



# ***STANDARD PURCHASE ORDER TERMS AND CONDITIONS***

*August 2023*

**CATHOLIC SCHOOLS BROKEN BAY**

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## Terms and Conditions

### **Purchase Order: Standard Terms And Conditions Of Supply**

The agreement between Catholic Schools Broken Bay (CSBB) and the Supplier (Agreement) is comprised of:

- (a) the attached Purchase Order and any additional formal agreement (excluding terms attached to a Supplier quote or proposal) executed between CSBB and the Supplier (together 'Purchase Order'); and
- (b) these Terms and Conditions of Supply.

In the event of any inconsistency between the Purchase Order, any quote or proposal from the Supplier, and these Terms of Conditions of Supply, the terms of the Purchase Order prevail, followed by these Terms and Conditions of Supply.

### **1. Supply Of Goods And Services**

(a) The Supplier must, in relation to the supply of goods or services, deliver the goods or services detailed in the Purchase Order by the date specified by CSBB, to the address notified by CSBB, and, if applicable, by the methods and delivery instructions specified by CSBB, all in accordance with the terms of this Agreement.

(b) The Supplier is responsible for payment of all costs (including any levies, duties or taxes) associated with the manufacture, importation, packaging, storage, transportation, delivery and installation (if required by CSBB), of the goods supplied.

(c) The Supplier must ensure that each packaging slip, bill of lading and invoice bears the applicable purchase order number (or other identification) issued by CSBB and the location at which goods are to be delivered or services provided.

(d) The Supplier must, in relation to the provision of services to CSBB detailed in the Purchase Order, perform those services in a professional manner and in accordance with any standards or requirements notified by CSBB.

### **2. General Supplier Obligations**

The Supplier must:

(a) comply with any reasonable directions given by CSBB from time to time in respect of the nature and scope of goods and services to be supplied;

(b) observe all applicable CSBB policies and procedures, including the Code of Conduct Policy, as provided to the Supplier from time to time;

(c) ensure that it does not engage in any conduct or activity that:

(i) will harm, or is likely to harm, the name or reputation of CSBB or its related associations;

(ii) is offensive, corrupt or disreputable;

(iii) may bring CSBB, or its related associations, into disrepute, contempt, scandal or ridicule; or

(iv) contravenes or is contrary to the requirements, principles and standards notified by CSBB.

(d) ensure that all employees, agents and contractors engaged to provide goods and services (collectively, the Personnel and each Person) are competent and have the skills and experience required to provide the goods and services to the standard required by CSBB;

(e) ensure that all Personnel consent to any routine background checks and where requested by CSBB, remove any Personnel who, in CSBB's opinion, are not suitable to provide the goods or services and replace such Personnel with a person acceptable to CSBB;

(f) assume responsibility for the acts or omissions of the Personnel in respect of the supply of goods and services to CSBB; and

(g) where the Supplier is providing services to CSBB at a site (the Site):

- (i) ensure that it complies with any Site conditions that are notified by CSBB, including conditions relating to access, safety, Site control, working hours;
- (ii) provide CSBB with a list of all major equipment which it proposes to use on Site and ensure that such equipment complies with all applicable Australian standards and safety requirements;
- (iii) ensure that any necessary licences and permits are obtained in order to provide the services, including operation of any vehicle or equipment used in provision of the services;
- (iv) rectify any damage to the Site caused by the provision of the services.

### **3. Payment**

(a) All prices and fees for provision of goods and services are fixed as specified in the Purchase Order unless CSBB agrees in writing to a price variation.

(b) Subject to anything in the contrary in the Purchase Order, it is at CSBB's discretion as to whether it pays the invoices upfront or makes payment within 30 days after receipt of a valid tax invoice or within 30 days of the end of the month in which the goods or services are delivered, provided that:

- (i) the goods or services are satisfactory to CSBB;
- (ii) the valid tax invoice is issued after the delivery of the goods or after the provision of the services;
- (iii) and delivery of the goods, provision of the services and the amounts invoiced are in accordance with this Agreement or other written instructions issued by or on behalf of CSBB.

