

Purchase Order Terms

It is agreed:

1. Terms of the Agreement

- 1.1 These Purchase Order Terms set out the terms under which we request to engage you to provide the Deliverables.
- 1.2 These Purchase Order Terms are accepted by you from the earliest of the time you: indicate in writing your acceptance, provide us with a receipt of any Samples provided, issue a receipt in response to any Chain of Custody Document or otherwise commence providing any Deliverable.
- 1.3 By providing a Purchase Order, we reject any prior terms and conditions which you may have provided to us including such terms and conditions which may apply to any Quote. By accepting these Purchase Order Terms in accordance with clause 1.2, you agree that any prior terms and conditions do not apply to the provision of the Deliverables.

2. Our role

- 2.1 We will provide the Materials that you may require to perform the Deliverables. We do not make any warranty as to the accuracy or completeness of the Materials.
- 2.2 We will pay you for the Deliverables in accordance with clause 4.
- 2.3 We reserve the right to cancel a Purchase Order if a Deliverable ordered is not delivered by the Delivery Date for that Deliverable and such failure is not due to our conduct. Where we exercise this right after 7 Business Days following the Delivery Date, you do not have and may not prosecute any claim whatsoever at law or in equity against us arising from the cancellation.
- 2.4 Where we exercise our rights under clause 2.3, you must, in addition to any other liability you may have under to this Agreement, pay the costs of removing any Deliverables that are goods from our premises.

3. Your role

- 3.1 In the course of providing the Deliverables, you will:
- (a) notify us as soon as practicable (but in any event within 2 Business Days) if you become aware:
 - (i) that the Materials are inaccurate or incomplete for the purpose of providing the Deliverables; or
 - (ii) of a matter which may change the nature of the Deliverables or the Delivery Date of a Deliverable;
 - (b) provide the Deliverables by the Delivery Date for each Deliverable;
 - (c) not engage individuals or entities on a sub-contract or consultancy basis to assist in the provision of the Deliverables without our prior written consent;
 - (d) ensure that you maintain public liability insurance (in the amount of \$10,000,000 per occurrence) and professional indemnity insurance (in the amount of \$10,000,000 per occurrence) relevant to the Deliverables;
 - (e) cooperate fully with us in respect of the performance of the Deliverables;
 - (f) seek clarification if there is any matter identified in the Information that, in the reasonable opinion of a professional in your industry, appears to be incorrect;
 - (g) ensure that any Reports you provide are true and correct;
 - (h) ensure that your Personnel at all times comply with your obligations under this Agreement;
 - (i) produce to us, evidence of your accreditation with the National Association of Testing Authorities, Australia if you are providing Testing Services;
 - (j) ensure that any Deliverable you provide:
 - (i) conforms to any specifications, drawings, samples or other description (if any) furnished by us to you or as may be identified in any Quote and that any in-progress inspection by us or our Personnel does not affect this requirement; and
 - (ii) carries any applicable manufacturer's warranty which passes to us from you without liability to us and that you must assign to us at our request the benefit of any warranty or guarantee that you have received from any of your suppliers (whether under contract or by implication or operation of law).
 - (iii) is fit for the purpose for which each Deliverable of the same kind is commonly supplied, and any other reasonable purpose made known to you;

(k) ensure that, in addition to the requirements set out in paragraph (j), where any Deliverable you provide that is a good, it is of merchantable quality and free from defect in material or workmanship;

(l) ensure that, in addition to the requirements set out in paragraph (j), where a Deliverable is a service, you:

(i) act in a professional manner exercising reasonable skill, care and diligence to the standard normally practised by professionals in your industry;

(ii) act in accordance with any applicable standards, guidelines, procedures and practices at the date of performance of those Deliverables.

3.2 You warrant that to the extent that you engage any other party to provide a Deliverable, the Deliverable will be provided in accordance with this Agreement as if it had been provided by you.

3.3 By agreeing and continuing to provide the Deliverables, you warrant any matter which is represented or warranted in any Quote and that you will perform and have performed the Deliverables in accordance with your obligations set out in clause 3.1. You agree that you make these warranties and the warranty set out in clause 3.2 continuously and upon providing any Report and any invoice under this Agreement.

4. Acceptance and Risk of Deliverables that are goods

4.1 Where a Deliverable is a good:

(a) The Deliverable is received by us subject to our inspection of the goods within 14 days after delivery or before delivery at our discretion irrespective of date of payment.

(b) Any document which identifies delivery to us does not mean that the Deliverable has been accepted by us.

(c) We must promptly notify you of any defects appearing, and hold the Deliverable so found to be defective for your instructions and at your risk for a reasonable period not exceeding 14 days. If we do not receive your instructions within this period, we may return the defective Deliverable to your premises at your expense and risk. Any reasonable expense incurred by us in such return is payable by you and may be set off by us against any moneys otherwise due to you.

4.2 Subject to clause 4.1, any Deliverables that are goods are at your risk until delivered to us. Once the Deliverable is delivered the risk is transferred to us whether or not transfer of title occurs on delivery of the Goods.

