

## 1. Supply of goods and/or services

- 1.1. The Supplier agrees to sell and Coates agrees to buy the Goods and/or Services on and subject to the Order and these Purchase Order Terms and Conditions ("the Terms").
- 1.2. These Terms constitute the entire agreement and supersede any other agreement or understanding between the parties. If the Supplier's terms are supplied with the Goods or Services, those terms will be of no legal effect (even if any representative of Coates signs those terms or annexes the terms and conditions to any Order).
- 1.3. The Supplier must, in supplying the Goods or performing the Services, comply with the Coates Code of Conduct.
- 1.4. On request by Coates, the Supplier must provide any information and assistance reasonably required by Coates on any matter relating to the Goods and/or Services.

## 2. Delivery

- 2.1. The Supplier must deliver the Goods to the Delivery Address by the Delivery Date.
- 2.2. The Supplier must ensure that the Goods are suitably packed to avoid damage in transit or in storage.
- 2.3. Packages must be marked with the Order number, item number, destination, contents, quantity, date and method of dispatch and weight of each package.
- 2.4. On reasonable notice, the Supplier must provide and procure for Coates (and its representatives) full access to all premises and locations to allow Coates to inspect the Goods at any time prior to their Delivery.

### 3. Title

- 3.1. Title in the Goods passes to Coates upon delivery.

#### 4. Price

1. Coates must pay the Supplier the Price for the Goods and/or Services based on the rates and quantities set out in the Order.
2. Coates may direct the Supplier to alter, add to or omit all or part of the Goods and/or Services. The price for such variation will be based on the rates set out in the Order unless otherwise agreed by the parties.
3. The Price is inclusive of all costs incurred by the Supplier in the supply of the Goods and/or performance of the Services.
4. If GST is imposed on any supply made by the Supplier under or in connection with the Order, the Supplier must provide Coates with a valid tax invoice before Coates will pay the GST amount to the Supplier.

## 5. Invoicing

- 5.1. The Supplier must provide to Coates a Supplier Delivery Document upon delivery of the Goods and/or completion of the Services. All invoices must include an Order Number and must be submitted to Coates in a timely manner (and no later than 12 months from the date of providing the Goods and/or Services). To the extent permitted by law, Coates reserves the right to reject payment of any invoice that has not been presented by the Supplier in a timely manner.
- 5.2. Coates is not obliged to pay any invoice or part of the invoice that has not been submitted in accordance with the Terms (including but not limited to invoices submitted without an Order Number) or which relates to Goods or Services that have not been accepted by Coates and are the subject of a Dispute (as defined in clause 8.1).
- 5.3. Subject to clause 5.1 and 5.2, Coates will pay all invoices that comply with the Terms within 45 days from the end of the month in which the invoice was received, except where Coates disputes the Supplier Delivery Document or invoice, in which case:
- ( ) Coates may withhold payment pending resolution of the Dispute; and
- ( ) if upon resolution of the Dispute, it is determined that Coates must pay an amount to the Supplier, Coates must pay that amount within 14 days of such resolution.
- 5.4. Coates may reduce any payment due to the Supplier under the Terms by any amount which the Supplier must pay Coates, including costs, charges, damages and expenses and any debts owed by the Supplier to Coates on any account whatsoever. This does not limit Coates' right to recover those amounts in other way.

## 6. Quality

- 3.1. The Supplier warrants that:
  - a) the Goods and/or Services match the description referred to in the Order, and conform to all relevant specifications, drawings, samples and descriptions;
  - b) the Goods and/or Services are fit for Coates' intended purpose;
  - c) the Goods are of reasonable quality and, unless otherwise specified in the Order, are new;
  - d) the Services will be performed in a thorough, professional and competent manner using the standard of care, skill and diligence that would reasonably be expected from an

- e) the Goods are free of all liens and encumbrances and the Supplier has good title to them;
- f) the Supplier's Personnel will at all times hold all licences required by Law for the supply of the Goods and/or the performance of the Services;
- g) there are no terms, conditions or restrictions which will become binding on Coates as a result of the sale of the Goods to Coates or the use of the Goods by Coates or the resale or hiring out of the Goods by Coates; and
- h) it shall assign to Coates the benefits and rights of all warranties to which the Supplier is entitled with respect to the Goods and/or Services.

## 7. Defective goods and services

- 7.1. If, any of the Goods or Services are found to be Defective, Coates may, at the Supplier's cost:
- a) return the Defective Goods to the Supplier;
  - b) reject the Defective Services;
  - c) repair or make good the Defective Goods; or
  - d) re-perform or make good the Defective Services.
- 7.2. The Supplier must at the Supplier's cost, if requested to do so by Coates:
- a) repair or replace the Defective Goods;
  - b) re-perform or make good the Defective Services; or
  - c) reimburse Coates for any expenses incurred in repairing, re-performing or making good (as the case may be) any Defective Goods or Services.