(c) Payments may be made by direct deposit and the Supplier will provide CSBB with full details of its bank account for this purpose.

### **4. Work Health And Safety**

(a) The Supplier warrants that it is familiar with and has the capability and resources to comply with all work health and safety laws applicable or relevant to the provision of goods and services, and to the extent applicable, will comply with its obligations under the Work Health and Safety Act 2011 (NSW) (WHS Act) and the Work Health and Safety Regulation 2011 (NSW) (WHS Regulation) as a supplier of goods and services, and as a designer, manufacturer, importer, installer, constructor or commissioner of the goods.

(b) The Supplier will comply with and ensure that all its contractors engaged in the provision of the goods or services comply with all work health and safety laws applicable or relevant to the provision of goods and services. The Supplier must, on reasonable request by or on behalf of CSBB, demonstrate compliance with those requirements including providing evidence of measures taken to achieve such compliance.

(c) The Supplier must comply with its obligation under the work health and safety laws to consult, co-operate and co-ordinate activities with all other persons who have a work health and safety duty in relation to the same matter.

(d) Where the Supplier is performing work for CSBB on sites which are not CSBB premises, the Supplier must:

- (i) cooperate with CSBB in order to maintain consistent safety practices on the site; and
- (ii) cooperate with CSBB to enable CSBB to comply with its obligations under all work health and safety laws applicable or relevant to the goods and services.

(e) Where the Supplier is performing work on sites that are not CSBB premises the Supplier must ensure that any incident that occurs in relation to the provision of the goods or services which is notifiable under the WHS Act and WHS Regulation, is notified to the relevant regulatory authority.

(f) The Supplier acknowledges that other than when goods or services are being supplied to or performed on CSBB premises, CSBB does not control or influence health and safety matters concerning the supply of the goods or services.

(g) Any breach by the Supplier of this clause entitles CSBB at its option to suspend the whole or part of the provision of the goods or services and any payment for such goods or services until the breach is rectified and the Supplier must bear any costs it incurs as a result of the suspension.

## **5. Child Protection**

(a) To the extent the following legislation is applicable to the Supplier, it undertakes it has complied with and will continue to comply with all relevant provisions of the:

(i) Child Protection (Working with Children) Act 2012 (NSW) and Child Protection (Working with Children) Regulation 2012 (NSW), in particular the requirement to verify the Working with Children Checks (WWCC) of any persons employed or contracted by the Supplier required to hold a WWCC;

(ii) Children's Guardian Act 2019 (NSW) and any regulations made under that Act, in particular the requirements to keep child protection systems and report Reportable Allegations or convictions considered to be Reportable Convictions, to the NSW Office of the Children's Guardian; and

(iii) Children and Young Persons (Care and Protection) Act 1998 (NSW) and Children and Young Persons (Care and Protection) Regulation 2012 (NSW), in particular the requirements relating to mandatory reporters.

(iv) The Supplier must, on reasonable request by or on behalf of CSBB, demonstrate compliance with those requirements including providing evidence of measures taken to achieve such compliance.

(b) In providing the goods or services under this Agreement, the Supplier must comply, and must ensure that its employees, volunteers and contractors comply, with the child protection and safeguarding policies and procedures of CSBB as notified to the Supplier from time-to-time.

(c) In the event that it comes to the Supplier's attention that one of its employees, volunteers or contractors who is required to hold a WWCC for the purposes of the Supplier's provision of goods or services to CSBB under this Agreement, is the subject of a Reportable Allegation or a conviction considered to be a Reportable Conviction (as defined under the Children's Guardian Act 2019), the Supplier agrees to the following:

(i) It must notify CSBB of the Reportable Allegation or the conviction considered to be a Reportable Conviction as soon as possible.

(ii) CSBB is required to report the relevant conduct to the NSW Office of the Children's Guardian in compliance with the requirements of the Children's Guardian Act 2019 and conduct an investigation of the same; and

(iii) The Supplier and each of its employees, volunteers and contractors agree to cooperate with any investigation conducted by CSBB and consent to the use of their personal and confidential information for the purpose of any such investigation or report prepared in that regard.

