

# TERMS AND CONDITIONS OF PURCHASE



## 1 INTRODUCTION

1.1 Tassal Operations Pty Ltd (ACN 106 324 127) or De Costi Seafoods Pty Ltd (ACN 606 307 804) or the member of the Tassal group of companies as specified in the Purchase Order (**Tassal**) confirms your appointment to provide the goods, services or works described in the Purchase Order (**Supply**) on the terms of:

- (a) the purchase order setting out the particulars of the Supply (the **Purchase Order**);
  - (b) any Special Conditions set out or referred to in the Supply Description in the Purchase Order (if any) (the **Special Conditions**); and
  - (c) these terms and conditions of purchase (the **Terms and Conditions**),
- (together this **Agreement**).

1.2 To the extent of any inconsistency between them, the terms shall be given precedence in the order listed above.

## 2 AGREEMENT TO SUPPLY

You agree the Supply includes the provision of the goods, services or works described in the Description in the Purchase Order (the **Supply Description**) in accordance with this Agreement.

## 3 PROGRESS

- (a) You must commence the Supply immediately on the date specified in the Purchase Order (if any), or where a date for commencement is not specified in the Purchase Order, upon your acceptance of this Agreement or such later date as Tassal may advise, (**Date for Commencement**).
- (b) You must fully complete the Supply and satisfy all other matters which this Agreement requires to be satisfied before the completion of Supply is achieved (**Completion**), by the date Tassal requires Completion, either as set out in the Supply Description or as Tassal may otherwise agree in writing (the **Date for Completion**). Tassal will only excuse you for delays which you notify Tassal of promptly and which are beyond your and your subcontractors' reasonable control.

## 4 SITE REQUIREMENTS

4.1 Before you commence any activity at:

- (a) the "Delivered to" address specified in the Purchase Order;
  - (b) the areas described or indicated in the Supply Description as the site; or
  - (c) the areas notified to you by Tassal from time to time for the purposes of providing the Supply,
- (the **Site**), you must complete and pass any required Tassal site induction.

4.2 While performing any part of Supply at the Site, you must:

- (a) comply with all policies, procedures, standards and directions of Tassal (including in relation to work health and safety, environment, biosecurity and health requirements);
- (b) not interfere with existing operations on Site and

cooperate and coordinate with other works and occupants at the Site; and

- (c) immediately notify Tassal in the event of any accident, injury or property or environmental damage occurring during or in association with the performance of the Supply and cooperate fully with any investigation by Tassal.

## 5 PAYMENT

(a) Subject to paragraphs (b) and (f) below, to the extent the Purchase Order provides for payment of:

- (i) a lump sum, Tassal must pay you that lump sum (which unless otherwise expressly stated is a lump sum covering all of the Supply); or
- (ii) an amount calculated by applying a schedule of rates, Tassal must pay you the amount calculated by applying the schedule of rates to the actual quantities comprised in the Supply,

(the **Supply Price**).

(b) Where the Purchases Order:

- (i) includes a total price for the Supply or any part of the Supply, the Supply Price is taken to be a lump sum; or
- (ii) does not include a total price for the Supply or any part of the Supply, the Supply Price is taken to be an amount calculated by applying a schedule of rates in accordance with clause 5(a)(ii),

unless the Purchase Order expressly states otherwise.

(c) Payments may be claimed by you:

- (i) where the Supply is for the delivery of goods, on the date the goods are delivered to Tassal in accordance with this Agreement;
- (ii) where the Supply is for the provision of works or services:

(A) monthly on the last working day of each month until Completion; and

(B) on the date which is within 14 days after Completion,

and the amount payable will be calculated in accordance with this Agreement as the value of the Supply provided in accordance with this Agreement prior to the relevant date less previous amounts paid.

(d) Payment claims must be submitted to [purchasing@tassal.com.au](mailto:purchasing@tassal.com.au) in the form of a tax invoice which states your entity name, ABN number, description of the Supply provided, the amount claimed, the purchase order or contract number and such other details as Tassal reasonably requires.

