

Australian purchase order terms and conditions

1. APPLICATION OF THESE TERMS & CONDITIONS

These terms & conditions ("**agreement**") shall apply wherever Compass Group procures goods and/or services ("**products**") from the Supplier if there is no effective written agreement with the Supplier signed by Compass Group. A binding contract under this agreement will be formed either upon the written acceptance by Compass Group of the Supplier's quotation or the Supplier's acceptance of a Compass Group purchase order, whichever is applicable, and the terms contained herein shall take precedence over and prevail to the extent of any inconsistency with the Supplier's terms or conditions of trade.

2. THIS AGREEMENT

- 2.1 This agreement supersedes and cancels all prior written agreements and may only be amended as agreed in writing signed by both parties. Any term and condition that may be stated in any other document issued by the Supplier that purports to amend the terms of this agreement without the prior written consent of the parties, is not binding on the parties.
- 2.2 If the Supplier attends any site controlled by a client of Compass Group to deliver the products, the Supplier agrees to comply with all reasonable directions from the client or Compass Group relating to the Supplier's obligations under this agreement and when accessing the client's premises ("**Directions**").
- 2.3 The failure or omission of a party to enforce compliance with any provision of this agreement or to exercise any discretion under this agreement will not operate as a waiver of its rights, which may only be waived in writing signed by the waiving party.

3. SCOPE OF THE AGREEMENT

- 3.1. Compass Group may place purchase orders with the Supplier for such quantities of products, services or a combination of products and services (together "**products**"), as Compass Group may require from time to time, throughout the period of time the parties perform under this agreement ("**Term**"). The Supplier must provide the products Compass Group orders in accordance with this agreement at the price agreed.
- 3.2. Despite anything else in this agreement, any volume rebates or discounts for products acquired by Compass Group will only become binding on the Supplier when products are accepted (either by acceptance of the products or confirmation in writing) by Compass Group, the Compass Group nominated distributor, or, in the case of direct deliveries, the person with the authority to accept delivery. Where any product is returned or otherwise found to be unfit for use, or as otherwise provided under clause 14, a corresponding adjustment will be made to the relevant volume rebate or discount.
- 3.3. Compass Group may specify an expected volume of products, which is an estimate only. Regardless of any estimate or periodic purchases, Compass Group does not give any undertaking, representation or guarantee that Compass Group will require any minimum volume or quantity of products from the Supplier. The Supplier is not the exclusive supplier of the products to Compass Group and Compass Group may source products from third parties at any time for any reason.
- 3.4. The relationship between Compass Group and the Supplier is that of supplier and buyer and there is no agency, joint venture, employee relationship or partnership between the parties. The Supplier has no authority whatsoever to act on behalf of Compass Group and must exercise independent management and control over its own personnel to ensure compliance with its obligations under this Agreement.

4. WARRANTIES

The Supplier warrants that as at the date of this agreement and during the Term:

- (a) it has the power and authority to enter into this agreement and to perform its obligations under this agreement and has not relied on any information provided by Compass Group to enter this agreement or gear up to provide the products;
- (b) it will supply all material, equipment and labour required to supply the products;
- (c) it will produce and provide all products in a diligent and professional manner with the degree of skill and care that is normally exercised by suppliers supplying products of a similar nature;
- (d) the products shall, at the time of supply, match the description in this agreement and be of quality which is in the reasonable opinion of Compass Group satisfactory, fit for the purpose, the correct retail quantity and weight, produced in a competent manner, of sound materials and of the nature, substance and quality specified by Compass Group and will at all times be of a standard which is in the reasonable opinion of Compass Group satisfactory;
- (e) the products conform in every respect with the requirements of the Compass Group Supplier Requirements as advised from time to time;
- (f) it will be solely responsible for all express and implied warranties given by it in relation to the products, the benefit of which Compass Group may hold for its clients;
- (g) it, and each person engaged by it (whether or not employees), has all qualifications, licences, authorisations, consents, approvals and permits required by applicable laws and good industry practice in order to provide the product and perform its obligations under this agreement;
- (h) the manufacture or provision of products by the Supplier and the use thereof will not infringe the intellectual property of any third parties;
- (i) it has effected all insurance as required by law and under this agreement; and
- (j) it will comply with this Anti-bribery warranty - as a matter of corporate policy and as strictly prohibited under the Compass CBC, Compass Group expressly prohibits payments or offers of bribes and/or facilitation payments (otherwise known as "grease" payments) in connection with Compass Group business operations by any supplier or agent engaged to provide goods or services to Compass.
- (k) The Supplier undertakes and agrees that in connection with this agreement and the transactions contemplated by this agreement, it will comply with all applicable laws, rules, regulations, decrees and/or official governmental orders of the United Kingdom, the United States of America and the country of operations relating to anti-corruption and anti-money laundering.
- (l) The Supplier agrees, undertakes and confirms that it and each member of the Supplier Group, has not made, offered, promised to make, authorised the making of, and will not make, offer, or promise to make, or authorise the making of, any payment or other transfer of any financial or other advantage or anything else of value, including without limitation the provision of any funds, services, gifts or entertainment, directly or indirectly to any:
 - (i) government official;
 - (ii) director, officer, employee or agent/representative of an actual or prospective counterparty, supplier or customer of Compass Group;
 - (iii) director, officer, employee or agent of Compass Group or its co-venturers or any of its or their affiliates;
 - (iv) political party, official of a political party, or candidate for public office;
 - (v) agent or intermediary for payment to any of the foregoing; or

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(vi) other person or entity, for the purpose of obtaining, rewarding or influencing the award of this agreement or for any improper advantage or improper purpose or where it would be improper for the person to accept such an advantage in connection with the performance of this agreement and the transactions contemplated hereunder or in connection with any other business transactions involving Compass Group, if and to the extent that to do so is or would be in violation of or inconsistent with the principles or requirements of any anti-bribery or anti-money laundering laws applicable to Compass Group or to the Supplier, or to their respective parent companies, including, but not limited to, the *UK Bribery Act 2010*, the *UK Anti-Terrorism, Crime and Security Act 2001*, the *U.S. Foreign Corrupt Practices Act* and successor legislation, legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or the United Nations Convention Against Corruption, and/or the anti-corruption or anti-money laundering laws of the country of operations.

Notwithstanding the foregoing undertakings, the Supplier agrees to notify Compass Group promptly upon discovery of any instance where the Supplier has failed to comply with any provisions of this clause.

5. QUALITY ASSURANCE

5.1. Compass Group Supplier Requirements

(a) The Supplier must comply with, and must ensure that its personnel comply with:

- (i) the Compass Group Supplier Requirements (including those found on its website here: <https://www.compass-group.com.au/why-compass/#s-corporate>) in place at the date of this agreement; and
- (ii) subject to the remainder of this clause 5.1, any amendments to the Compass Group Supplier Requirements advised by Compass Group from time to time during the Term ("Policy Amendments").

(b) Except where the Policy Amendments are mandated by law, if the Supplier reasonably determines that a Policy Amendment would:

- (vii) be inconsistent with the terms of this agreement; or
- (viii) require the Supplier to comply with obligations that would cause a material detriment to the Supplier,

the Supplier must notify Compass Group and provide all evidence reasonably requested by Compass Group to substantiate its claim.

(c) If Compass Group reasonably determines, on receipt of the Supplier's notice and evidence under clause 5.1(b), that the whole or any part of the Policy Amendment would satisfy clause 5.1(b)(i) and/or (ii), Compass Group may notify the Supplier that it will not require the Supplier to comply with the relevant part of the Policy Amendment.

5.2. The Supplier and its personnel must comply in all respects with all applicable legislation, regulations, codes of practice and industrial awards and agreements, including all safety, health and environmental laws and regulations, as amended from time to time.

(a) Compass Group has a Code of Business Conduct (the "**Compass CBC**"). An electronic copy can be downloaded from the following web site:

<https://www.compass-group.com/en/who-we-are/corporate-governance/policies.html>

(b) The Supplier shall:

- (i) carefully review the Compass CBC;
- (ii) ensure that the Compass CBC is disclosed to all of the Supplier's personnel; and
- (iii) undertake and agree that, in connection with the Supplier's performance under this agreement, all of the Supplier's personnel shall act consistently with the applicable principles of the Compass CBC in all material respects.

