

Standard terms and conditions

1. General

1.1. These are the terms and conditions referred to in the **purchase order**.

When terms and conditions apply

1.2. These standard terms and conditions (**standard conditions**) apply to any contract entered into by Amana Living Incorporated (**Amana Living**) issuing a purchase order to the nominated supplier (**the supplier**), whether as an offer or acceptance of an offer (**the contract**), where that purchase order refers to the Amana Living standard terms and conditions.

The General Scope of the Purchase Order Contract

- 1.3. Supply goods or services as nominated as to sizes, quantities and types;
- 1.4. Ensure that the goods or services delivered comply with the quality, size and nature specified in any contract documents or correspondence agreed by Amana Living's representative;
- 1.5. Supply the same for the amount or at the rates of charge referred to in the purchase order;
- 1.6. Comply in all respects with the contract documents (if applicable) concerning the sale, supply, delivery and payment for goods and services on the purchase order;
- 1.7. No goods will be paid for, received or acknowledged without the issue to the supplier of this form of official Amana Living Purchase Order.

2. Interpretation

2.1. In these standard conditions:

Goods means any material, plant, item or equipment specified in the order;

Manufacture includes grow, extract, produce, process and assemble;

Property includes every type of right, interest or thing which is legally capable of being owned and includes, but is not restricted to, physical goods, equipment and real property, as well as intangibles such as intellectual property, contract options and goodwill;

Service means any service provided by the supplier;

Supplies means property and/or services as the context requires.

2.2. Headings are not part of these standard conditions.

2.3. Subject to clause 6, these standard conditions will prevail in any conflict between them and the terms of any offer or acceptance by the supplier.

2.4. Unless otherwise provided all references to sums of money shall be in terms of the Australian currency, all documents and communications shall be in the English language and all references to measurements, quantities, dimensions and units shall be in terms of commonwealth legal units.

3. Special conditions

3.1. The contract conditions include any special conditions referred to in the purchase order and if any such special conditions are inconsistent with these standard conditions, the former will, to the extent of this inconsistency, prevail.

4. Packing

4.1. Goods must be packed with the minimum of packaging material so as to ensure its safe delivery. Environmentally friendly packaging material shall be used where practicable.

5. Delivery

5.1. Subject to clause 10, delivery of the goods must be made at the time, place and in the manner specified in the purchase order. Failure to comply with the advised transport mode may render a cost variation at the supplier's expense;

5.2. Amana Living can specify in writing a later time for delivery;

5.3. Upon delivery the goods shall be accompanied by a delivery docket quoting Amana Living's purchase order number. A separate Tax Invoice shall be sent to Amana Living as soon as possible which shall state clearly the contents of the delivery, pricing

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including freight costs and Amana Livings purchase order number;

- 5.4. All elements of the goods or service delivered by the supplier shall be at the risk of the supplier and no liability to pay for them shall arise until that element of the goods or service are approved by Amana living and delivery is accepted by Amana Living;
- 5.5. Should the supplier be at fault in the completion of a service or delivery as specified, upon return of any such element of the goods which are not acceptable to Amana Living, the supplier shall reimburse Amana Living for:
 - 5.5.1. Any amounts paid by Amana Living on account of the price of the returned elements of the goods; and
 - 5.5.2. Any costs incurred by Amana Living in connection with the delivery or return of the relevant element of the returned goods.
- 5.6. Where Amana Living has accepted an element of the goods that constitute part of the purchase order, Amana Living will pay the supplier that part of the purchase price attributable to the goods accepted.

6. Quality

- 6.1. The goods must be free from defects in materials and workmanship and at least of merchantable quality;
- 6.2. Amana Living can inspect the goods at any time and reject those not in accordance with the contract;
- 6.3. Amana Living can reject goods after acceptance if they do not comply with the contract;
- 6.4. Amana Living is not liable to pay for:
 - 6.4.1. rejected goods;
 - 6.4.2. goods damaged by inspection; or
 - 6.4.3. costs associated with inspection or rejection.
- 6.5. If goods are rejected by Amana Living, the supplier must, without prejudice to Amana Living's rights:
 - 6.5.1. replace or repair, without cost to Amana Living, the rejected goods; or
 - 6.5.2. remove the rejected goods and refund payment of the rejected goods.
- 6.6. The supplier must comply, at no cost, with all efforts of Amana Living to inspect the goods;
- 6.7. The supplier will not manufacture goods in bulk until Amana Living has approved the purchase of goods.