## 8. Dispute resolution

- 8.1. If a difference or dispute between the parties arises in connection with an invoice or the subject matter or interpretation of the Terms ("Dispute"), either party may give the other party written notice of the Dispute identifying and providing details of the Dispute ("Dispute Notice").
- 8.2. Within 7 business days of receipt of the Dispute Notice, representatives of the parties having authority to bind the parties shall discuss the Dispute ("Dispute Meeting").
- 8.3. Providing the provisions of this clause have been complied with and the Dispute has not been resolved within 10 business days following the Dispute Meeting, either party may commence proceedings in court.

## 9. Intellectual property

- 9.1. If the Supplier is manufacturing or procuring the manufacture of the Goods and the Goods are required to be manufactured or fabricated to Coates' specifications or special requirements (and are not goods of the type ordinarily manufactured by the Supplier or the Supplier's sub-contractors) Coates will own all intellectual property rights of any kind that arise as a result of, or in the course of, the design or manufacture of the Goods.
- 9.2. If the Services are required to be performed to Coates' specifications or special requirements Coates will own all intellectual property rights of any kind that arise as a result of, or in the course of, the performance of the Services.
- 9.3. The Supplier will do all necessary acts to give effect to Coates' rights under clauses 9.1 and 9.2.
- 9.4. The Supplier warrants that the supply of the Services and Goods to Coates, the use of the Goods by Coates or any resale or hiring out of the Goods by Coates will not infringe the intellectual property rights of any person and Coates will not have to pay any licence fee, royalty or other amount to any person in connection with the Services or Goods.

## 10. Liability and indemnity

- 10.1. The Supplier shall indemnify and hold Coates harmless against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment (including any legal costs on a full indemnity basis) arising out of, or in connection with, the supply of the Goods or Services in respect of:
  - personal injury to, or the death of, any person;
  - loss of, damage to, or loss of use of, any property, including property of Coates;
  - any claim that the Goods and/or Services infringe the intellectual property rights of a third party;
  - a breach of clause 6 or 7 of these Terms; and
  - any other claims arising from any wrongful or negligent act or omission by or on behalf of the Supplier or the Supplier's Personnel, in connection with the supply of the Goods or Services (including, but not limited to, a breach of the Terms).
- 10.2. The Supplier is responsible for all acts or omissions of the Supplier's Personnel in relation to the provision of the Services and supply of the Goods.

# Purchase order terms and conditions – February 2022

- 10.3. The Supplier must remedy any environmental damage or degradation resulting from the Supplier's actions or omissions.
- 11. Chain of Responsibility obligations**
- 11.1. The Supplier must:
- a) comply with all Chain of Responsibility legislation and must ensure that any activity relating to the supply of the Goods and/or Services is undertaken in accordance with the Supplier's Chain of Responsibility obligations;
- b) ensure that any of the Supplier's transport subcontractors are contractually bound by similar Chain of Responsibility obligations to those set out in this clause.
- 11.2. The Supplier will allow Coates to audit the Supplier's records to ensure that the Supplier has proper processes in place to manage the Supplier's Chain of Responsibility obligations.
- 12. Modern slavery**
- 12.1. Without limiting the Supplier's obligations elsewhere in these Terms or otherwise, the Supplier must:
- 12.2. comply with all obligations under the Modern Slavery Laws;
- 12.3. have and maintain adequate and reasonable policies and procedures to prevent, detect, assess, manage and remedy modern slavery risks in the Supplier's operations and supply chain;
- 12.4. provide any information Coates requires and comply with Coates' directions to enable Coates to comply with Coates' obligations under the Modern Slavery Laws; and
- 12.5. keep records adequate to demonstrate compliance with this clause.
- 13. Exclusions from small business contracts**
- 13.1. If these Terms constitute a 'small business contract' (as that term is defined in the ACL) then Clause 15.4 (21 days to lodge a claim) will not apply.
- 14. PPSA**
- 14.1 The Supplier acknowledges and agrees that it will not register any PMSI under the PPSA in respect of the Goods and/or Services without the prior written consent of Coates.
- 14.2 In the event Coates provides its consent pursuant to clause 14.1, the Supplier acknowledges and agrees that Coates will not be responsible for:
- (i) the preparation and registration of the financing statement or financing change statement; and
- (ii) payment of any fees associated with the registration.