(e) Within 45 business days after the end of the calendar month in which Tassal receives your payment claim, Tassal will pay to you the amount Tassal assesses is payable by Tassal to you under this clause.

(f) For the avoidance of doubt, the amount otherwise

due for payment under this clause will be reduced by the value of any incomplete or defective Supply and by amounts Tassal claims from you on any account.

## 6 REQUIREMENTS

- 6.1 You must as an independent contractor, provide all things including all equipment, tools, materials and anything else necessary to complete the Supply in accordance with this Agreement.
- 6.2 You must ensure, and you warrant to Tassal, that you have complied and will continue to comply with in relation to the Supply:
- (a) all applicable laws and approvals; and
  - (b) the Supplier standards or guidelines issued by Tassal on its website <https://tassalgroup.com.au/terms-conditions> from time to time which set out the ethical principles Tassal expects its suppliers to adhere to in conducting business with Tassal.
- 6.3 You must take all possible steps to protect people from death or injury and protect the Supply, the environment and any property belonging to Tassal or others from loss or damage arising from or in connection with you providing the Supply.
- 6.4 You will (at your cost) reinstate the Supply if it is damaged or destroyed by any cause prior to Completion.
- 6.5 To the extent the Supply is for the delivery of goods:
- (a) you must deliver the goods to the address specified in the Purchase Order or as otherwise described in the Supply Description (the **Delivery Address**) together with a delivery note referring to the Purchase Order number, any other documents required to transfer full legal and beneficial ownership of the goods and the benefit of any warranty and licences in respect of the goods, on or before the Date for Completion;
  - (b) you must ensure the goods conform with any description or sample approved by Tassal;
  - (c) you warrant that the goods are fit for their purpose, of merchantable quality, free from any defects and free and clear of all liens, charges or encumbrances;
  - (d) you warrant that Tassal will have the benefit of any manufacturer's warranty or licences required to use the goods;
  - (e) for the purposes of the *Personal Property Securities Act 2009* (Cth), you agree that you have no security interest in any goods constituting the Supply, that you must not register a security interest against Tassal without out prior written consent and that you may not disclose any information of a kind referred to in section 275(1) of that Act that is not in the public domain;
  - (f) full unencumbered title in the goods passes to Tassal upon the earlier of any payment for the goods or delivery, but risk in the goods remains with you until Completion;
  - (g) Tassal may return the goods at your cost and risk if Tassal finds that the goods or any part of them are not in accordance with this Agreement.
- 6.6 To the extent the Supply is for the carrying out of work you must ensure, and you warrant that, the work will be carried out in a proper and workmanlike manner and that the work incorporates only new materials or plant which are of merchantable quality and fit for that

purpose.

- 6.7 To the extent the Supply is for the performance of services you must use reasonable skill and care in providing the services and warrant that the services will be fit for their purpose.
- 6.8 Your obligations under this Agreement will continue and not be prejudiced by:
- (a) delivery or Completion of the whole or any part of the Supply; and
  - (b) any payment made by Tassal for or in connection with the Supply.

## 7 SUBCONTRACTING AND ASSIGNMENT

- 7.1 You must not subcontract any of the Supply or assign any right or obligation under this Agreement without Tassal's prior written consent.
- 7.2 You are responsible for acts or omissions of subcontractors (whether or not Tassal has consented to the subcontract).

## 8 INTELLECTUAL PROPERTY

- 8.1 You:
- (a) grant Tassal an irrevocable and royalty-free licence to use any intellectual property connected with the Supply for any of Tassal's own purposes;
  - (b) warrant that in supplying the Supply you have not and will not infringe upon any intellectual property rights (including moral rights) of any third party or any laws which apply in respect of these conditions; and
  - (c) indemnify Tassal against any loss or liability arising from third party claims in connection with the intellectual property.

## 9 WORK HEALTH AND SAFETY

- 9.1 You are responsible for complying with and ensuring that all of your officers, employees, agents, subcontractors or subcontractors' agents comply with all requirements (including fully discharging all duties imposed upon any of them) under or in connection with the legal requirements relating to health or safety in the State in which the Supply is carried out (**Work Health and Safety Law**) in respect of all areas which your activities relating to the provision of the Supply are being carried out at anytime, whether or not Tassal is also obliged to comply with or discharge any of the duties.

