

Unitywater Purchase Order Terms

- 1. Order**
 - 1.1. A Unitywater Order is an offer by the Northern SEQ Distributor-Retailer Authority trading as Unitywater (ABN 89 791 717 472) ('UW') to the Supplier, to purchase the Goods and Services described in the Order on the terms and conditions of the written contract agreed between UW and the Supplier prior to the Order, or if no such contract has been entered into, on these terms and conditions ('Contract').
 - 1.2. This Contract between UW and the Supplier is: a) comprised of the following documents provided by UW, in descending order of precedence: (i) Schedule 1 (if any), (ii) these terms and conditions, (iii) Order, (iv) Specifications (if any), and (v) drawings (if any); and b) made as at 9:00am AEST on the date of the Order and represents the entire agreement in relation to the subject matter.
 - 1.3. Any other documents provided by UW for the purpose of the Order including reports are for the Supplier's information only, do not form part of the Contract, and may not be relied on by the Supplier.
 - 1.4. The Supplier has read and understood this Contract and had the opportunity to seek legal advice.
 - 1.5. The Supplier has fully informed itself on all aspects of UW's requirements and has represented that it can meet the requirements.
 - 1.6. The Supplier is deemed to have accepted UW's offer by performing any of its obligations under this Contract including supplying Goods or Services.
 - 1.7. Any variations are to be agreed in writing by the parties.
 - 1.8. This Contract applies to the exclusion of any terms and conditions appearing on or forming part of the Supplier's dockets, quotes, invoices or other documentation, including any terms issued by the Supplier on supply of the Goods or Services, or any terms and conditions that generally apply to the Supplier's supply to other parties.
 - 1.9. A counter-offer by the Supplier on the basis of substituted terms and conditions is not binding on UW unless UW accepts the counter-offer in writing. In the absence of a written acceptance, this Contract applies.
- 2. Scope**
 - 2.1. The Supplier is to supply the Goods and Services to the Delivery Point by the Delivery Date in accordance with this Contract.
 - 2.2. Time is of the essence in relation to the supply of Goods.
 - 2.3. UW agrees to pay the Price to the Supplier in consideration for the supply of the Goods and Services.
 - 2.4. Unless otherwise stated in the Order, the Price is fixed and includes all costs incurred by the Supplier in supplying the Goods and Services (including materials, transport, delivery, insurance, export, import, customs, taxes, duties, exchange rates, loading and unloading).
- 3. Supply**
 - 3.1. To enable the Goods to be used, the Supplier is to deliver to UW all keys and legible English language operating manuals, instructions, passwords, and reference material about the Goods by the Delivery Date.
 - 3.2. This Contract is on Delivery Duty Paid terms to the Delivery Point for all Goods unless otherwise stated in the Order.
 - 3.3. Delivery to the Delivery Point occurs when the Goods are accepted by a UW authorised officer by signing for receipt of the Goods.
 - 3.4. Title and risk in the Goods passes to UW on delivery at the Delivery Point following inspection of the Goods by UW.
 - 3.5. Any Goods found to be wrongly supplied, faulty or damaged may be returned to the Supplier at the Supplier's sole cost.
 - 3.6. Delivery of the Goods is only to occur between 8:30am and 4:00pm AEST on business days at the Delivery Point, other than days between 25 December and 1 January, unless otherwise stated in the Order.
 - 3.7. A separate delivery note or invoice is to be provided at the time the Goods and Services for each Order or part Order are supplied to UW.
 - 3.8. UW is not responsible for any Goods or Services supplied by the Supplier without an Order.
 - 3.9. If the Supplier is unable to supply any of the Goods or Services by the Delivery Date, the Supplier is to inform UW as soon as possible.
- 4. Invoice**
 - 4.1. The Supplier is to invoice UW within seven days after supply of the Goods and Services unless previously agreed in writing by the parties.
 - 4.2. All invoices must be sent to Accounts Payable accounts-payable@unitywater.com or Accounts Payable, Unitywater, PO Box 953, CABOOLTURE, QLD, 4510. All correspondence in connection with this Contract other than invoices or payment correspondence is to be sent to the address shown on the Order.
