

Standard Terms & Conditions for Purchase Order

1. EVANS BUILT DEFINITION

Each Party to this Agreement acknowledges and agrees that:

a) each reference in this Agreement to 'Evans Built' or to a 'Purchaser' is a reference to Evans Built Pty Ltd (ABN 61 120 743 099).

2. EXCLUSIVITY & MINIMUM PURCHASE

2.1 Contract is non-exclusive

a) Nothing in the Contract imposes an obligation of exclusivity on Evans Built or the Supplier.
b) Evans Built may engage a third party to provide any combination of Goods and Services in addition to or in place of the Supplier at any time and from time to time.

2.2 No minimum volume

Evans Built has no obligation to purchase a minimum volume, or any particular volume, of Goods and Services from the Supplier.

3. COMPLIANCE WITH LAWS

Except as expressly provided otherwise, the Supplier must, at its own cost, obtain all Licenses required to provide the Goods and Services.

4. ASSIGNMENT, NOVATION & SUBCONTRACTING

a) The Supplier may not assign, novate or subcontract its rights or obligations under the Contract to another party without the prior written consent of Evans Built.
b) Evans Built may assign, or novate any or all of its rights or obligations under the Contract at any time to any person.

5. DELIVERY

5.1 Delivery Term

The Supplier must deliver the Goods or Services in accordance with the delivery term stated in the Purchase Order. If no delivery term is specified in the Purchase Order, all Goods will be delivered DDP (Delivered Duty Paid).

5.2 Supply difficulties

If the Supplier is, or reasonably believes it will be, unable to provide the Goods or Services by the Date for Delivery, the Supplier must use its best endeavours to obtain the Goods or Services from an alternative source or provide alternate goods or services which are acceptable to Evans Built in their discretion, at the Price.

6. TITLE

a) Unless expressly provided otherwise, title in the Goods will pass to Evans Built on and from the earlier to occur of:

(i) the date Delivery is achieved; or
(ii) payment for the Goods.

b) The Supplier warrants that Evans Built will receive full unencumbered title in the Goods free of any Security Interest.

7. PERFORMANCE ON SITE

The Supplier must:

a) Use its best endeavours to not interfere with any of the activities of any member of Evans Built;
b) Only access the Site in the manner and at the times provided for in the Contract or if none are specified, as directed in writing by Evans Built;
c) Take all steps necessary to protect the safety of Evans Built, Evans Built Personnel and any invitees of Evans Built from risks to safety in connection with the Goods and Services;
d) Complete such safety or other training or induction as Evans Built directs from time to time;
e) Not do anything which may place Evans Built in breach of any Laws;
f) Keep the site clean and tidy at all times; and
g) Comply with Evans Built occupational health and safety policies, Site Specific Safety Rules, Construction Safety and Environmental management Plans, all of which are accessible at the respective Site.

8. PAYMENT

a) Evans Built must pay the Supplier the amount certified as being due for payment within 32 days of the end of the month in which the Tax Invoice was submitted.
b) Payment is payment on account only and is not evidence of the value of the Goods or Services, an admission of liability or an admission that the Goods or Services are in accordance with the Contract.
c) Except to the extent expressly provided otherwise in this contract, the Supplier is solely responsible for any and all taxes, duties, levies, charges and deductions including, but not limited to, stamp duty, payroll tax, customs duty and fuel excise (including any penalties and additional payments thereon), paid or payable in the supply of the Goods or the performance of the Services and they are deemed to be included in the Price.

8.1 Set-off

Evans Built may deduct from any amount due or to become due to the Supplier, all debts and monies due and payable from the Supplier or its Personnel to any member of Evans Built under or in connection with the Contract or any other agreement between the Parties.

9. TERMINATION

9.1 Termination for Breach

Evans Built may immediately terminate the Contract by notice to the Supplier:

a) If the Supplier is in breach of the Contract and:

(i) the Supplier has failed to remedy the breach in accordance with the terms of the relevant Breach Notice; or
(ii) the breach is not capable of remedy.
b) If the Supplier grants a Security Interest, assigns or novates the Contract other than in accordance with the terms of the Contract; or
c) On any other grounds specified in the Contract giving rise to a right of termination.

9.2 Insolvency

Either Party may terminate the Contract immediately by giving a notice to the other Party if an Insolvency Event occurs in relation to that other Party.

9.3 Payment on Termination

a) On termination of the Contract for any reason, the sole liability of Evans Built to the Supplier will be the payment of amounts payable for Goods Delivered and Services performed up to the date of termination.
b) Nothing in the Contract will render Evans Built liable for any costs relating to redundancy or termination payments of any Supplier Personnel.

9.4 Clause survives termination

This clause survives the termination or expiry of the Contract.

10. INSURANCE

10.1 Insurances required to be effected by the Supplier

The Supplier will effect or cause to be effected:

a) Public and Products Liability Insurance with a limit of liability of at least \$20 million per occurrence (and for products liability insurance, in the aggregate);
b) Motor Vehicle Insurance with a limit of liability of at least \$10 million per occurrence; and
c) Workers Compensation Insurance.

