



**STANDARD TERMS AND CONDITIONS FOR
ISSUING PO'S AND RFQ'S**

Doc. No:	FRMMGT-345
Effective Date:	22/01/2019
Revision No:	2
Page No	1 of 5

1.0	DEFINITIONS
1.1	The following definitions apply to this document:
1.1.1	'Date for Delivery' means the date by which the Goods are to be delivered as specified in the Purchase Order Form, subject to any extension or adjustment of the Date for Delivery in accordance with the Prevailing Terms. If no Date for Delivery is specified in the Purchase Order Form, Date for Delivery shall be (subject to any extension or adjustment) a date notified by DMC (acting reasonably).
1.1.2	'Delivery Point' means the place where the Goods are to be delivered as specified in the Purchase Order Form and, if no such place is specified, the place as directed by DMC.
1.1.3	'DMC' means DM Drainage and Constructions Pty Ltd trading as DM Civil.
1.1.4	'FIS' means, in relation to delivery of the Goods, 'free into store' and includes the responsibility (and associated costs) for packing, loading, transportation and insurance to the Delivery Point.
1.1.5	'Goods' means all goods, equipment, materials, articles, or any other property or parts to be provided to DMC by the Supplier under the Purchase Order.
1.1.6	'GST Act' means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and its associated legislation and regulations.
1.1.7	'Payment Claim' means any claim for payment made by the Supplier under the Purchase Order, including in respect of variations, in relation to performance of the Supplier's obligations.
1.1.8	'Prevailing Terms' means the terms and conditions of the Purchase Order.
1.1.9	'Purchase Order' means the agreement between the Parties comprised of the Purchase Order Form, these terms and conditions, and any other documents expressly listed in or incorporated into the Purchase Order Form.
1.1.10	'Purchase Order Form' means the cover page section of the Purchase Order which identifies DMC and the Supplier and includes but is not limited to a brief description of the Goods.
1.1.11	'Purchase Order Price' means, subject to adjustment for variations, the total fixed price for the Goods stated in the Purchase Order (or, where the Purchase Order Form indicates that Goods are being acquired for a fixed rate on a "per item" basis, the total price calculated by multiplying the fixed rate applicable to each item by the total quantity of each such items).
1.1.12	'Supplier' means the person providing the Goods, as identified in the Purchase Order Form.
1.1.13	'Warranty Period' means the period commencing on the date of the last of the Goods was delivered to DMC and lasting for a period of 12 months, unless otherwise stated in the Purchase Order.
1.2	The Supplier has satisfied itself as to the correctness of the documents that comprise this Purchase Order and their suitability for the execution of the supply of Goods.
1.3	Where possible, the documents comprising the Purchase Order should be read together. If there is any error, ambiguity or discrepancy in or between any of the Purchase Order documents, the Supplier must immediately notify DMC and seek a direction to resolve that issue. Irrespective of which party identifies an error, ambiguity or discrepancy, DMC shall have the right to give a direction to resolve the manner in which the Purchase Order documents are to be construed and the Supplier shall be bound by that direction and there shall be deemed to have been no variation by reason of that direction.
1.4	If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from the Prevailing Terms, but the rest of the Prevailing Terms are not affected.

2.0	GENERAL
2.1	The Purchase Order represents the entirety of the parties' agreement and shall supersede all prior agreements. Where any document provided by or given on behalf of the Supplier is referenced or incorporated into the Purchase Order contains terms or conditions which cover the same ground as the Purchase Order Form or the Prevailing Terms, or which otherwise purport to regulate the terms or conditions upon which the parties are contracting (" Competing Terms "), the Purchase Order Form and Prevailing Terms shall apply to the exclusion of such Competing Terms. Without limitation of this, Competing Terms include:
2.1.1	Terms as to how and when to make Payment Claims, how Payment Claims are assessed, and the due date for payment;
2.1.2	Terms purporting to limit or exclude any liability of the Supplier;
2.1.3	Terms as to the time for performance by the Supplier and the consequences of late performance;
2.1.4	Terms as to the quality or standard of work or materials to be provided by the Supplier.
2.2	The Supplier must supply the goods, including any variations in accordance with the Prevailing Terms.
2.3	In commencing the work necessary for the supply of Goods the subject of the Purchase Order, the Supplier is deemed to have accepted the Prevailing Terms.