(d) In the event that any other issue pertaining to the safety and wellbeing of children arises with employees, volunteers or contractors of the Supplier in the course of their provision of services to CSBB, the Supplier must:

(i) Meet its statutory reporting obligations, as required;

- (ii) Notify CSBB of the issue; and
- (iii) Comply with (and ensure that its employees, volunteers or contractors comply with) any investigation commenced by CSBB or any action taken by CSBB, as a result.

## **6. Modern Slavery**

- (a) In this clause:
  - (i) **Modern Slavery** has the same meaning as in the *Modern Slavery Act 2018* (Cth); and
  - (ii) **Modern Slavery Laws** means the *Modern Slavery Act 2018* (Cth), the *Modern Slavery Act 2018* (NSW), any other applicable legislation and regulations relating to Modern Slavery, and any code of practice or compliance code relating to Modern Slavery applicable to this Agreement.
- (b) The Supplier must take all reasonable steps to identify, assess and address any Modern Slavery in its operations and supply chain, or that of its subcontractors and suppliers, including:
  - (i) establishing and implementing appropriate systems and processes (including relevant employee training systems and supply chain due diligence procedures) to ensure any risks or occurrences of Modern Slavery offences in its supply chains or any part of its business are identified, assessed and addressed;
  - (ii) notifying CSBB as soon as reasonably practicable after it becomes aware of, or has a reasonable basis for suspecting, instances of Modern Slavery in its supply chains or any part of its business; and
  - (iii) taking all reasonable steps to ensure that any instances of Modern Slavery in its supply chains or any part of its business cease and are remediated.
- (c) The Supplier must provide all reasonable assistance (including the provision of information and access to documents) that CSBB reasonably requires to ensure the Supplier's compliance with this clause and to enable CSBB to comply with its obligations under Modern Slavery Laws.

## **7. GST**

- (a) In this clause:
  - (i) words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
  - (ii) GST Law has the meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.
- (c) If GST is payable by the Supplier or by the representative member for a GST group of which the Supplier is a member, on any supply made under this Agreement, the recipient will pay to the Supplier an amount equal to the GST payable on the supply.
- (d) The recipient will pay the amount referred to in this clause in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.

## **8. Oversupply And Early Supply**

- (a) CSBB will not be responsible for goods delivered or services provided in excess of written instructions by CSBB. Deliveries in excess of those authorised by CSBB may be returned to the Supplier and the Supplier must pay CSBB for all packaging, removing, handling, sorting and transportation expenses incurred in connection with such deliveries.

(b) CSBB is not obliged to accept early delivery of goods and the Supplier is responsible for holding and storing the goods until the time of delivery.

## **9. Warranty And Inspection**

Without limitation to any other terms implied by statute, common law, equity or otherwise:

(a) The Supplier represents and warrants that:

(i) all goods supplied to CSBB:

1. conform to the specifications, drawings, samples, packaging and environmental considerations as notified by CSBB from time to time, or other descriptions furnished by CSBB;
2. are fit for the purpose intended;
3. are free from defect or default of any kind;
4. are of merchantable quality
5. are free from any charge or other encumbrance;
6. do not and will not infringe any patent, trademark, copyright or other present or future intellectual property rights, whether registered or registrable (Intellectual Property) or Moral Rights of any person (where Moral Rights means moral rights granted under the Copyright Act 1968 (Cth), including the right of attribution of authorship, right not to have authorship falsely attributed and right of integrity of authorship); and comply with all applicable laws, regulations, local requirements and other applicable Australian standards and industry regulations.

(ii) services supplied to CSBB:

1. are carried out with due care and skill
2. where materials are supplied in connection with the services, those materials are fit for the purpose for which they are supplied.

(b) The Supplier must rectify any damage to the delivery Site (or any fixtures, fittings or equipment at the delivery Site) caused by the provision of services by or on behalf of the Supplier or, if directed by CSBB, pay for the cost of repair.