5.3. The Supplier shall:

- (a) at the reasonable request of Compass Group and at the Supplier's cost, submit samples of the product for testing, by an independent body of Compass Group's choosing, against applicable standards; and
- (b) allow Compass Group, its employees or agents, on the provision of reasonable notice to the Supplier, to conduct a quality audit on the premises of the Supplier and delivery vehicles as reasonably requested throughout the Term.

5.4. Compass Group reserves the right to suspend, vary or cancel any order for products if as a result of any audit, inspection or testing Compass Group requires any

corrective action to be undertaken to ensure compliance with relevant legislation, health regulations, codes of practice and the Compass Group Supplier Requirements (as applicable).

5.5. The Supplier shall deliver all products using registered vehicles which shall be compliant with all relevant legislation, health regulations, codes of practice and the Compass Group Supplier Requirements.

5.6. The Supplier shall respond within 2 (two) business days in writing to any request for a 'supplier service report' (or similar) issued by a Compass Group's representative in relation to any product or delivery issue.

5.7. The Supplier shall control and measure its use of raw materials and natural resources connected with its activities, processes, products and services and shall also control and measure the resulting waste, pollution and greenhouse gas emissions in an environmentally responsible manner in accordance with accepted Australian Standards and laws. The Supplier agrees it is solely liable for all greenhouse gas emissions that originate from its own activities, goods, processes and/or services, and for all income and other taxes of any kind and no arrangements or agreements have been made with Compass Group to meet the Supplier's liabilities for greenhouse gas emissions, income or other taxes whatsoever.

5.8. The Supplier will ensure it does not breach the *Modern Slavery Act 2018* (Cth), Divisions 270 and 271 of the *Criminal Code 1995* (Cth), and any other analogous anti-Modern Slavery laws or regulations in force in Australia ("**Modern Slavery Laws**"). The Supplier agrees to the following relating to modern slavery:

- (a) The Supplier will promptly provide any information or reports requested by Compass Group in relation to, or required under, any law relating to modern slavery including the Modern Slavery Laws.
- (b) The Supplier, in performing its obligations under this agreement, will:
 - (i) comply with all applicable laws relating to anti-slavery and human trafficking;
 - (ii) have and maintain its own policies and procedures to ensure compliance with such applicable laws and reduce the risk of modern slavery;