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Doc. No:	FRMMGT-345
Effective Date:	22/01/2019
Revision No:	2
Page No	2 of 5

3.0	PAYMENT TERMS
3.1	The Supplier is entitled to be paid the Purchase Order Price subject to and in accordance with the Prevailing Terms.
3.2	Unless otherwise expressly specified in the Purchase Order Form, the Purchase Order Price is not claimable and DMC has no obligation to pay the Purchase Order Price until delivery of all of the Goods to DMC (unless otherwise agreed in writing by DMC).
3.4	A Payment Claim must be in writing, must be dated and signed, and must:
3.4.1	State the amount claimed / invoiced (which amount must be calculated in accordance with the Purchase Order);
3.5	Should DMC provide a written notice of assessment in accordance with clause 3.6, it is only obliged to pay the Supplier the amount stated in the assessment (even if assessment is less than the amount claimed in the Payment Claim / Tax Invoice), provided that the Supplier shall have the right to dispute any shortfall. Should DMC fail to give such notice within such period, the Payment Claim / Tax Invoice is deemed to be disputed in its entirety and DMC shall not be obliged to make any payment in respect of that Payment Claim / Tax Invoice.
3.6	In assessing a Payment Claim / Tax Invoice, DMC can deduct any amounts due and owing to DMC. Further, DMC shall be entitled to have regard to the effect of any defect in the Goods or any other Supplier breach of the Prevailing Terms that has affected the value of the Goods or caused DMC to potentially suffer loss or damage, and deduct an amount reflecting its reasonably estimated loss in that regard.
3.7	Subject to the Prevailing Terms, the due date for payment of any amount payable in respect of a Payment Claim / Tax Invoice shall be 30 days from the end of the month of the works being completed, provided always that the Supplier shall provide a valid Tax Invoice in respect of each amount assessed to be payable prior to the due date for payment.
3.8	Where DMC in assessing a Payment Claim or Tax Invoice and assesses that in fact an amount is payable to DMC rather than the Supplier, DMC may give such an assessment and the Supplier shall be liable to pay the same to DMC within 30 days of the assessment being given to it.
3.9	Any DMC assessment and payment made in respect of a Payment Claim or Tax Invoice is provisional and does not constitute an admission on DMC's part that:
3.9.1	The supply of Goods conforms to the Prevailing Terms;
3.9.2	All relevant deductions have been made by DMC.

4.0	PERFORMANCE AND QUALITY
4.1	The Supplier warrants that the Goods shall upon delivery:
4.1.1	Be free from charges, encumbrances, mortgages or other defects in title;
4.1.2	Be free from defects in design, materials and workmanship
4.1.3	Be free from asbestos;
4.1.4	Conform to the conditions and specifications of the Purchase Order;
4.1.5	Comply with all applicable Australian Standards;
4.1.6	Conform to all applicable laws and regulations to which the Goods are subject; and
4.1.7	Be new, and fit for purpose (including but not limited to any particular purpose made known or reasonably apparent to the Supplier);
4.1.8	Accord with any specification or quality requirements noted or referred to in the Purchase Order and Prevailing Terms.
4.2	The warranties in the Prevailing Terms are in addition to any statutory warranties applicable to the Goods.
4.3	The Supplier represents and warrants to DMC that it has the necessary skills, resources and experience to successfully supply the Goods in accordance with the Prevailing Terms by the Date for Delivery.
4.4	The Goods must be tested at the Supplier's cost in accordance with the requirements of all applicable Australian Standards, the requirements of the relevant statutory authorities and law. The results of tests shall be promptly given to DMC in writing.
4.5	DMC shall have the right, upon request, to inspect the Goods prior to delivery at the Supplier's premises during its normal working hours. Any inspection by DMC shall not relieve the Supplier from its obligations to comply with the requirements of the Purchase Order.
4.6	At any time before the expiration of the Warranty Period and without limitation of DMC's rights, DMC may give written notice to the Supplier of any failure or defect in the Goods and further in such notice direct the Supplier to attend the location of the Goods concerned and make good (by way of repair, replacement, or other means acceptable to DMC):
4.6.1	The defect or failure in the Goods; and
4.6.2	Any damage to other property caused by the defect or failure in the Goods, or the making good of the defect or failure in the Goods.
4.7	If the Supplier fails to comply with a notice given under clause within the time specified in the notice (which time shall not be unreasonable), DMC can rectify itself or have the rectification undertaken by a third party and all costs so incurred shall be a debt due and payable by the Supplier to DMC.
4.8	Any Goods repaired under warranty shall be subject to a further full Warranty Period, if required by DMC, commencing on the date of completion of any such repair.



