order for any one occurrence;
    - (b) with an insurer and on terms and conditions approved by Frankpile; and
    - (c) effected before any fabrication work is commenced and maintained at least for the period of 7 years after the Goods have been supplied to Frankpile.
6. **Delivery**
  - 6.1 The Supplier must deliver the Goods undamaged to the delivery address specified in the Purchase Order on or before the delivery date specified in the Purchase Order and in accordance with any instructions or conditions specified in the Purchase Order.
  - 6.2 The Supplier must give Frankpile not less than 24 hours prior notice of the expected date and time of delivery of the Goods if special equipment is required to unload the Goods.
  - 6.3 If the Goods are not supplied strictly in accordance with the terms of the Purchase Order and the Purchase Order Conditions Frankpile may, without prejudice to any other remedy that may be available to it:
    - (a) cancel the Purchase Order wholly or in part;
    - (b) return, at the risk and expense of the Supplier, any Goods already delivered which Frankpile in its absolute discretion determines cannot be effectively or commercially used by Frankpile;
    - (c) recover from the Supplier any money already paid by Frankpile in respect of Goods returned to the Supplier;
    - (d) recover from the Supplier any additional expenditure reasonably incurred by Frankpile in obtaining replacement products or repairing damaged Goods;
    - (e) recover from the Supplier any loss, damage or expense that Frankpile incurs as a result of the Supplier failing to comply with the terms of the Purchase Order.
  - 6.4 The Supplier will not be entitled to make and waives its right to any Claim against Frankpile either at law or in equity in relation to the Purchase Order if Frankpile exercises any of the rights in clause 6.3.
  - 6.5 Frankpile may, without incurring any additional liability to the Supplier, re-schedule the delivery date by notification to the Supplier prior to the delivery date specified in the Purchase Order.
  - 6.6 If the Supplier delivers the Goods to Frankpile, the Supplier's driver must report to Frankpile's site or yard office and await instructions before unloading the Goods. If the driver is to be involved in unloading the Goods, he must, before participating in the unloading operation, be inducted to any applicable safe work procedures and provide to Frankpile's representative evidence of relevant certificates of competency covering the tasks to be performed. Appropriate personal protective equipment including hardhat, high visibility vest and safety boots must be worn at all times. If the Supplier's driver is not to be involved in unloading the Goods he must remain at a safe location near the delivery truck and comply with all directions of Frankpile's representatives involved in unloading the Goods.
7. **Guarantees**

The Supplier guarantees that:

  - (a) the Supplier has the right to sell the Goods;
  - (b) Frankpile will enjoy undisturbed possession of the Goods;
  - (c) the Goods are free of any security, charge or encumbrance in favour of any third party;

(d) the Goods are:

  - (i) new (unless the Purchase Order contains a contrary indication);
  - (ii) free from defects in materials and workmanship;
  - (iii) of acceptable quality; and
  - (iv) fit for any purpose disclosed in the Purchase Order;
  - (e) the Goods will be in accordance with and conform to any designs, drawings, specifications, samples or descriptions furnished by Frankpile to the Supplier;
  - (f) Goods that comprise personal protective equipment comply with applicable Australian Standards.
8. **Indemnity**

The Supplier indemnifies Frankpile against Claims in respect of loss of or damage to property and death, disease or illness of or injury to any person arising out of or in connection with or caused by a breach by the Supplier of any of the guarantees in clause 7(d), clause 7(e) or clause 7(f).
9. **Manufacturer's Warranties**

The Supplier must assign to Frankpile and/or any other party specified by Frankpile the benefit of any manufacturer's warranty or guarantee that the Supplier has received from any other person in respect of the Goods (whether under contract or by implication or operation of law).
10. **Title and Risk**

Subject to clause 6.3 and clause 11:

  - (a) title to the Goods shall pass to Frankpile upon delivery to Frankpile; and
  - (b) the Goods will be at the Supplier's risk until delivered to the delivery address specified in the Purchase Order. Nothing in the conduct of Frankpile (including delay that is or is not the fault of Frankpile or any person who represents Frankpile) alters the incidence of risk under this clause.
11. **Inspection and Return**
  - 11.1 Frankpile receives Goods delivered pursuant to the Purchase Order subject to inspection within a reasonable time after delivery or, at Frankpile's discretion, before delivery irrespective of the date of payment for the Goods.