10.2 Evidence of Insurance

Upon request, before commencing the performance of its obligations under the Contract, and at other times requested by Evans Built, the Supplier must provide Evans Built, in respect of each Insurance Policy, certificates of currency issued by the insurer.

10.3 Terms of Insurance Policy

Terms of Insurance Policy are available within our complete form of Terms and Conditions which may be obtained by contacting our office on 07 5353 5050 or visiting our website www.evansbuilt.com.au

11. LIABILITY & INDEMNITIES

11.1 Liability

a) Subject to this clause, the Supplier will indemnify and keep indemnified the Indemnified Parties against any Liability arising out of or in connection with any:
(i) breach by the Supplier or its Personnel of any warranty;
(ii) negligent, reckless or intentional act or omission of the Supplier or its Personnel;
(iii) any damage to or loss or destruction of any property of the Indemnified Parties or any third party; or
(iv) personal injury, illness or death to any person;
(v) breach of Law by the Supplier or its Personnel; and
(vi) any Claim regarding the infringement or alleged infringement of Intellectual Property Rights of any person.

b) The Supplier's liability under clause 11.1(a) will be reduced proportionally to the extent that the Liability is caused or contributed to by the Indemnified Parties.

c) Each indemnity in the Contract is a continuing obligation separate and independent from the Supplier's other obligations and survives termination of the Contract.

11.2 Limit on Liability

a) Subject to clause 11.3 but notwithstanding any other provision of the contract, the Supplier's maximum aggregate Liability to Evans Built for all Claims and Liabilities arising under or in connection with the Contract or the performance of the Services is limited to and will not exceed the General Liability Cap.

b) Notwithstanding anything else in the Contract, the maximum aggregate Liability of Evans Built to the Supplier for all Claims and Liabilities arising under or in connection with the Contract is limited to payment of the Price.

11.3 Uncapped Amounts

The General Liability Cap and the Consequential Loss Exclusion do not limit the Supplier's Liability in respect of any Claim or Liability for any Uncapped Amount, and the Supplier's Liability in respect of an Uncapped Amount will be unlimited.

12. MISCELLANEOUS

12.1 Definitions

Definitions are available within our complete form of Terms and Conditions which may be obtained by contacting our office on 07 5353 5050 or visiting our website www.evansbuilt.com.au

12.2 Interpretation

In these Terms and Conditions and any Purchase Order unless the context clearly indicates otherwise:

a) A reference to these Terms and Conditions, a Purchase Order, the Contract or another instrument means these Terms and Conditions and any Purchase Order issued pursuant to these Terms and Conditions and in each instance collectively a Contract, and includes any variation, supplement, assignment, novation or replacement of any of them;
b) The singular includes the plural and vice versa;
c) A reference to a person includes a natural person, firm, partnership, body corporate, unincorporated association, authority, the Crown or any other organisation or legal entity;
d) A requirement to do any thing includes a requirement to cause or procure that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
e) A word that is derived from a defined word has a corresponding meaning;
f) The words "include", "includes" or "including" are not words of limitation; and
g) Headings are inserted for convenience only and do not affect interpretation of the Contract.

12.3 Inconsistency

a) Unless expressly provided otherwise, to the extent of any inconsistency between the terms set out in these Terms and Conditions or a Purchase Order issued pursuant to these Terms and Conditions, the terms of the Purchase Order shall prevail.

12.4 Construction

The Contract is not to be construed against a Party on the basis that the Party or its lawyers were responsible for its drafting.

12.5 No Reliance

Without limiting any other provision of the Contract, the Supplier represents and warrants that:

a) It has not entered into the Contract in reliance on any representation expressly or impliedly given by or on behalf of Evans Built; and
b) It has made its own inquiries as to the Licenses which apply to the supply of the Goods and the performance of the Services.

12.6 Relationship of Parties

a) Nothing in the Contract creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties.
b) Neither Party has the authority to bind the other Party by any representation, declaration or admission, or to make any contract or commitment on behalf of the other Party or to pledge the other Party's credit.

12.7 Governing Law

a) The Contract is governed by the laws of the State or Territory in which the Goods are supplied and the Services are performed.

b) Both Parties irrevocably submit to the non-exclusive jurisdiction of the courts of the State or Territory in which the Goods are supplied and the Services are performed and courts competent to determine appeals from those courts with respect to any proceedings which may be brought arising out of or in connection with the Contract.

12.8 Waiver

A right created by the Contract cannot be waived except in writing signed by the Party entitled to that right. Delay by a Party in exercising a right does not constitute a waiver of the right, nor will a waiver (either wholly or in part) by a Party of a right operate as a subsequent waiver of the same right or of any other right of that Party.

12.9 Severance

If any cause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from the Contract without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

12.10 Preservation of Existing Rights

The expiration or termination of the Contract does not affect any right that has accrued to a Party before the expiration or termination date.

12.11 No Merger

Any right or obligation of any Party that is expressed to operate or have effect on or after the completion, expiration or termination of the Contract for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

Important Note:

This is an abridged version of the Evans Built Standard Terms and Conditions for Purchase Order and is deemed to represent the complete Evans Built Standard Terms and Conditions for Purchase Order, which may be obtained by contacting our office on 07 5353 5050 or visiting our website www.evansbuilt.com.au