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- (iii) keep complete, accurate and up to date records to trace the supply chain of all services provided to Compass Group and permit Compass Group to inspect those records as reasonably required; and
 - (iv) promptly notify Compass Group as soon as the Supplier becomes aware of:
 - a. any breach or potential breach of this clause 5.7; or
 - b. any actual or suspected slavery or human trafficking in a supply chain which has a connection to any agreement between Compass Group and the Supplier.
 - (c) The Supplier represents and warrants that neither the Supplier nor any of its officers or employees:
 - (i) has been convicted of any offence involving modern slavery or human trafficking; and
 - (ii) to the best of its knowledge, having made reasonable enquiries, has never been or is the subject of any investigation, inquiry or enforcement proceedings by any government, administrative or regulatory body regarding any offence or alleged offence of or in connection with modern slavery and human trafficking.
 - (d) The Supplier shall implement due diligence procedures for its subcontractors and suppliers in relation to eradicating modern slavery or human trafficking in its supply chains.
 - (e) The Supplier must, once per year or more frequently if requested, prepare and provide to Compass Group a modern slavery statement if required in accordance with the requirements of the Modern Slavery Laws.
- 6. PRICE AND PAYMENT TERMS**
- 6.1. Prices shall be as per the agreed pricing set out in the Supplier's quotation or if there is no price specified then the price as agreed between the parties from time to time. Prices are inclusive of all costs, delivery charges, and taxes, unless expressly provided otherwise in this agreement.
- 6.2. Rebate calculations are to be on the basis of Compass Group's total purchases from the Supplier regardless of the purchase volume of any individual site or client of Compass Group. Compass Group will deduct from each invoice a rebate at the rate as set out in the Supplier's quotation, if any, or where otherwise agreed between Compass Group and the Supplier.
- 6.3. Without limiting any other rights Compass Group may have under this agreement or at law, Compass Group may deduct from any monies which may be, or become, payable to the Supplier any monies (that are not subject to a bona fide dispute) due from the Supplier to Compass Group. Nothing in this clause shall affect the right of Compass Group to recover from the Supplier the whole of the debt, or any balance of the debt, which remains owing after such a deduction has been made.
- 6.4. Subject to the Supplier not being in breach of any material term of this agreement, payment will be made to the Supplier within 60 days of the end of month of receipt of a valid tax invoice (unless otherwise agreed and signed between the parties in writing). The Supplier acknowledges that any proposed due date of payment a Supplier invoice that is different to this agreement is not effective as the due date of payment of its invoice is determined by this clause.
- 6.5. Invoices which do not comply with GST legislation or contain other material errors will not be processed until corrected.
- 6.6. All payments made by Compass Group shall be by electronic funds transfer, followed by a copy of the remittance advice.
- 7. DELIVERY TERMS / FREIGHT / INVOICING**
- 7.1. The supplier must issue a valid Tax Invoice to the recipient of a taxable supply on the same day as delivery of the product or completion of the services, including GST where applicable.
- 7.2. For the invoice to be processed, the Compass Group sourcing site's 8-digit number must be included on the invoice.
- 7.3. The Supplier must send a copy of each tax invoice in PDF or TIF format to:
compass.invoices@converga.com.au
- 7.4. If agreed between Compass Group and the Supplier, invoices may be sent by Electronic Invoicing ("e-Invoicing") in cxml format (refer to www.cxml.org for technical information relating to the required standard) in accordance with Compass Group's reasonable directions.
- 7.5. The Supplier must comply with all laws and applicable health regulations and codes of practice including relating to transport, packaging, and labelling, including but not limited to the *Competition and Consumer Act 2010* as amended from time to time.
- 8. CONFIDENTIALITY**
- 8.1. The parties agree not to disclose, or permit to be disclosed, any confidential information relating to this agreement except with the prior written consent of the other party, to its related bodies corporate, or otherwise as required by law.
- 8.2. The obligation in this clause 8 survives termination or expiry of this agreement for a period of 18 (eighteen) months.
- 9. ASSIGNABILITY**
- 9.1. The Supplier may not assign or otherwise dispose of any of its rights or obligations under this agreement without the prior written consent of Compass Group. A change in the control of the Supplier and any other disposal of rights and obligations of the Supplier is an assignment for the purposes of this clause.
- 9.2. Compass Group may assign this agreement upon providing 7 days' written notice to the Supplier, except where such assignment would be detrimental to the Supplier (as evidenced by the Supplier in writing).
- 10. TERMINATION AND SUSPENSION**
- 10.1. Either party (Terminating Party) may immediately terminate the agreement by written notice to the other party if the other party (Defaulting Party):
- (a) is in breach or default of any material term of this agreement and fails to rectify that breach or default (if capable of remedy) within 20 (twenty) business days after being requested to so in writing by the Terminating Party;
 - (b) is in breach or default of any material term that is incapable of being rectified;
 - (c) has a liquidator, provisional liquidator, receiver, receiver and manager, administrator or external controller appointed to it or such proceedings are threatened;
 - (d) resolves to wind up or is subject to an order to wind up or ceases to do business; or
 - (e) enters into a scheme of arrangement with its creditors or otherwise comprises or compounds its debts with its creditors.