5. Payment for Deliverables

5.1 We will pay you the Fees for each Deliverable in accordance with this clause.

5.2 We are not obliged to pay you any amount:

(a) in excess of the Fees for each Deliverable;

(b) in excess of the Total Fees for the Deliverables;

(c) relating to an activity that is not specified as a Deliverable; or

(d) for repeating any of the Deliverables.

5.3 You must not issue an invoice for any Fees where the Deliverable to which those Fees relate have not been completely delivered and accepted by us.

5.4 We will retain an amount not exceeding 10% of the Total Fees which will be paid upon completion of all Deliverables.

5.5 Where you have performed any Deliverable in breach of your obligations set out in clause 3, you agree to provide the Deliverables again at no cost to us.

5.6 All amounts payable by you in connection with this Agreement are exclusive of GST. If GST is payable on any supply made by a party under or in connection with this Agreement, the consideration provided (or to be provided) for that supply will be increased by an amount equal to the GST liability payable by the supplier and the amount of such GST liability must be paid by the recipient of the supply at the same time and in the same manner as the consideration for the supply.

6. Termination

6.1 Either party may terminate this Agreement immediately if:

(a) an order is made for the winding up or bankruptcy of the other party;

(b) the other party's shareholders pass a resolution for its winding up;

(c) a trustee controlling trustee, administrator, receiver, receiver and manager, controller (as defined in section 9 of the Corporations Act 2001), or similar person is appointed to the other party;

- (d) the other party, without the consent of the first party makes any assignment or enters into any arrangement or composition generally for the benefit of one or more of its creditors;
- (e) execution is levied against the other party by a creditor;
- (f) the other party breaches this Agreement and such breach is incapable of remedy, or is not remedied within 14 days of the date the first party provides notice setting out the breach and the steps required for its remedy.
- 6.2 We may terminate this Agreement at any time and for any reason by giving you thirty (30) days' written notice. In this event, we will only be liable to pay any Fees which have been invoiced in accordance with clause 4 prior to the date of termination.
- 6.3 Where we terminate this Agreement in accordance with clause 6.1, we are not obliged to pay any further Fees which have been invoiced but not paid as at the date of the termination.
- 7. Intellectual Property Rights**
- 7.1 Any Intellectual Property Rights owned by us before the commencement of this Agreement will remain owned by us and nothing in this Agreement grants you any rights in relation to such Intellectual Property Rights.
- 7.2 You grant us and the Head Client a non-exclusive, irrevocable, transferrable, royalty-free licence to use any of your pre-existing Intellectual Property Rights to the extent reasonably required by us and the Head Client to rely upon the Deliverables or any Reports arising therefrom.
- 7.3 All Intellectual Property Rights (including any such rights in any Reports, designs, drawings and documents) created by you in the course of providing the Deliverables will immediately vest upon their creation in us. You will do all things necessary (at no cost to us) to ensure that to the extent such Intellectual Property Rights do not vest in us, that they are assigned to us.
- 7.4 Where the Deliverables are based upon any Materials owned by a third party, you indemnify us against Liability arising out of or in any way related to infringement of the Intellectual Property Rights of a third party in connection with same.
- 8. Confidentiality**
- 8.1 Each party may use and disclose the Confidential Information of the other party solely to the extent necessary for the performance of the party's obligations under this Agreement.
- 8.2 Each party may disclose Confidential Information of the other party if compelled to do so by law or to the party's legal or professional advisers who are bound by obligations of confidentiality.
- 9. Reports**
- 9.1 You acknowledge that any Report you provide is true and correct and that in providing the Report, you have complied with your obligations under this Agreement (including those set out in clause 3.1) and any assumptions stated in the Report.
- 9.2 Any Report may be relied upon by us and the Head Client.
- 9.3 You warrant that each Report is prepared in accordance with applicable standards, guidelines, procedures and practices at the date of issue of the Report.
- 10. Limitation of liability**
- 10.1 You shall, at all times, indemnify and hold us and our Personnel harmless from and against any Liability (including any Liability under the contract with the Head Client) incurred or suffered by us in connection with any of the following:
- (a) a breach of this Agreement by you or your Personnel;
- (b) any inaccurate, misleading, or incomplete statement in any Report;
- (c) any wilful, unlawful or negligent act or omission by you.
- 10.2 We do not warrant and you release us from any Liability arising out of any Materials which are misleading, inaccurate or incomplete.
- 10.3 Any Liability that we may incur in respect of this Agreement is:
- (a) reduced proportionally to the extent that such Liability is contributed to by you or your Personnel; and
- (b) limited to the value of the Total Fees.
- 11. General Terms**
- 11.1 **(Notices):** Notices under this Agreement may be delivered by:
- (a) mail, where it is deemed given on the second business day (in the location of the recipient) after postage;
- (b) hand, where it is deemed given immediately upon delivery; or
- (c) email, where it is deemed given on the day it is sent (if it is sent before 4:00pm) or otherwise on the next business day (in the location of the recipient).
- 11.2 **(Entire Agreement):** Subject to clause 3.3, this Agreement constitutes the entire agreement between the parties and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing. For the avoidance of doubt, any of your pre-existing terms and conditions are expressly rejected and do not form part of this Agreement.
- 11.3 **(Assignment):** Your rights and obligations under this Agreement must not be assigned, novated or dealt with without our prior written consent.
- 11.4 **(Waiver):** No right under this Agreement shall be deemed to be waived by us except by notice in writing signed by us. Any waiver by us will not prejudice any of our rights in respect of any subsequent breach of this Agreement by you.
- 11.5 **(Variation):** The provisions of this Agreement shall not be varied, except by agreement in writing signed by the parties.
- 11.6 **(Survival):** All of your obligations and our rights in connection with this Agreement will survive the termination of this Agreement.
- 11.7 **(Severability):** If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, this Agreement shall remain otherwise in full force apart from such provisions which will be deemed to be deleted.
- 11.8 **(Set-off):** We may set-off any monies owing by us to you under this Agreement against any monies owed by you to us. This does not limit our rights to recover amounts from you by any other means.
- 11.9 **(Governing Law):** This Agreement will be governed by and the parties submit to the non-exclusive jurisdiction of the laws of Queensland.
- 12. Definitions and interpretation**
- 12.1 Unless the context otherwise requires, in each document forming part of this Agreement:
- (a) **Agreement** means the agreement between you and us comprising of the Purchase Order, these Purchase Order Terms and, if the Deliverables include any Testing Services, any Chain of Custody Document relating to those Testing Services (in that order of precedence in the event of inconsistency).
- (b) **Chain of Custody Document** means a document provided by us to you which identifies the date on which a Sample is provided for the purpose of quality assurance.
- (c) **Confidential Information** means all know how, Intellectual Property Rights, business, financial, technical and other commercially valuable or sensitive information of a party in whatever form. This includes inventions (whether or not reduced to practice), trade secrets, methodologies, formulae, graphs, drawings, samples, biological materials, devices, models, business plans, policies and any other materials or information which the party regards as confidential, proprietary or of a commercially sensitive nature that relates to that party.
- (d) **Deliverables** means the collection of relevant services, activities and products set out in the Purchase Order and **Deliverable** means any one of those items.
- (e) **Delivery Date** means the date specified in the Purchase Order by which each Deliverable is to be provided.
- (f) **Fees** means the fees payable in respect of each Deliverable as set out in the Purchase Order.
- (g) **Head Client** means the entity set out in the Purchase Order.
- (h) **Information** means all information, documents, maps and other particulars that are provided by us to you in connection with the Deliverables.
- (i) **Intellectual Property Rights** means copyright, trademark, design, patent, and any other rights whether or not they are registered or registrable, relevant to, among other things, the textual, graphical, audio and other information, content, data or material used by us in respect to this Agreement.
- (j) **Liability** means any cost, loss (including consequential loss), liability, charge (government or otherwise), tax, duty, penalty, fine, expense (including advisor's and solicitors' fees on a full indemnity basis), demand, proceeding, suit, action or cause of action, whether arising in contract, tort (including negligence), under statute or otherwise, of whatever nature, known or unknown, liquidated or unliquidated, actual or contingent.
- (k) **Materials** means any Information or Samples.