## 10 DEFECTS

- 10.1 If at any time prior to 12 months after Completion (or in relation to rectification works, 12 months after completion of the relevant rectification works) Tassal determines that any part of the Supply does not comply with this Agreement, you must do any of the following, at your cost, as Tassal directs (acting reasonably):
- (a) refund all money paid for the defective Supply; or
  - (b) rectify any defects; and
  - (c) reimburse Tassal any damages suffered directly from the defective Supply.

If you fail to act as and when directed under this clause Tassal may, without further notice, engage another to rectify the defective Supply. All damages suffered by Tassal directly from your failure will be a debt due and payable to Tassal.

## 11 INDEMNITY

- 11.1 You indemnify Tassal (and Tassal's agents and

employees) against any claims, damages, losses, costs, expenses or other liabilities arising from or in connection with:

- (a) property loss or damage, personal injury or death (including to your employees) or environmental damage arising from or in connection with you providing the Supply;
- (b) any breach by you of this Agreement or any law; or
- (c) any act or omission, negligence or default on your part in respect of this Agreement,

except to the extent Tassal's negligence has directly caused the loss, damage, injury or death.

## 12 INSURANCE

12.1 Unless Tassal agrees otherwise in writing, from the Date for Commencement, you must effect and maintain the following insurances:

- (a) **(Public and Products Liability)** while you continue to have any obligations regarding the Supply and for at least 3 years after the Delivery Date, public and products liability insurance in the amount of \$20 million per occurrence which names Tassal as an interested party and which covers the Supply and the liabilities assumed by you in this Agreement;
- (b) **(Professional Indemnity)** where you are providing any design, specification or other professional services in connection with the Supply, until at least 6 years after Completion, professional indemnity insurance in the amount of \$5 million per claim;
- (c) **(Motor Vehicle)** while you continue to have any obligations to supply goods or perform works or services which will involve the use of a motor vehicle, motor vehicle third party property damage and bodily injury insurance in the amount of \$20 million per occurrence;
- (d) **(Workers Compensation)** workers compensation insurance as required by law; and
- (e) **(Plant, Material and Goods (including Transit insurance))** insurance in respect of any plant, equipment, material or goods included in or in connection with the Supply during transit to and unloading at the Delivery Address and while in storage off-site for at least the amount of the value of the plant, equipment, material or goods.

12.2 You must provide Tassal with evidence of all policies of insurance required to be maintained by you and copies of the conditions applying to the insurance when requested.

## 13 CHANGES OF REQUIREMENTS

13.1 Tassal may for any reason (including for Tassal's convenience) direct you in writing to:

- (a) accelerate or delay the progress of, change the sequence of or suspend for any period the Supply or any part of it; or
- (b) change the extent, character or quality of the Supply (including by adding or omitting (and having others provide) any part of the Supply or changing methods of Supply), in which case:
- (c) the Supply Price and the Date for Completion shall be adjusted by the amount agreed by the parties (but in the event that the parties are unable to agree within 7 days of the issue of the direction,

then the amount that Tassal reasonably determines), unless Tassal's direction arises from your act, omission or default (in which case you shall have no claim for additional cost or extension of time) or from a suspension for a matter beyond Tassal's control (in which case you shall have no claim for additional cost);

- (d) you are not entitled to any other cost, expense, loss or damage (including loss of profit) arising from or in connection with a direction made pursuant to this clause; and
- (e) if Tassal omits any part of the Supply (including rectification works), Tassal may itself perform or have others perform such obligations without any liability to you (and in the case of rectification works, at your cost).

## 14 GST AND OTHER TAXES

14.1 If the Supply Price is exclusive of GST, Tassal will pay you the GST that applies to the Supply after you provide Tassal with a valid tax invoice. You must pay all taxes and charges payable in connection with the Supply. Where Tassal incurs GST on any supply Tassal is required to make to you, you must pay Tassal that GST.