- 11.2 A signed delivery docket does not constitute acceptance by Frankpile of the Goods delivered but only the quantity delivered. Frankpile shall promptly notify the Supplier of any defects in Goods delivered by the Supplier to Frankpile and hold any Goods found to be defective for the Supplier's instructions and at the Supplier's risk for a period not exceeding 7 days. If the Supplier's instructions are not received within that period, Frankpile may, at its option, exercise any of the remedies in clause 6.3 or any other remedy that may be available to it and may set-off any loss, damage or expense against any moneys otherwise due by Frankpile to the Supplier.
12. **Packaging**  
The Goods must be suitably packaged or otherwise prepared for delivery to Frankpile. However, the Supplier must ensure that unnecessary packaging is avoided and waste is kept to a minimum.
13. **National Code of Practice for the Construction Industry**  
This clause shall apply unless the Purchase Order specifies that the National Code of Practice for the Construction Industry ('the Code') does not apply to the project in relation to which the Goods are to be supplied ('the Project'). Alternative 1 applies if the Price is \$25,000.00 or less otherwise Alternative 2 applies.
- Alternative 1**  
The Code and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, May 2012 ('the Guidelines') apply to the Project. By agreeing to supply the Goods, the Supplier will be taken to have read and to agree to comply with the Code and the Guidelines.
- Alternative 2**
1. The Supplier must comply with the Code and the Guidelines. Copies of the Code and Guidelines are available at [www.deewr.gov.au/building](http://www.deewr.gov.au/building).
  2. Compliance with the Code and Guidelines shall not relieve the Supplier from responsibility to supply the Goods, or from liability for any defects in the Goods arising from compliance with the Code and Guidelines.
  3. Where a change in the Purchase Order is proposed and that change would affect compliance with the Code and Guidelines, the Supplier must submit a report to the Commonwealth specifying the extent to which the Supplier's compliance with the Code and Guidelines will be affected.
  4. The Supplier must maintain adequate records of the Compliance with the Code and Guidelines by:
    - (a) the Supplier;
    - (b) its secondary suppliers;
    - (c) consultants; and
    - (d) its related entities (see Guidelines for meaning including Section 3.5 of the Guidelines).
  5. If the Supplier does not comply with the requirements of the Code or the Guidelines in the performance of the Purchase Order such that a sanction is applied by the Minister for Employment and Workplace Relations, the Code Monitoring Group or the Commonwealth, without prejudice to any rights that would otherwise accrue, those parties shall be entitled to record the non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Supplier or a related entity in respect of work funded by the Commonwealth or its agencies.
  6. While acknowledging that value for money is the core principle underpinning decisions on Government procurement, when assessing tenders, the Supplier may give preference to suppliers and consultants that have a demonstrated commitment to:
    - (a) adding and/or retaining trainees and apprentices;
    - (b) increasing the participation of women in all aspects of the industry; or
    - (c) promoting employment and training opportunities for Indigenous Australians in regions where significant indigenous populations exist.
  7. The Supplier must not appoint a secondary supplier or consultant in relation to the supply of the Goods where:
    - (a) the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations; or
    - (b) the secondary supplier or consultant has had an adverse Court or Tribunal decision (not including decisions under appeal) for a breach of workplace relations law, work, health and safety law or workers' compensation law and the secondary supplier or consultant has not fully complied, or is not fully complying, with the order.
  8. The Supplier agrees to require that it and its secondary suppliers or consultants and its related entities provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, with access to:
    - (a) inspect any work, material, machinery, appliance, article or facility;
    - (b) inspect and copy any record relevant to the Goods; and
    - (c) interview any person
- as is necessary to demonstrate its compliance with the Code and Guidelines.
9. Additionally, the Supplier agrees that the Supplier and its related entities will agree to a request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, to produce a specified document within a specified period, in person, by fax or by post.
10. The Supplier must ensure that all secondary suppliers impose obligations on secondary suppliers equivalent to the obligations in paragraphs 1 to 10 inclusive of this clause 13.
14. **Victorian Code of Practice for the Building and Construction Industry**  
This clause shall apply unless the Purchase Order specifies that the Victorian Government's Code of Practice for the Building and Construction Industry ('the Victorian Code') does not apply to the project in relation to which the Goods are to be supplied ('the Project'), Alternative 1 applies if the Price is \$25,000.00 or less otherwise Alternative 2 applies.
- Alternative 1**  
The Victorian Code and the Victorian Government's Implementation Guidelines to the Victorian Code ('the Victorian Guidelines') apply to the Project. By agreeing to supply the Goods, the Supplier warrants that it is not precluded from supplying the Goods and agrees that it will be deemed to have read and understood, and that it will comply with, the Victorian Code and Victorian Guidelines.
- Alternative 2**
1. In addition to terms defined in the Purchase Order, terms used in this clause 14 have the same meaning as is attributed to them in the Guidelines (as published by the Department of Treasury and Finance, April 2012). The Victorian Code and Victorian Guidelines are available at [www.dtf.vic.gov.au](http://www.dtf.vic.gov.au).  
Primary Obligation
  2. The Supplier must comply with, and meet any obligations imposed by, the Victorian Code and Victorian Guidelines.
  3. The Supplier must notify the CCCU (or nominee) and the Client Agency of any alleged breaches of the Victorian Code and Victorian Guidelines and of voluntary remedial action taken, within 24 hours of becoming aware of the alleged breach.
  4. Where the Supplier is authorised to engage a secondary supplier or consultant, and it does so, the Supplier must ensure that any secondary subcontract imposes on the secondary supplier or consultant equivalent obligations to those in this clause 14 including that the secondary supplier or consultant must comply with, and meet any obligations imposed by, the Victorian Code and the Victorian Guidelines.
  5. The Supplier must not appoint or engage another party in relation to the Project where that appointment or engagement would breach a sanction imposed on the other party in relation to the Victorian Code or Victorian Guidelines.  
Access and information
  6. The Supplier must maintain adequate records of compliance with the Victorian Code and Victorian Guidelines by it, its secondary subcontractors, consultants and related entities.
  7. The Supplier must allow, and take reasonable steps to facilitate, Victorian Government authorised personnel (including personnel of the CCCU) to:
    - (a) enter and have access to sites and premises controlled by the Supplier, including the Project site;
    - (b) inspect any work, material, machinery, appliance, article or facility;
    - (c) access information and documents;
    - (d) inspect and copy any record relevant to the project;
    - (e) have access to personnel; and
    - (f) interview any person
 as is necessary for the authorised personnel to monitor and investigate compliance with the Victorian Code and Victorian Guidelines, by the Supplier, its secondary suppliers, consultants and related entities.
  8. The Supplier, and its related entities, must agree to, and comply with, a request from Victorian Government authorised personnel (including personnel of the CCCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.  
Sanctions
  9. The Supplier warrants that at the date of the Purchase Order neither it, nor any of its related entities, are subject to a sanction in connection with the Victorian Code or Victorian Guidelines that would have precluded it from tendering for work to which the Victorian Code and Victorian Guidelines apply.
  10. If the Supplier does not comply with, or fails to meet any obligation imposed by, the Victorian Code or Victorian Guidelines, a sanction may be imposed against it in connection with the Victorian Code or Victorian Guidelines.