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- 10.2 Compass Group may terminate or suspend this agreement for convenience by giving the Supplier 30 days' written notice upon payment by Compass Group to the Supplier of the Supplier's fees under this agreement and the Supplier's direct costs associated with the termination of the agreement under this clause.
11. **RECORDS AND REPORTS**
The Supplier agrees to keep proper and accurate books of account and separate job cards/purchase orders for the products and provide to Compass Group (upon reasonable request) detailed reports pertaining to the supply of products.
12. **MONTHLY STATEMENT ADDRESS**
All of the Supplier's monthly statements must be sent via email to the email address to be notified in writing by Compass Group from time to time.
13. **LAWS TO APPLY AND JURISDICTION**
- 13.1. The terms of this agreement shall in all respects be construed according to the laws of the State of New South Wales (unless otherwise agreed by the parties in writing).
- 13.2. The parties each submit to the exclusive jurisdiction of the courts of the place in clause 13.1 and the courts of appeal from them.
14. **DEFECTIVE PRODUCT OR SERVICE**
- 14.1 If Compass Group determines, acting reasonably, that any products supplied to Compass Group under this agreement are defective, Compass Group may return or offer to return the product to the Supplier ("**Returned Product**") at no additional cost and deal with the defective services in accordance with clause 14.2.
- 14.2 In the case of any Returned Product or defective services, and in addition to any other rights of Compass Group, the Supplier must, causing as little inconvenience to Compass Group as is reasonably possible:
- (a) at Compass Group's option:
- (i) replace the Returned Product free of charge (including delivery costs) or perform the services again, free of charge; or
- (ii) credit Compass Group with the invoiced cost of the Returned Product or the defective services; and
- (b) reimburse Compass Group for the cost of returning the Returned Product.
15. **INSURANCES**
The Supplier warrants that it and each of its subcontractor has in place the following insurances with reputable insurers:
- (a) product and public liability insurance for the amount of \$10,000,000 (ten million dollars) per occurrence; and
- (b) motor vehicle liability insurance for the amount of \$10,000,000 (ten million dollars) per occurrence;
- (c) workers compensation insurance for the amount as required by law; and
- (d) any other insurance that is reasonably required under a Direction,
- and will provide Compass Group with the certificates of currency, upon demand and from time to time, in respect of each required insurance policy.
16. **INDEMNITIES**
- 17.1. The Supplier will, to the extent permitted by law, indemnify and keep indemnified and hold harmless Compass Group, its officers, employees, agents and contractors against:
- (a) any loss (including consequential loss) or damage of any kind whatsoever relating to any property (including, but not limited to, that of Compass Group); and
- (b) claims by any person in respect of personal injury (which expression includes illness or disability) or death; and
- (c) any other liability, loss (including consequential loss) or damage and any claims, actions, suits, demands, expenses costs (including legal costs on an indemnity basis) or proceedings of whatever nature arising from any breach of contract, breach of any warranties or representations (express or implied), breach of statutory duty or negligence, arising out of, or in any way in connection with the execution, performance or purported performance of the Supplier's obligations under this agreement except to the extent that any such liability, loss or damage has been caused by Compass Group or anyone acting through Compass Group (other than the Supplier and its subcontractors).
- 17.2. Each indemnity in this agreement is a continuing obligation separate and independent from the Supplier's other obligations and survives termination for any reason of this agreement.
- 17.3. It is not necessary for Compass Group to incur expense or make payment before enforcing a right of indemnity conferred by this agreement.
- 17.4. Compass Group shall be entitled to retain out of any payment which would otherwise be payable to the Supplier whether in connection with this agreement or any other, such monies as Compass Group may reasonably require to meet any contingent claim, action, proceedings, loss (including consequential loss), damage, costs or expenses arising from or in connection with any breach by the Supplier of its obligations under this agreement.
- 17.5. Compass Group's right to set-off shall be cumulative and in addition to any other rights or remedies which it may have at law or in equity.
17. **DICTIONARY**
In this agreement:
- "**Compass Group**" means Compass Group (Australia) Pty Ltd (ABN 41 000 683 125) or any related company thereof; and
- "**Compass Group Sourcing Sites**" means Compass Group's nominated delivery sites as notified by Compass Group in the purchase order, and as amended from time to time where the Supplier is offering to deliver to.
- "**Compass Group Supplier Requirements**" means Compass Group's policies, procedures, and standards which the Supplier is required to meet, as amended by Compass Group from time to time in accordance with clause 5.3.
- "**Direction**" has the meaning given in clause 2.2.
- "**Supplier**" means the person or entity named in the accompanying Compass Group purchase order or party who supplies the products to Compass Group.