- 4.3** All Tax Invoices must include a reference to the corresponding UW Purchase Order (PO) number (The format being 3 alpha and 6 numeric characters e.g. ABC123456) for the UW Order. A Tax Invoice will not be considered as valid and eligible for payment unless and until the Tax Invoice is provided to UW with the correct PO number for the Order.
- 4.4** If the supply of Goods or Services is a Taxable Supply (as that term is defined in the GST Act, then the invoice provided by the Supplier must be in the form of a valid Tax Invoice.
- 4.5** If a Good and Services Tax (GST) is payable on the supply of the Order, then subject to the receipt of a valid Tax Invoice, UW is to pay the Supplier an amount equal to the amount of GST payable on the taxable supply at the same time as the taxable supply is paid.
- 5. Payment**
 - 5.1. UW will pay to the Supplier, the amount stated on a valid and correctly rendered invoice (as determined by UW) within 30 days from the invoice date (or the next business day after the 30th day if this day is not a business day) unless otherwise stated on the Order.
 - 5.2. Payment shall be made into the Supplier's nominated bank account in accordance with the details provided by the Supplier. Payment will be deemed to have been made when the funds are credited to the Supplier's nominated bank account and UW will be fully discharged of its obligation to pay the Supplier.
 - 5.3. The Supplier is solely responsible for informing UW in writing of any changes to or closure of the Supplier's nominated bank account. Any request to change or update the Supplier's nominated bank account details must be submitted on the Supplier's letterhead and signed by the Finance or Senior Manager, or they will not be accepted or processed by UW.
 - 5.4. The Supplier agrees to repay any amounts paid to the Supplier by UW in error, on request in writing. UW reserves the right to set off the amount of any overpayment against any present or future liability to the Supplier.
 - 5.5. If UW, acting reasonably, disputes an invoice, it is not obliged to pay the disputed portion of the invoice until the dispute is resolved.
 - 5.6. After being established as a Supplier by UW, the Supplier may be provided with access to UW's Supplier Portal. Following the date of such access, all payment and contact information and related updates of the Supplier will be managed by the Supplier through this platform.
 - 5.7. Without limiting clause 20 (Supplier Portal), the Supplier is solely responsible for ensuring at all times during the term of this Contract that all payment information is true, accurate and complete in all material respects and not misleading in any material respect (including by omission). The Supplier is not entitled to make any claim for any cost, loss, damage or expense it suffers or incurs out of or in connection with any errors contained in the information contained within the Supplier Portal.
- 6. Warranty**
 - 6.1. The Supplier warrants that the: (i) Goods and Services are fit for purpose, meet Australian Standards including AS/NZS 4020 if for use in contact with drinking water, conform to any sample supplied, will not adversely affect public health when used for purpose, and will not, or will not cause UW to, breach any law; (ii) Supplier will supply the Services punctually, with due care, skill and diligence, and otherwise in the manner UW reasonably requires; (iii) Goods are new, not used, of merchantable quality, and are free from defect, lien, charge, security interest and encumbrance; (iv) Supplier has obtained the necessary approvals for the supply of the Goods and Services; and (v) Supplier has not provided any false or misleading information, has declared any conflict of interest, and will act ethically, honestly and in good faith.
 - 6.2. If, during the Warranty Period, any of the Goods or Services are found to be Defective, UW may at its option, and at the Supplier's cost and without prejudice to UW's other rights and remedies, (i) Return the Defective Goods for a refund; (ii) Reject the Defective Services; (iii) Repair, Replace or make good the Defective Goods; or (iv) Re-perform or make good the Defective Services.
 - 6.3. If requested, the Supplier is to: (i) Repair or replace the Defective Goods at the Supplier's cost, including any associated costs of removing the Defective Goods from their delivery or installation location (as required by UW) and delivery or reinstallation of the repaired or replaced Defective Goods at the same location (as required by UW); (ii) Re-perform or make good the Defective

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Services at the Supplier's cost; and (iii) Reimburse UW for expenses incurred due to the Defective Goods and Services, including all reinstallation costs.