**STANDARD TERMS AND CONDITIONS FOR
ISSUING PO'S AND RFQ'S**

Doc. No:	FRMMGT-345
Effective Date:	22/01/2019
Revision No:	2
Page No	3 of 5

5.0	VARIATIONS
5.1	DMC may direct the Supplier (by notice in writing pursuant to this clause) to vary the Purchase Order to:
5.1.1	Increase, decrease or omit any part of the supply of Goods;
5.1.2	Change the character or quality of any Goods;
5.1.3	Execute additional supply of Goods; or
5.1.4	Bring forward the Date for Delivery of some or all of the Goods.
5.2	The Supplier shall not vary the supply of Goods except pursuant to an express written direction to vary from DMC pursuant to clause 5.1.
5.3	Before complying with any direction to vary from DMC (and in any event within 5 days of receipt of the direction), the Supplier shall advise DMC in writing whether it is possible for the variation to be effected and, if the variation can be effected, the Supplier shall further state:
5.3.1	The effects which the Supplier estimates that the variation will have on the Date for Delivery or any relevant milestone date, and
5.3.2	Provide its estimate of a reasonable sum for the proposed variation (on a lump sum basis).
5.4	DMC may, without penalty, withdraw a variation direction upon receipt of the Supplier's notice under clause 5.3.
5.5	No variation will relieve the Supplier from its obligations under the Prevailing Terms.
5.6	The Supplier shall include any claim for payment for variations in a Payment Claim in accordance with the Prevailing Terms but claim for payment of a variation can be made only if the Supplier has strictly complied with clause 5.2 and 5.3. Variations included together with a Payment Claim or invoice shall be clearly identified as such.
5.7	If the Supplier does not strictly comply with clause 5.2 and 5.3, the Supplier is not entitled to claim any payment, damages or compensation additional to the price agreed for the Goods.
5.8	DMC shall price each variation having regard to what DMC assesses to be a reasonable sum and shall not be bound by any particular pricing or costing proposal given by the Supplier. Upon pricing of each variation, the Purchase Order Price shall be adjusted accordingly.
5.9	Where DMC omits any part of the supply of Goods, DMC may engage an alternative supplier to supply those Goods to it.

6.0	DELIVERY AND DATE FOR DELIVERY
6.1	Unless otherwise specified in the Purchase Order, the Goods shall be delivered adequately packaged and protected to ensure safe delivery, to the Delivery Point and by the Date for Delivery. The Goods shall be accompanied by a delivery docket which shall be signed by a duly authorized representative of DMC at the point of delivery.
6.2	All Goods must be delivered during DMC's normal site hours. The Supplier shall liaise with DMC in advance of delivery to co-ordinate a suitable time for delivery of physical Goods.
6.3	The Goods shall become the property of DMC once incorporated into the works or when the Tax Invoice payment is made (whichever is first).
6.4	Notwithstanding that DMC has taken delivery of the Goods, the Supplier shall remain responsible for any loss or hidden damage to the Goods, which may have occurred prior to delivery, and
6.4.1	For any non-compliance of the Goods with the requirements of the Purchase Order Form.
6.5	Further, in the event the Date for Delivery is not met there shall be deemed to be a continuing substantial breach of this Purchase Order.

7.0	COMMENCEMENT AND COMPLETION
7.1	DMC may negotiate with the Supplier to vary the sequence by which the supply of Goods is to be carried out. Such a negotiation shall not constitute a variation to the Purchase Order or give right to claim additional time unless such terms were expressly agreed in the Purchase Order.
7.2	Without limitation of its obligations, the Supplier must carry out the work necessary to ensure the supply of Goods in a diligent and timely manner.
7.3	Where requested by DMC, the Supplier must provide DMC with reasonable evidence of the Supplier's progress and readiness to comply with the Prevailing Terms and give details of any delays or problems extant or expected.