## **10. Rejection**

(a) A claim that the goods or services are below the requisite standards may be made by CSBB on delivery. Acceptance on delivery of the goods or services or payment by CSBB does not constitute an agreement that the services meet the requisite standards.

(b) If CSBB reasonably determines that goods or services provided by the Supplier are defective in material or workmanship (including any installation requirements of CSBB) or otherwise fail to meet CSBB's requirements, CSBB may at its discretion and without limitation to any other right or remedy:

- (i) reject those goods or services and the Supplier must repay on demand all moneys paid by CSBB to the Supplier for those goods or services; or
- (ii) elect to accept those goods or services and recover from the Supplier damages suffered by reason of the Supplier's failure to provide goods or services in accordance with CSBB's requirements.

(c) The Supplier will be liable for all expenses incurred by CSBB in returning, correcting or replacing defective or faulty goods or services.

## **11. Intellectual Property, Advertising Rights And Confidential Information**

(a) The Supplier must not advertise or promote its supply of goods or services to CSBB or any relationship with CSBB, or release any such materials bearing, containing or referring to any marks, logos or devices of CSBB.

(b) The Supplier must not give any interviews or assist a media entity in relation to the writing or broadcasting of any story concerning the provision of goods or services to CSBB or otherwise concerning CSBB.

(c) The Supplier must ensure that the Supplier, its officers, employees and agents:

(i) keep confidential all information of CSBB that it receives which it knows or reasonably ought to know is confidential, including the fact that the Supplier has provided CSBB with the services and has entered into an agreement with CSBB; and

(ii) do not use or disclose such confidential information to any person without CSBB's prior written approval.

## **12. Indemnity And Insurance**

(a) Except where the Loss is caused by the negligence of CSBB, the Supplier indemnifies CSBB, including its respective directors, executive members, officers, employees, volunteers, agents and contractors from and against all claims, liabilities, losses, damages and costs (including the cost of complying with product recall, loss of profits and legal costs and expenses calculated on a solicitor-client basis) and/or liability to any third party arising out of or incidental to a breach of this Agreement by the Supplier, any warranty given by the Supplier under this Agreement being incorrect or misleading in any way, or any loss or damage (including damage to property or injury to person) which arises from the provision of defective goods or services by the Supplier under this Agreement and/or any act or omission (including negligence or unlawful or wilful conduct) by the Supplier or any of its directors, executive members, officers, employees, contractors, agents or advisers relating to the supply of goods or the provision of services under this Agreement (Loss).

(b) If requested by CSBB, the Supplier must provide and maintain (and if requested by CSBB, provide CSBB with a certificate of insurance verifying compliance) the following insurances on an occurrence basis:

(i) public liability insurance with a minimum insurance coverage of \$20 million (with no deductible) for each occurrence of bodily injury and property damage including contractual liability, product liability, cross liability coverage, personal injury and property damage;

(ii) workers compensation;

(iii) insurance of the goods or full replacement value of the goods; and

(iv) insurance for all equipment and materials used by the Supplier (if any) for installation of the goods or for provision of the services.

## **13. Limited Liability**

(a) Any act or omission (including any negligent act or omission) of CSBB arising out of or in any way in connection with the performance or non-performance of this Agreement; or the termination of this Agreement (whether as a result of breach, repudiation or otherwise), to the extent that it is not expressly excluded, is limited in the aggregate to the total amounts payable by CSBB under this Agreement.

(b) To the extent permitted by law, CSBB is not liable for, and no measure of damages will, under any circumstances, include, special, indirect, consequential, incidental or punitive damages or economic loss, loss of profits, revenue, goodwill, bargain, anticipated savings or loss or corruption of data, whether in an action in contract, tort (including without limitation negligence and product liability), statute or

otherwise, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.

#### **14. Title And Risk**

(a) In the case of purchase of goods by CSBB, title to the goods will pass to CSBB upon payment by CSBB and responsibility for any loss or damage to the goods will pass to CSBB on delivery of such goods to the address notified by CSBB.

(b) Where the Supplier conducts any repair and/or maintenance activities in respect of the goods, the Supplier will be responsible for any loss of or damage to the goods as a result of such maintenance or repair.