- 6.4. In performing its obligations under the Contract, 1) The Supplier represents and warrants that neither the Supplier nor any of its personnel: (i) has been convicted of any offence involving slavery and human trafficking; and (ii) having made reasonable enquiries, to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking. 2) The Supplier shall notify UW as soon as it becomes aware of any actual or suspected slavery or human trafficking in its operations or supply chain. 3) The Supplier shall provide information on its operations and supply chain on request for the purpose of UW's modern slavery statement. 4) UW may terminate this Contract with immediate effect by giving written notice to the Supplier if the Supplier breaches this clause 6.4.

7. Safety

- 7.1 The Supplier, in supplying the Goods and performing the Services, is to: (i) Attend inductions as directed and follow instruction from UW, and not otherwise interfere with UW's activities or the activities of any other person at the Delivery Point; (ii) Comply with: UW policies including the UW code of conduct; national heavy vehicle, and work, health and safety laws; and all lawful directions given by UW and any person authorised by law to give directions to the Supplier; (iii) Ensure that the Services are performed and the Goods delivered in a safe manner and in such a way which does not adversely affect public health, safe working practices, safety and care of property or continuity of work at the Delivery Point; (iv) Provide all such information and assistance as UW reasonably requires; (v) Ensure any hazardous materials are to be approved by UW's Safety, Health, Environment and Quality team prior to initial supply; (vi) Provide copies of relevant material safety data sheets with the Goods; and (vii) Ensure electrical appliance Goods have been tested and tagged.
- 7.2 The Supplier acknowledges and agrees that if part of the Services to be provided under the Order are to be performed at a UW workplace, the Supplier will successfully complete an online contractor induction course prior to arriving on site. Access at: unitywater.e3learning.com.au

8. Unitywater Property

- 8.1. UW Property remains the property of UW. No property rights are transferred from UW to the Supplier by this Contract.
- 8.2. The Supplier is not to use or modify UW Property except in the proper performance of this Contract.
- 8.3. The Supplier is to take reasonable care of UW Property and hand over to UW any UW Property when it is no longer required by the Supplier for the purpose of this Contract or in any case within seven days of request by UW at the Supplier's expense.

9. Personal property

- 9.1. The parties agree that for the purposes of section 115 of the *Personal Property Securities Act 2009* (Cth), sections 120, 126, and 128 of that Act are not to apply to any collateral related to this Contract.
- 9.2. The Supplier is not to allow to be perfected or attached in favour of the Supplier or any third party, a security interest in the Goods, whether to a provider of new value, or otherwise.
- 9.3. The Supplier is to do anything reasonably required by UW to ensure that, at all times, UW has a continuously perfected security interest over the Goods.

10. Intellectual property

- 10.1. UW grants the Supplier a non-exclusive, global, revocable licence to the end of the Warranty Period (excluding the right to sublicense) to use UW intellectual property for the purpose of fulfilling this Contract.
- 10.2. For intellectual property provided by the Supplier, the Supplier grants UW a perpetual, global, royalty-free, non-exclusive, irrevocable licence (including the right to sublicense) to use, reproduce, adapt, modify, distribute and communicate that intellectual property.
- 10.3. Rights to all intellectual property created for the purpose of, or as a result of, this Contract vest in UW.

11. Information

- 11.1. The Supplier is not to disclose or otherwise make available any information provided by or obtained from UW in relation to this Contract except: (i) to its employees on a need-to-know basis; (ii) with UW's written consent; (iii) if required by law; or (iv) if it is in the public domain, except as a result of a breach of this Contract.
- 11.2. UW may disclose confidential information to (i) the Australian Competition and Consumer Commission if there is a reasonable suspicion of cartel conduct or unlawful collusion; or (ii) the Queensland

government under established government protocols or for public accountability purposes.

