



Terms and Conditions of Purchase

Definitions:

"AMES" means **Adult Multicultural Educational Services (AMES ABN 49 056 993 913)**

"Goods" means the objects or articles the subject of this Order for Goods or Services and includes these Terms and Conditions of Purchase;

"Supplier" means the person, firm or corporation from whom Goods or Services are ordered by this document;

"Services" includes repair, overhaul, maintenance, modification, alteration, construction, replacement for like activities; words in the singular include plural and vice-versa.

Contract and Variation

This order constitutes the date of contract between the parties and supersedes all previous communications and negotiations. No terms **stated** by the Supplier in accepting or acknowledging this Order will be binding on AMES unless expressly accepted by AMES in writing. **The Supplier** may not **assign** this Order without AMES's prior written consent. This order may not be varied except by a written "Amendment to Purchase Order" signed by AMES.

This order constitutes a contract between the parties and no further document or act will be required of the parties to be legally bound. The **Supplier** warrants that the Goods will at all times be of prime quality, fresh in the case of perishables, fit for the purpose for which they are required and intended, conform to their description and specifications and be of merchantable quality. These warranties are in addition to any other warranties of service or guarantees given by the Supplier or that may be implied by law.

Services will be provided professionally, in accordance with best commercial practice and with due skill, care and attention. The Supplier will comply with the following requirements: Goods will not be under or over supplied; Minimum order requirements will not be applicable unless specified in the Order; The product brands described in the order will be supplied. Alternative product brands must be approved by AMES before they are acceptable; The Goods will not be defective, sub-standard, faulty, soiled, damaged, unusable or late; The Supplier shall maintain the quality of the Goods from the time of the Order until delivery; In the case of the provision of Services the Supplier undertakes to rectify or redo any faulty work or Services for a period of 12 months from the date of the practical completion; The Supplier will comply with all relevant laws, regulations etc. in the supply of the Goods **and** will obtain any requisite **licenses** or permits.

Delivery

The Supplier will deliver the Goods to the location specified to the Purchase Order between the hours of 8.00am and 3.00pm on any Monday to Friday unless prior **arrangements** are made. The **Supplier** will **ensure** that: The Goods are delivered with detailed delivery documentation detailing order number and description on contents and Invoice, detailing item, quantity, individual price and total price; The Goods are supplied in one delivery; The Goods are provided Fit in Service unless otherwise specified in the Order; Any **items** subject to shelf **life control** will be freshly manufactured and clearly **identify** on delivery with details **of the date** of manufacture, shelf **life** conditions, **requirements** and shelf life period; In the case of food delivery, delivery is made in appropriately licensed registered and hygienic food transportation vehicles; All Goods are packed in a way to ensure their safe delivery undamaged to AMES. Time is of essence in the delivery of Goods. The Supplier will deliver the Goods pursuant to the **Order** on the date and time specified in the Order. **If** the Supplier fails to deliver the Goods on the date and time as specified, AMES may; Cancel the whole or **part** of this Order; Return the Goods to the Supplier at the Supplier's expense; Seek damages as a result of the Supplier's late delivery; and/or Order the Goods elsewhere and seek damages for any loss suffered by AMES. Where no delivery date is specified herein, the Supplier must notify AMES of the delivery date upon receipt of the Order.

AMES in **accepting delivery of the Goods** must sign delivery documentation.

If Goods are delivered and no signature has been obtained the Goods may be considered undelivered **and** in that **case AMES will not be** responsible for such Goods-

Return of Goods

Notwithstanding the terms and any delivery documentation including the signature thereon of AMES, AMES may reject and return any Goods which do not comply with this Order or which are otherwise unacceptable in the reasonable opinion of AMES. The Supplier will accept return of any Goods in excess of AMES's requirements except for perishables (including foodstuffs) and Goods manufactured expressly for AMES (including printed materials) for which there is no alternative market.

Where Goods are returnable the Supplier will bear the cost of return transportation and AMES may, without prejudice to any other rights under this Order or otherwise:

Obtain credit for the returnable Goods; or

Obtain replacement Goods from the Supplier; or

Source of Goods elsewhere and recover any additional cost or expense so incurred from the **Supplier; or Terminate the order** in whole or in **part and** seek **damages**.

OH&S

The Supplier will ensure that all goods or services comply with all applicable health and safety requirements specified by AMES, Australian standards and any applicable laws (including the Occupational Health and Safety Act 1985) and regulations.