- 14.3 The Supplier is obliged, at all times, to give Coates notice if the Supplier's security interest is assigned to another party.
- 15. General**
- 15.1. Coates may terminate an Order in its absolute discretion by giving the Supplier 7 days' notice in writing prior to the Delivery Date. In such case no Price will be payable by Coates. Termination of the Order pursuant to this clause shall be without prejudice to the rights of either party which accrued before termination.
- 15.2. Coates may terminate an Order with immediate effect where it reasonably believes that the Supplier has breached the Code of Conduct in any material respect. The only Price payable to the Supplier following termination of the Order will be for Goods or Services delivered to Coates in accordance with the Terms prior to the breach.
- 15.3. Any amount paid by Coates to any subcontractor or supplier of the Supplier pursuant to any notice of claim served on Coates by such subcontractor or supplier under the Building and Construction Industry Security of Payment Act 1999(NSW) or the Building and Construction Industry Security of Payment Act 2002 (Vic) (or any other similar or equivalent legislation in other states or territories) shall be a debt due and payable by the Supplier to Coates.
- 15.4. Coates shall have no liability to the Supplier in respect of any matter in connection with the Order unless a claim together with full particulars is lodged with Coates within 21 days of the occurrence of the event on which the claim is based.
- 15.5. If any provision or part of any provision of the Terms is unenforceable, such unenforceability shall not affect any other part of such provision or any other provision of the Terms.
- 15.6. Delivery acronyms such as FCA, FOB, CIF shall be interpreted in accordance with INCOTERMS 2000 edition.
- 15.7. The Terms shall be governed by the laws of New South Wales and the Parties agree to submit to the jurisdiction of the Courts of that state.
- 10.8 Coates agrees that it will deal with all personal information provided by the Supplier in accordance with its legal obligations and the Coates Privacy Policy, a copy of which is available on the Website.
- 10.9 If the Supplier subcontracts any part of the Services:

- a) The terms of the subcontract must be consistent with the Terms;
- b) The Supplier's obligations are not lessened or otherwise affected by subcontracting the performance of those Services; and
- c) The Supplier is responsible for ensuring their subcontractors' compliance with the Code of Conduct.
- 16. Definitions**
- ACL** means the Australian Consumer Law, which is contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
- Chain of Responsibility** means legislation that extends liability for Road Law offences to all parties whose actions, inactions or demands influence conduct on the road..
- Coates** means Coates Hire Operations Pty Limited ACN 074 126 971 or the Coates entity named in the Order.
- Code of Conduct** means the Coates Code of Conduct, a copy of which is available on the Website.
- Defective** means Goods and/or Services (or any aspect of them) which are not in accordance with the Order or which are damaged, deficient, faulty, inadequate or incomplete.
- Delivery Address** means the place for delivery specified on the Order.
- Delivery Date** means the delivery date specified on the Order, or a date subsequently notified in writing by Coates to the Supplier.
- Goods** means the goods, if any, described in the Order.
- GST** has the meaning given to that term under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- Law** means:
- a) Commonwealth, State and local government legislation including regulations, by-laws, orders, awards and proclamations;
- b) common law and equity;
- c) authority requirements and consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals); and
- d) guidelines of Authorities with which the Supplier is legally required to comply.
- Modern Slavery Law** means any modern slavery legislative requirements in any jurisdiction that are applicable to the Supplier, Coates or this Agreement, including the *Modern Slavery Act 2018* (Cth) and the *Modern Slavery Act 2018* (NSW).

**Order** means the purchase order issued by Coates to the Supplier from time to time containing, amongst other things, a description of the Goods and/or Services.

**Order Number** means a 7 digit number, which appears on all valid Orders.

**PPSA** means the Personal Property Securities Act 2009 (Cth) (as amended) and any other legislation and regulations in respect of it and the following words in clause 14 have the respective meanings given to them in the PPSA: financing change statement, financing statement, purchase money security interest (or "PMSI"), register, registration and security interest.

**Price** means the price set out in the Order which is exclusive of GST, but is inclusive of all other costs and charges.

**Road Law** means any law, regulation or rule relating to the use of a road, restrictions on driving hours (in whichever legislative instrument those requirements may appear), mass, load and restraint requirements for the carriage of goods, dangerous goods, environmental impacts and speed and traffic requirements and includes the Heavy Vehicle National Law.

**Services** means the services, if any, described in the Order.

**Supplier** means the party identified as such in the Order.

**Supplier Delivery Document** means a delivery document, dispatch note, time sheet, claim form or such other document which evidences the delivery of Goods or performance of Services.

**Supplier's Personnel** means the Supplier's officers, employees, agents, consultants, contractors and subcontractors.

**Website** means <http://www.coates.com.au/>