- 11.3. The Supplier is to deal with personal information provided by or collected on behalf of UW as if it were UW for the purpose of the *Information Privacy Act 2009* (Qld).
- 11.4. The Supplier is to do all things that a reasonable and prudent person would do to ensure that all UW systems and information which it accesses during the course of providing the Services, are protected at all times from unauthorised access or use by a third party or misuse, damage or destruction by any person and report any such incident to UW immediately.
- 11.5. The Supplier is not to disparage UW, where disparage means any act or omission, including written or verbal communication, which is intended, or would reasonably be expected, to harm UW or its reputation or which would reasonably be expected to lead to unwanted, negative, or unfavourable publicity to UW.

12. Audit

- 12.1. To the extent permitted by law, UW may exchange information about the Supplier's credit and financial standing, history and capacity with any third party.
- 12.2. The Supplier is to keep proper business and accounting records relating to the supply under this Contract.
- 12.3. The Supplier is to do all things reasonably necessary to facilitate a prompt and efficient audit of its supply if requested by UW including providing access to premises, material, records and personnel.

13. Insurance

- 13.1. The Supplier is to effect and maintain: (i) Public liability insurance of no less than \$20 million; (ii) Products liability insurance of no less than \$10 million; and (iii) Insurance for death or injury to persons employed by the Supplier (workers compensation) and must upload details of these insurances to the Supplier Portal (unless otherwise directed by UW).
- 13.2. If the Supplier is supplying Goods, it is to effect and maintain transit insurance for the full value of the Goods.
- 13.3. If the Supplier is supplying professional Service, it is to effect and maintain professional indemnity insurance of no less than \$5 million for no less than seven years after the Delivery Date.
- 13.4. If the Supplier's plant and equipment are used on UW premises for this Contract, the Supplier is to effect and maintain plant and equipment insurance against loss, theft, damage or destruction for the full replacement or reinstatement at market value of the plant and equipment.
- 13.5. The Supplier is to upload details of all necessary insurances to the Supplier Portal. The Supplier must upload copies of certificates of currency to the Supplier Portal by the Delivery Date for all insurance required under this Contract and update the Supplier Portal immediately on replacement and termination of insurance.

14. Indemnity

- 14.1. The Supplier indemnifies and is to defend UW against claims, liabilities, losses, damages, costs (including legal costs) and expenses made against, or suffered or incurred by UW as a result of any breach of this Contract, claim by a third party, intellectual property breach, or negligence, criminal act, or wilful act or omission by the Supplier in relation to this Contract.
- 14.2. UW is not required to incur expense before enforcing an indemnity.
- 14.3. In conducting any claim or proceeding in respect of which the Supplier indemnifies UW, the Supplier will, at the Supplier's expense, comply with UW's reasonable directions.

15. Insolvency

The Supplier is to notify UW immediately in writing if it ceases to carry on its business or pay its debts as and when they become due and payable, commits an act of insolvency or bankruptcy, has an administrator, controller or liquidator appointed, is declared bankrupt or insolvent or is otherwise unable to continue trading for any reason ('Act of Insolvency').

16. Termination

Without limiting the parties other rights and remedies, either party may terminate the Contract if: (i) The other party breaches a clause of this Contract which is not capable of remedy; (ii) The other party breaches a clause of this Contract that is capable of remedy but that other party fails to remedy the breach within 14 days after receiving notice requiring it to do so; or (iii) The other party commits an Act of Insolvency, subject to the *Corporations Act 2001* (Cth) and any relevant Court order.

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17. Dispute resolution

The parties agree that their procurement officers will try to settle a Contract dispute within ten business days or will, without delay, refer the dispute to a mediator selected by the chairperson of an accredited mediation organisation chosen by UW for a mediation to commence within 15 business days. Representatives with the authority to bind the relevant party must attend any mediation and act in good faith to attempt to resolve the dispute. If the dispute is not resolved within 30 business days after mediation commences, either party may start legal proceedings.