Title and Risk of Loss or Damage

The Supplier warrants that the Goods purchased are free and clear of all liens and encumbrances and the Supplier has good and marketable title to same. All risk whatsoever including risk of loss or damage to the Goods and/or items to be services including material supplied by AMES or any third parties or their **property will** be upon the Supplier **until the Goods and/or items are** delivered in accordance with this order.

Where this order relates to a service the Supplier will bear the risk of loss or damage from the time of the receipt by the Supplier of the Items to be serviced until they are delivered in accordance with this Order.

Where part payment for any Goods is made by AMES and title to and **property** in the partly **completed** or completed Goods, meaning materials or parts to be used in this manufacture will pass to AMES. Risk of loss will remain with the Supplier.

Installation and Fitting

Where the **Supplier** provides **work** in connection with the installation of fittings of Goods or where the presence of the Supplier or its servants or agents is required on AMES's premises. The Supplier enters AMES's premises at its own risk and shall be liable for and indemnify AMES against any loss, damage claim or liability arising directly or indirectly out of the performance of work or presence on AMES's premises; The Supplier, its employees, agents and contracts shall comply with the safety regulations of AMES and with the reasonable directions of AMES.

Supply independent of AMES

The Supplier performs all work independently of AMES and not as an agent or employee of AMES and will be liable for the safe supply of the Goods.

Price

Unless otherwise specified in the Order all prices will be Fit in service, fixed and inclusive of all taxes, duties or other charges payable. Where, pursuant to this Order, a price is not specified or is variable, if the Supplier has failed to substantiate the price or the price appears to be unreasonable to AMES, AMES may refuse to accept the delivery or may accept the delivery and payment will only be made after confirmation of change to **the** price or by agreement

between **the parties**. AMES may reduce the amount payable on any invoice on a pro-rata basis where Goods are returned or in the event of short shipment.

Invoices shall be settled at the agreed rate of price in the Order. Invoices shall be addressed to AMES and sent to the address in the Order. All documents must include an applicable AMES Order Number and description and quantity of Goods delivered. Invoices shall be settled at the agreed rate or price as specified in the Order and subject to the terms specified on the face of this document and may only be varied in writing of AMES, irrespective of any pending counter claim- AMES may offset or deduct from any amount owing to the Supplier such amounts as may be due or payable by the Supplier to AMES whether pursuant to this Order or **otherwise**.

Indemnity

The Supplier will indemnify and hold harmless AMES its officers employees and agents from and against all liabilities, claims, losses, damages and judgements, including costs and expenses incidental thereto; For damage to or loss of property or injury, death or inconvenience to any person whomsoever arising from or in any way connected with any act or omission of the Supplier. Arising out of or in connection with Infringement of patent, trademark, copyright or the like regardless where such action, claim or demand arises, by reason of the use of the Goods purchased by this Order.

Termination

Without prejudice to any other rights, AMES may have against the Supplier, AMES may terminate this Order in whole or in part in writing with the immediate effect in the event of any of the following: Supplier enters into liquidation is presented with a winding up application, has appointed a receiver and/or manager or is unable to pay its debts; Supplier's conduct in AMES's opinion of prejudicial to the interests and operations of AMES; Supplier breaches any of the terms and conditions of this Order; Supplier assigns or subcontracts this agreement in whole or in part without the prior written consent of AMES; **Supplier** ceases or threatens **to create to carry** on its business. Waiver of AMES of any specific default by the Supplier or failure by AMES to cancel this Order or any part thereof when a right of cancellation arises shall not constitute waiver by AMES of any of the rights pursuant to this Order.

AMES's Property

All designs, data samples, blue prints, plans, drawings, specifications etc ("AMES property") furnished by AMES to the Supplier whether or not the Supplier has been changed for the same and any of such has been manufactured or purchased by the Supplier and for which AMES shall have paid shall be the sole property of AMES. Any such AMES property or any substantial portion or description thereof may not be produced or reproduced in any material form without authority in writing by AMES. Upon conclusion or cancellation of this Order the Supplier shall hand to AMES any **finished or unfinished** work **relevant** to this Order **and** such **AMES** property as aforesaid. The Supplier will not during continuance of this Order or any time thereafter manufacture any Goods, the subject of any **AMES** property for commercial use other than **to** order of **AMES**, nor furnish to third party any such **Goods** or samples.

Advertising

The Supplier will not without first obtaining the written consent of AMES in any manner advertise or publish the fact that the Supplier has contracted with AMES for **the** supply **of** Goods.

Governing Law

This Order shall be governed by and construed with the laws **of** Victoria.