**STANDARD TERMS AND CONDITIONS FOR
ISSUING PO'S AND RFQ'S**

Doc. No:	FRMMGT-345
Effective Date:	22/01/2019
Revision No:	2
Page No	4 of 5

8.0	DELAYS, EXTENSION OF DATE FOR DELIVERY
8.1	The Supplier is only entitled to an extension of time to the Date for Delivery if the following conditions precedent are satisfied:
8.1.1	There is or will be a delay in the date of delivery of the Goods caused by an act, omission or breach by DMC, or DMC's agents, employees or other contractors;
8.1.2	The delay was not caused or contributed to by any default or breach of the Prevailing Terms by the Supplier;
8.1.3	The Supplier gives written notice to DMC of the fact or likelihood of delay within 5 days after first becoming aware of the cause of delay;
8.1.4	Within 14 days after the cause of delay first arises, the Supplier gives written notice to DMC of:
8.1.4.1	The cause of delay and the date on which the cause of the delay arose;
8.1.4.2	How delivery of the Goods is likely to be affected or how a particular item in the supply of Goods is likely to be affected (or both);
8.1.4.3	The Supplier's claim for an extension of time specifying the number of days claimed and how that has been calculated.
8.2	DMC must grant the Supplier a reasonable extension of time for the Date for Delivery, but only if:
8.2.1	The conditions precedent in clause 8.1 are satisfied; and
8.2.2	The Supplier has demonstrated via reasonable evidence that the extension of time is justified (both in terms of entitlement and extent).
8.3	Notwithstanding that the Supplier is not entitled to an extension of time to the Date for Delivery, DMC may in its discretion (and acting in its own interests) nonetheless grant the Supplier an extension of time and the Date for Delivery shall be revised accordingly.
8.4	Any failure on DMC's part to assess an extension of time claim shall not set the Date for Delivery at large.
8.5	The Supplier is not entitled to claim any payment for prolongation, delay or disruption in respect of an extension of time granted by DMC in accordance with clause 8.2 or otherwise.

9.0	FURTHER SUBCONTRACTING
9.1	The Supplier shall not, without prior written approval of DMC, subcontract any part of the Purchase Order.
9.2	Approval to subcontract shall not relieve the Supplier from any liability or obligation under the Purchase Order. The Supplier shall be liable to DMC for the acts, defaults and omissions of its suppliers, consultants, agents and subcontractors as if they were those of the Supplier.

10.0	NOTIFICATION OF CLAIMS
10.1	Should the Supplier have any claim against DMC in respect of any matter arising out of or connected with the Purchase Order, including but not limited to a breach of the Purchase Order, it must give written notice to DMC of the claim, or its intention to make a claim within 14 days of the date the Supplier ought reasonably to have been aware of any such event. Any notice made by the Supplier under this clause must expressly state that it is a notice made under this clause.
10.2	DMC will not be liable for any claim by the Supplier in respect of any matter arising out of or connected with the Purchase Order or the Prevailing Terms that the Supplier fails to notify it of in accordance with clause 10.1.
10.3	Further, without limitation of any other bar in the Prevailing Terms, any claim for payment of any kind (whether based on contract or otherwise) that the Supplier has or may have in respect of this Purchase Order or the supply of Goods which has not been made in writing to DMC within 14 days of the expiration of the Warranty Period shall be deemed to be waived by the Supplier and shall be forever barred.

11.0	DEFAULT
11.1	If the Supplier commits a substantial breach of the Purchase Order, or if DMC has reasonable grounds to believe the Supplier is either insolvent or unable to deliver the Goods in accordance with the Prevailing Terms, DMC may (without limitation of its common law rights) give the Supplier a written notice demanding the Supplier show cause why the Purchase Order should not be terminated (" Show Cause Notice "). Substantial breaches include, but are not limited to when:
11.1.1	The Supplier fails to deliver the Goods by the Date for Delivery; or Goods in accordance with the Prevailing terms;
11.1.2	The Supplier delivers Goods which contain a substantial defect, or numerous defects.
11.2	If the Supplier fails to show reasonable cause to DMC's satisfaction (acting reasonably) within 5 days of receiving a Show Cause Notice DMC may by written notice to the Supplier terminate the Purchase Order.
11.3	If the Purchase Order is terminated pursuant to clause 11.2, the parties' remedies, rights and liabilities shall be the same as if the Supplier had repudiated the Purchase Order and DMC elected to treat the agreement at the end and recover damages.