- (l) **Personnel**, of a party, means any employee, contractor, consultant, subcontractor or agent of that party.
- (m) **Purchase Order** means the document that we give you setting out the Deliverables required by us, the Fees, and other details relevant thereto as referred to in these Purchase Order Terms.
- (n) **Purchase Order Terms** mean the terms and conditions set out in this document.
- (o) **Quote** means a document provided by you which sets out the scope of any Deliverables to be provided and the estimated Total Fees.
- (p) **Report** means any document prepared by you which may set out opinions, conclusions, recommendations or otherwise identifies scientific or non-scientific results in connection with the Deliverables.
- (q) **Samples** means a small part of quantity of biotic or abiotic matter.
- (r) **SGME, we, us, our** or any similar expression means SGM Environmental Pty Ltd ABN 65 621 989 866.
- (s) **Supplier, you** or **your** means the entity we are engaging to provide the Deliverables, as set out in the Purchase Order.
- (t) **Testing Services** means scientific activities by which you will examine Samples provided by us and provide us with the results of those activities.
- (u) **Total Fees** means the amount specified as such in the Purchase Order.

12.2 **(Interpretation):** In this Agreement:

- (a) headings are for convenience only and do not affect interpretation of this Agreement;
- (b) this document is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself;
- (c) the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what else might be included,
and unless the context otherwise requires:
- (d) words importing the singular include the plural and vice versa;
- (e) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this Agreement;
- (f) a reference to a party includes a reference to the person's executors, administrators, successors, permitted substitutes, permitted assigns and, in the case of a trustee, includes any substituted or additional trustee;
- (g) if a term is defined, its other grammatical forms have a corresponding meaning;
- (h) a reference to a document or agreement (including this Agreement) is to that document or agreement as amended, supplemented or replaced from time to time; and
- (i) a reference to a natural person includes a corporation, trust, partnership, unincorporated body, government agency, or other entity whether or not it comprises a separate legal entity.