14.2 Tassal may withhold from payment to you any amount which Tassal reasonably considers Tassal is or may be required by law to withhold, including PAYG and the foreign entity withholding tax.

## 15 TERMINATION

15.1 Tassal may terminate this Agreement at any time and for any reason (including for Tassal's convenience) by no less than 7 days prior notice to you in writing (in which case Tassal will pay for Supply completed to the date of termination together with such justifiable extra or unavoidable direct costs incurred to the termination (as assessed by Tassal, acting reasonably) but will not be liable to you for any other cost, expense, loss or damage (including loss of profit and other consequential loss).

15.2 You may terminate this Agreement by no less than 7 days prior notice to Tassal in writing if Tassal fails to rectify a substantial breach of this Agreement within 30 days of receipt from you of a written notice requiring Tassal to remedy that breach (in which case Tassal will pay for Supply completed to the date of termination but will not be liable to you for any cost, expense, loss or damage (including loss of profit)).

## 16 BREACH OR INSOLVENCY

16.1 Subject to the operation of sections 415D, 415G, 434J to 434M and 451E to 451H of the *Corporations Act 2001* (Cth) (**Ipsso Facto Laws**), without limiting Tassal's rights against you, if you are in breach of any obligation under this Agreement (and fail to rectify that breach within five days of notice to do so), or if Tassal considers for any reason that you cannot pay your debts as and when they fall due or if you become insolvent, Tassal may:

- (a) terminate this Agreement (in whole or in part) immediately;
- (b) carry out ourselves or have others carry out your obligations at your cost without any liability to you; or
- (c) suspend payment of any further amount under this Agreement while the breach continues.

To the extent of inconsistency between any provision of this Agreement and the Ipsso Facto Laws, the relevant

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provision of this Agreement will be read down or severed from this Agreement, so as to maintain as far as possible, the original effect and intent of this Agreement.

otherwise agreed, be sent to a party at one of its addresses referred to below:

Tassal:

Address:

GPO Box 1645, Hobart TAS 7001

You:

the address and fax number stated in the Purchase Order.

## **17 POST TERMINATION OBLIGATIONS**

17.1 Within 2 business days after termination or expiry of this Agreement (for any reason), you must deliver to Tassal:

- (a) all plant, equipment, materials, property (including without limitation keys), documentation, information or other items of Tassal's which Tassal provided to you in connection with this Agreement; and
- (b) any of the materials or other items which under this Agreement have become Tassal's property.

## **18 CONTRACT TERMS**

18.1 Despite any other provision:

- (a) subject to paragraph (b) below, the terms of this Agreement:
  - (i) operate to the exclusion of all other terms (including in any document, standard terms and conditions, material or communication issued by you at any time (whether before or after your receipt of this Agreement));
  - (ii) only include documents referred to in the Supply Description to the extent those documents describe the Supply (including without limitation its performance characteristics) and not for any other purpose (including without limitation terms or conditions proposed by you for the Supply); and
  - (iii) will include documents expressed to form part of this Agreement that are not known to you until after this Agreement is entered into (including Additional Documents) only from the time they are made known to you and you will be taken to have accepted those documents when you continue with the performance of any activity connected with the Supply after that time; and
- (b) no waiver of a breach of any provision of this Agreement shall constitute a waiver of any other breach of such provision or any other provision.

## **19 COMPLETING PURCHASE ORDER**

19.1 You authorise Tassal to edit or revise the Purchase Order for the purposes of correcting any errors or completing the Purchase Order to the extent required to give effect to the parties' intentions relating to the Supply or this Agreement.

## **20 GENERAL**

- (a) The laws in force in the location of the Site apply to this Agreement and both parties submit to the exclusive jurisdiction of the courts of that jurisdiction, except that the United Nations Convention on Contracts for the International Sale of Goods does not apply.
- (b) Subject to disclosures that are necessary under either Law, you must keep confidential all information of Tassal, including this Agreement, information that is marked confidential or concerns Tassal's commercial or operational affairs, and is not in the public domain.
- (c) Any notice which is required or permitted to be given to either party must be in writing and, unless