18. Force Majeure

In the event of Force Majeure, the affected party will be excused from performance of its affected obligations to the extent and for the duration of the Force Majeure on the terms in this clause:

- 18.1 The affected party must give written notice to the other party setting out the circumstances of Force Majeure, the reasons and extent it is affected and what steps it is taking to make alternative arrangements, and otherwise resume performance of its obligations.
- 18.2 The Supplier is to supply the Goods and Services using best endeavours: 1) to regard UW as its First Priority when compared with other customers of the Supplier; or 2) if other customer of the Supplier also has First Priority or equivalent arrangement in its contract (and this is reasonably demonstrated in writing), pro rata to UW when compared with that customer.
- 18.3 If UW is unable to: 1) accept delivery or performance of any Goods or Services; 2) pay for any Goods or Services; or 3) provide any input or assistance including but not limited to UW Property, personnel, information, access, or technology; in the usual way, then UW is to provide instructions and information to the Supplier on the proposed alternative arrangement, which the Supplier is to follow.
- 18.4 If the Supplier fails to comply with either clause 18.2, or 18.3 or if the Force Majeure lasts at least 30 days, in addition to any other remedies, UW has the right to: 1) suspend this Contract and obtain the supplies from a third party for the duration the Supplier is affected by Force Majeure, in which case the Supplier has an obligation to assist Unitywater to obtain alternative supply; or 2) terminate the Contract at no cost to UW.
- 18.5 Neither party has any liability to the other party or any third party for any loss or damage arising out of or in connection with a Force Majeure.

19. Security of Critical Infrastructure

- 19.1 If as part of providing the Goods and Services under this Contract, the Supplier requires or is given access to the premises and/or property of UW, and such premises or property is considered by UW to be 'critical infrastructure asset' (as that term is defined in the *Security of Critical Infrastructure Act 2018* (Cth), then UW may in its sole and absolute discretion, require the Supplier to: (i) Notify UW in writing of any ownership interest (direct or indirect) in the Supplier held by any person or entity residing outside of Australia ('Foreign Ownership Interest'); (ii) Notify UW in writing of any change in any Foreign Ownership Interest; (iii) Notify UW in writing of any change in the executive management, ownership (direct or indirect) or control of the Supplier; and (iv) Undertake such background security checks (as are reasonably required by UW) on the Supplier's employees, agents and subcontractors who have access to UW's critical infrastructure assets.

20. Supplier Portal

- 20.1 The parties agree to use the Supplier Portal in connection with the Contract.
- 20.2 The Supplier acknowledges and agrees that the Supplier Portal will be supplied and administered by UW.
- 20.3 The Supplier acknowledges and agrees that:
 - (i) it has access to a computer with relevant hardware and software to access the Supplier Portal; (ii) it is familiar with or will have sufficient training to use the Supplier Portal; (iii) it has registered itself with the Supplier Portal; (iv) for the term of the Contract, where expressly required by the Contract or as otherwise directed by Unitywater (acting reasonably), it will upload and transmit all documents as required by the Contract into the Supplier Portal; (v) it will use the Supplier Portal in accordance with the terms and conditions of use of the Supplier Portal as well as any other specific requirements as directed by Unitywater; (vi) it will also provide hard copies of any documents uploaded to the Supplier Portal if required by Unitywater; (vii) it will immediately notify Unitywater if it is unable to use or access the Supplier Portal and provide an explanation why; (viii) it will use the full functionality of the Supplier Portal; (ix) it will pay all costs associated with the use of Supplier Portal by its Personnel (as applicable); and (x) it accepts responsibility for its use of the Supplier Portal, including any technical or other issues which may affect its use of the Supplier Portal.

- 20.4 Without limiting any other provision of the Contract and to the extent permitted at law, the Supplier must ensure at all times during the term of the Contract that all information which it inputted or uploaded into the Supplier Portal, is true, accurate and complete in all material respects and not misleading in any material respect (including by omission).
- 20.5 The Supplier is not entitled to make any claim for any cost, loss, damage or expense it suffers or incurs out of or in connection with its access to or use of the Supplier Portal including any technical difficulties or failure of the Supplier Portal.

