

## 1. General

Unless otherwise stated on the front of the purchase order (“the Order”) or if the order relates to an existing contract between the Buyer and Seller, the following terms and conditions will apply. Where there is any variation between these terms and conditions, and the terms and conditions contained in any letter, quotation, tender, or other communication or document of the Seller, the Order’s terms and conditions shall prevail in all cases unless the agreed variations are explicitly referenced on the Order. “Supplies” means all goods, materials, plant, machinery, works, services, labour, installation, or technical advice provided against the Order. “Buyer” means Southern Materials Recovery Facility (SMRF). “Seller” means the person, company, firm organisation, or corporation named on the front of the order from whom Supplies have been ordered.

## 2. Preparation of Invoices and Terms of Payment

No invoice shall be submitted until Supplies have been delivered. Payment by the Buyer shall be made on “30 day terms” from the date the Buyer receives a correctly rendered Tax Invoice from the Seller.

## 3. GST Provisions

Any invoice for payment under the Order must be a compliant Tax Invoice within the meaning defined in the *Goods and Services Tax Act 1999* (GST Act). The Buyer is not obliged to make any payment under this Order unless the Seller has provided a Tax Invoice in respect of that payment.

## 4. Non-Acceptance of Additional Charges

All prices stated on the front of the Order are to include delivery and any other charges for the Supplies to the nominated delivery point. No other additional charges will be payable by the Buyer.

## 5. Delivery and Purchase in Default

All deliveries shall be free into store at the point nominated on the Order. The time of delivery stated on the Order shall be of the essence of the contract and Supplies will be delivered as and when specified. If at any time the Seller becomes aware that the agreed delivery time shall not be met, then a written explanation of the reasons for the delay, together with a request for an extension of time shall be immediately sent to the Buyer. Should the Buyer be reasonably satisfied that the Seller could have avoided the delay, then the Buyer reserves the right to cancel the order with the Seller. Where the Buyer so cancels, then the Seller shall not be entitled to reimbursement for any costs associated with the Order, that have been incurred prior to cancellation.

## 6. Ownership of Intellectual Property and Indemnity

The Seller warrants the provision of the Supplies will not infringe the intellectual property rights of any third party. The Seller shall indemnify and keep indemnified the Buyer against all actions and claims arising out of the infringement of any third party’s intellectual property rights or use of or exercise of any invention by reason of the purchase, possession or use of the Supplies or part thereof. The Seller assigns to the Buyer all intellectual property rights (and future copyright) generated by the Seller in the provision of the Supplies.

## 7. Indemnity and Insurance

The Seller shall indemnify and keep indemnified the Buyer from any loss, damage, liability, costs, expenses, actions or claims suffered by or brought against the Buyer arising from any Service /

Supplies provided by the Seller under this Order (including where appropriate the erection, installation, repair or operation of any plant or equipment) whether in respect of injuries or death of any person (including employees of the Buyer and Seller), or of damage to any property. Where requested by the Buyer, the Seller shall produce without delay, copies of relevant insurance policies, including, but not limited to; public liability insurance, accident and sickness insurance, professional indemnity insurance and evidence of Workcover registration. The Seller shall ensure that insurance and other certification is in date and relevant to the service being provided.

## **8. Legislative & Work Health and Safety Requirements**

The Seller shall comply with all legislative and statutory requirements in the delivery of the Supplies. Where relevant, the Seller will provide Supplies in accordance with the *Work Health and Safety Act 2012*, and all associated regulations as amended. Where the Seller has quality and work, health and safety (WHS) systems in place, the Supplies provided will conform with those systems and the Seller will provide documentary evidence of such conformance to the Buyer as and when requested. The Seller shall be responsible to obtain and comply with the Buyer's WHS internal requirements when the Order includes works and services on the Buyer's property.

## **9. Return of Oversupplies**

The Buyer shall return all oversupplies against this Order at the Seller's expense.

## **10. Inspection, Testing and Acceptance**

Acceptance shall not be deemed to have occurred until the Buyer has been given a reasonable opportunity to inspect, test and accept the delivered Supplies.

## **11. Risk, Title, and Ownership of Supplies**

Title and/or ownership of Supplies shall not vest with the Buyer until payment has been made to the Seller. The risk for any Supplies shall remain with the Seller until delivery has been made to the Buyer in accordance with the terms and conditions of the Order.

## **12. Supplies to be in Accordance with Contract Standards**

The Supplies shall be of the qualities and standards specified in the Order, or linked contract (if applicable) and shall conform in all respects to any sealed patterns, specifications, plans, drawings, samples and other particulars specified on the Order or contract (if applicable). All Supplies provided against the Order, where relevant, shall comply with applicable Australian Standards.

## **13. Guarantees/Warranties**

The Seller shall guarantee that all Supplies provided against this Order conform to the standards specified on the Order, are of merchantable quality, and are fit for the intended purpose for which they were sold. The Seller shall further guarantee (for all Supplies provided against the Order) against all defects arising from faulty materials, workmanship or design for a period of twelve (12) months from the date of acceptance, after delivery by the Seller. Any defective Supplies shall be immediately repaired or replaced at the Seller's cost (include any transport, packaging and any other associated charges).

## **14. Firm Price**

All prices stated on the Order are firm and not subject to variation.

## 15. Termination

In the event of a breach by the Seller of any of the terms and conditions of this Order, the Buyer may at its option and without prejudice to any of its rights or remedies, cancel all or any undelivered supplies upon reasonable notice in writing to the Seller.

## 16. Force Majeure

No failure or omission to carry out or observe any of the stipulations or conditions of this Order shall, except as herein expressly provided to the contrary, give rise to any claims against either party or be deemed to be a breach of the contract, if such failure or omission arises from any cause reasonably beyond the control of either party.

## 17. Environmental Sustainability

In carrying out their obligations under this agreement, the Seller must comply with, and ensure that its employees, subcontractors and agents comply with all environmental legislation that is in any way applicable to the delivery of Supplies under this Order; perform those obligations in an environmentally sensitive manner that does not degrade the quality of the environment; and, comply with the requirements of the Buyer's Environmental Management System as may be in place from time to time and as communicated by the Buyer to the Seller.

## 18. Heavy Vehicle National Law & Regulations (HVNR)

Transportation providers must ensure compliance to State and National Law related to safe vehicle movement and compliant transportation of freight. For additional details related to HVNR refer [www.nhvr.gov.au](http://www.nhvr.gov.au)

## 19. Use of Agent or Third Party

Without prior written approval from the Buyer, the Supplier is prohibited from use of any subcontractor, agent or third party for provision of Supplies (exception being freight requirements).

## 20. Invoices for Payment

The Buyer's approved **Purchase Order Number must be stated on the invoice** when presented for payment. Neglect by the Supplier to place the Purchase Order Number to the Invoice may result in late payment, and this is at no risk to the Buyer. All statements and invoices for payment are to be submitted to [accounts.smrf@srwra.com.au](mailto:accounts.smrf@srwra.com.au) or by mail to Southern Materials Recovery Facility, PO Box 2414, McLaren Vale SA 5171.