11. Where a sanction is imposed:
- (a) it is without prejudice to any rights that would otherwise accrue to the parties; and
  - (b) the State of Victoria (through its agencies, Ministers and the CCCU) is entitled to:
    - (i) record and disclose details of non-compliance with the Victorian Code or Victorian Guidelines and the sanction; and take them into account in the evaluation of future expressions of interest or tender responses that may be lodged by the Supplier, or its related entities, in respect of work to which the Victorian Code and Victorian Guidelines apply
    - (ii)

Compliance

12. The Supplier bears the cost of ensuring its compliance with the Victorian Code and Victorian Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the Victorian Guidelines. The Supplier is not entitled to make a claim for reimbursement or an extension of time from the Client Agency or the State of Victoria for such costs.
13. Compliance with the Victorian Code and Victorian Guidelines does not relieve the Supplier from responsibility to supply the Goods and any other obligation under the Purchase Order, or from liability for any defect in the Goods or from any other legal liability, whether or not arising from its compliance with the Victorian Code and Victorian Guidelines.
14. Where a change in the Purchase Order or Goods is proposed, and that change would, or would be likely to, affect compliance with the Victorian Code and Victorian Guidelines, the Supplier must immediately notify the Client Agency (or nominee) of the change, or likely change and specify:
- (a) the circumstances of the proposed change;
  - (b) the extent to which compliance with the Victorian Code and Victorian Guidelines will, or is likely to be, affected by the change; and
  - (c) what steps the Supplier proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Health and Safety Management Plan),
- and the Client Agency will direct the Supplier as to the course it must adopt within 5 Business Days of receiving notice.
15. **Governing Law**
- The contract between Frankpile and the Supplier for the supply of the Goods specified in the Purchase Order will be construed in accordance with the laws of the State in which the Purchase Order was issued and the parties submit to the non-exclusive jurisdiction of the courts of that State and the courts entitled to hear appeals from those courts.