21. General

- (i) Neither party is to assign or novate its rights or obligations under this Contract without the other party's written consent. (ii) The Supplier will comply with applicable laws and standards and, when on UW's premises, UW's policies and directions. (iii) The Supplier is to cooperate with UW and do things reasonably required by UW to give effect to this Contract. (iv) If the Supplier becomes aware of a matter which is likely to affect materially the ability of the Supplier to perform this Contract, it will immediately notify UW of it. (v) UW may set off money due to UW from the Supplier, or damages, costs or expenses recoverable by UW from the Supplier, against money due to the Supplier under this Contract or another contract between the parties. (vi) If any part of this Contract is or becomes illegal, void or unenforceable, this does not invalidate the rest of this Contract. (vii) Clauses 10, 11, 12, 13, 14 and 17 survive the termination of this Contract. (viii) This Contract is governed by and construed in accordance with the law of Queensland and the parties submit to the jurisdiction of the Courts of Queensland. (ix) The *United Nations Convention on Contracts for the International Sale of Goods 1980* (Vienna Sales Convention) applies. (x) Failure or omission by a party to require strict or timely compliance with any provision of this Contract will not affect any right of that party to remedies it may have in respect of any breach of a provision. (xi) The Supplier may not subcontract the provision of Goods or Services without the prior written consent of UW. (xiii) This Contract does not create a partnership, joint venture, agency or employment arrangement and the Supplier is not to represent otherwise.

22. Interpretation

- 22.1 In this Contract: (i) Clause headings are inserted for convenience only and do not affect interpretation; (ii) "Includes" in any form is not a word of limitation; (iii) The Price is in Australian currency and an obligation to pay money is an obligation to pay in Australian dollars. The following definitions apply to this Contract: "Defect" means that the Goods or Services: (i) Do not conform to the Specifications; (ii) Have an error, defect or malfunction; (iii) Are not fit for the purpose made known by UW or are not of merchantable quality; (iv) Do not conform with a sample or test item provided by the Supplier; or (v) Otherwise do not comply with the requirements of this Contract; "Defective" means that the Goods or Services have a Defect; "Delivery Date" means the delivery date stated in the Order or, if no date is stated, a reasonable time after the date of the Order; "Delivery Duty Paid" has the same meaning as defined by the International Commercial Terms (Incoterms); "Delivery Point" means the place of destination stated in the Order or otherwise notified by UW. The Delivery Point is also the place risk is transferred unless otherwise agreed by the parties in writing; "First Priority" means priority in all aspects of the Contract including but not limited to scope, time, quality, quantity and safety. "Force Majeure" means any event or circumstance, or combination of events and circumstances, which is beyond the reasonable control of a party (affected party), which directly or indirectly causes or results in default, disruption or delay in the affected party's performance of any of its obligations under this Contract; "Goods" means the goods stated in the Order; "Goods and Services Tax" or "GST" means as defined in the GST Act; "GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and the Regulations made to that Act; "Order" means the UW offer to purchase Goods and Services; "Price" means the price stated in the Order, or such other price as the parties agree in writing; "Services" means the services stated in the Order; "Specifications" means: (i) specifications on, or referred to in the Order and associated documentation; and (ii) the current applicable specifications published generally by the manufacturer of the Goods. To the extent of any inconsistency between these specifications, the specifications in the Order prevail; "Supplier" means the person identified in the Order and its directors, employees, agents and contractors; "Supplier Portal" means the

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UW TechnologyOne interface portal which must be used by the Supplier in accordance with the terms of this Contract; "Tax Invoice" means as that term is defined in the GST Act; "UW Property" means all property owned by UW including real, personal, and intellectual property; and "Warranty Period" means the period commencing on delivery of the Goods to UW and continuing for the warranty period stated in the Order, or 12 months if no warranty period is stated.