#### **15. Termination**

(a) Unless otherwise agreed by the parties in writing, either party may terminate this Agreement at any time by giving 30 days prior written notice to the other party.

(b) In addition, CSBB may terminate this Agreement immediately in whole or in part by written notice if:

(i) the Supplier fails or refuses to make delivery of the goods or provision of the services in accordance with this Agreement;

(ii) the Supplier becomes insolvent, bankrupt or enters into liquidation;

(iii) there is a substantial change in shareholder control or ownership of the Supplier, which in the reasonable opinion of CSBB adversely affects the Supplier's ability to perform the obligations; or

(iv) the Supplier engages in conduct which, in the reasonable opinion of CSBB, reflects unfavourably on the good name, goodwill, reputation or image of CSBB.

(v) any government agency, auditor or professional advisor alleges that this Agreement (or any act performed in accordance with this Agreement) is or is likely to be in breach of any regulatory or funding requirement applicable to CSBB and without penalty to CSBB.

#### **16. Consequences Of Termination**

(a) Upon termination or expiration of this Agreement, the Supplier must immediately discontinue the supply of goods and the provision of services to CSBB.

(b) If CSBB terminates this Agreement for a reason other than breach by, or insolvency of, the Supplier or the negligence, unlawful or wilful conduct of the Supplier, then CSBB must pay the Supplier those costs which are properly incurred up to the date of termination.

(c) Clauses 9, 11, 12, 13, 16 and 21 will survive the expiry or termination of this Agreement to the extent necessary to effect the intent of the parties and to protect the rights of CSBB.

#### **17. Force Majeure**

(a) A party will not be liable for delays or failures in performing their obligations due to causes which are, beyond the control and without the fault or negligence of the respected parties and provided that, in the case of the Supplier, it has used its best endeavours to minimise any delays or failures.

(b) The Supplier must notify CSBB immediately of any delays or failure to perform its obligations.

(c) In the event of an excusable delay or failure of performance by the Supplier due to an event described in clause 17(a), CSBB will be entitled to obtain elsewhere for the duration of such delay or failure, the goods or services ordered and to reduce proportionally, and without any obligation to the Supplier, the quantity of goods or services ordered from the Supplier under this Agreement and accordingly reduce proportionally the amount payable under this Agreement.



## 18. Remedies

The individual remedies reserved in this Agreement are cumulative and additional to any other or further remedies provided in law or equity. No waiver of any breach of any provision of this Agreement will constitute a waiver of any other breach, or other such provision.

## 19. Entire Agreement

This Agreement may not be modified except in writing and signed by the parties.

## 20. Relationship Between The Parties And Assignment

Nothing in this Agreement creates a partnership, joint venture, relationship of employment, agency or similar relationship between the parties.

## 21. Compliance With Laws

This Agreement will be governed by and interpreted in accordance with the laws of New South Wales and the parties submit to the jurisdiction of the courts of that State.

## 22. Assignment

- (a) CSBB may by providing 14 days prior written notice to the Supplier assign and novate all or any part of its rights and obligations under this Agreement to another party. Each party will execute any and all documents which CSBB considers desirable for that purpose.
- (b) The Supplier must not assign or novate or otherwise deal with the whole or any part of its rights or obligations under the Agreement without the prior written consent of CSBB (such consent not to be unreasonably withheld.)
- (c) This Agreement binds the parties and their respective heirs, successors and assigns.

## 23. Termination of agreement necessary for regulatory purposes

If any Government Agency, auditor or professional advisor alleges that this Agreement (or any act performed in accordance with this Agreement) is or is likely to be in breach of any regulatory or funding requirement applicable to CSBB, then CSBB may terminate this document as of the date specified in the notice of termination without penalty.

## Revision/Modification History

| Version | Current Title                                | Summary of Changes | Approval Date | Commencement Date |
|---------|--|--------------------|---------------|-------------------|
| V1      | Purchase Order Standard Terms and Conditions |                    | 1 August 2023 | 1 August 2023     |