12.0	CANCELLATION
12.1	DMC is entitled to cancel the Purchase Order at any time for DMC's own convenience (" Termination for Convenience ") by notice in writing to the Supplier. If DMC does so, the Supplier's sole remedy shall be to be paid for the Supplier's actual direct costs reasonably and necessarily incurred by reason of the termination (to the extent not already paid by DMC) and which the Supplier, acting reasonably, is unable to mitigate. The Supplier must provide DMC reasonable evidence of these costs and its efforts to mitigate. In any event the amount of the Supplier's entitlements in the event of a Termination for Convenience cannot exceed the Purchase Order Price.



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Doc. No:	FRMMGT-345
Effective Date:	22/01/2019
Revision No:	2
Page No	5 of 5

13.0	INDEMNITIES AND INSURANCE
13.1	The Supplier indemnifies DMC against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which DMC suffers, incurs, or is liable to in respect of:
13.1.1	Personal injury or death caused by or arising out of the Supplier's performance of the Prevailing Terms; and
13.1.2	Damage to property caused by or arising out of the Supplier's performance of the Prevailing Terms except to the extent that such claim, action, damage etc was caused by DMC's breach of the Prevailing Terms or DMC's negligence.
13.2	The Supplier shall insure the Goods against loss and damage (for full replacement value) until delivery has occurred.
13.3	The Supplier shall effect and maintain all policies of insurance required by law and any policies of insurance required by the Purchase Order.
13.4	Before commencing the supply of Goods, the Supplier must provide to DMC relevant certificates of currency of insurance procured by the Supplier. The Supplier must also provide DMC immediately upon request to do so certificates of currency to evidence the continued existence of the policies required to be procured by the Supplier.

14.0	CONSEQUENTIAL LOSSES
14.1	Except to the extent that its liability cannot be excluded by operation of law, DMC shall not in any event be liable to the Supplier for any indirect or consequential loss howsoever caused.

15.0	GST
15.1	If the Purchase Order involves a supply of goods or services that constitutes a taxable supply that is connected to Australia within the meaning of the GST Act, the Supplier will ensure that:
15.1.1	It has an Australian Business Number (ABN), is GST registered and maintains the same prior to making any Payment Claim / Invoice; and
15.1.2	It issues tax invoices in a form complying with the GST Act and which will allow DMC to claim an input tax credit.

16.0	DISPUTE RESOLUTION
16.1	Notice of dispute
16.1.1	If a dispute between the Supplier and DMC arises out of, or in connection with this Purchase Order or its termination, or non-performance including a dispute concerning a direction given by DMC, then either party shall deliver by hand or send by e-mail or fax to the other party a notice of dispute in writing adequately identifying and providing details of the dispute (" Notice of Dispute ").
16.1.2	Notwithstanding the existence of a dispute, the Supplier shall continue to perform.
16.2	Further steps required before proceedings
16.2.1	Within 7 days of receiving a Notice of Dispute, the parties shall confer at least once, to attempt to resolve the dispute.
16.2.2	In the event that the dispute cannot be so resolved, either party may by notice in writing delivered by hand, sent by certified mail or facsimile transmission to the other party, refer such dispute to arbitration or (if directed by DMC in accordance with this clause) litigation.
16.3	Arbitration
16.3.1	If the dispute remains unresolved after 10 days of the date of service of the Notice of Dispute, the dispute must (unless directed by DMC to be litigated in a court) be confidentially arbitrated in accordance with this clause.
16.3.2	Arbitration shall be effected by a single arbitrator who shall be mutually agreed upon by the parties or, in the event that they fail to agree within 14 days of the matter being referred to arbitration, then the arbitrator shall be nominated by the Resolution Institute. The parties agree to submit to the arbitration procedures adopted by the Resolution Institute, including as to appointment of an arbitrator.