7. Samples

- 7.1. Amana Living may require, as a condition of the purchase order, a sample of the proposed goods to be supplied. In the event that such a sample is produced and approved then any subsequent delivery is referable to the sample and shall be of the size, nature and quality consistent with that of the approved sample.

8. Ownership of property

- 8.1. Ownership of, and risk of loss of or damage to the goods, passes to Amana Living upon delivery;
- 8.2. Where any part or progress payment for the goods or service is made by Amana Living the entire title of the property shall pass without exclusion or limitation. But subject to Amana Livings right to subsequent rejection in the event that the relevant goods or service is discovered to not comply with the terms of the contract, the specifications or the relevant purchase order.

9. Warranties

- 9.1. The Service Provider warrants to Amana Living that:
 - 9.1.1. The Services shall be supplied in accordance with the terms of the agreement with reasonable skill, care and diligence reasonably expected from a qualified, competent and experienced supplier of similar services;
 - 9.1.2. It has and will at all times have the skills, facilities, capacity, staff and other resources necessary to perform the Services in accordance with this agreement;
 - 9.1.3. The material supplied in connection with the services will be free from defects in design, material and workmanship
 - 9.1.4. All of its relevant personnel are appropriately trained in their role or function in the delivery of the services; and
 - 9.1.5. It will adequately monitor and supervise all relevant staff engaged in delivery of the service.
- 9.2. If Amana Living gives reasonable notice of any defect or omission discovered in the goods during any warranty period, the supplier must correct that defect or omission without delay and at no cost to Amana Living.
- 9.3. Where no warranty is otherwise specified, the warranty period shall be 90 days from acceptance by Amana Living;
- 9.4. The supplier must meet all costs of, and incidental to, the discharge of warranty obligations, including any packing, freight, disassembly and re-assembly costs.

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10. Police Clearances

- 10.1. All employees of the Service Provider who will have direct access to an Amana Living Resident, Client or Care Facility are required to undertake a National Police Clearance every three (3) years. Any person with a conviction for a precluding offence must not be employed, contracted, hired, retained, or accepted as an unsupervised volunteer in an aged care service subsidised by the Commonwealth. The offences that preclude a person from working in aged care are:
 - 10.1.1. A conviction for murder or sexual assault; or
 - 10.1.2. A conviction of, and a sentence to imprisonment for, any other form of assault.
- 10.2. The service provider must notify Amana Living if any of their employees at any time during the agreement have any new disclosable precluding offences that did not appear on their original National Police Clearance.

11. Indemnity and insurance

- 11.1. The supplier indemnifies Amana Living, its officers, employees and agents against all loss, damage, injury or expense Amana Living may sustain or incur as a result, whether directly or indirectly, of any breach of this contract, including any action or claim for alleged infringement of any patent, copyright, registered design, trademark or any other intellectual property rights, by reason of Amana Living's receipt or enjoyment of the goods;
- 11.2. The supplier will, for so long as any obligations remain in connection with this contract, effect and maintain appropriate insurance policies. Upon request by Amana living, the suppliers will provide Amana Living with proof of insurance acceptable to Amana Living.
- 11.3. The Service Provider agrees that Amana Living shall not be liable for any payments whatsoever (including any excess on claims) in respect of such insurance under this clause.

12. Payment

- 12.1. Amana Living's terms of trading, unless mutually agreed upon in writing at the time of supplier set up shall be 30 days upon receipt of a correctly rendered invoice unless alternative terms are agreed by both parties;
- 12.2. An invoice will be correctly rendered if it is addressed in accordance with the purchase order, identifies the purchase order number, satisfies the purchase order specifications, is a tax invoice for GST purposes and is, where explanation is necessary, accompanied by documentation substantiating the amount claimed;
- 12.3. The supplier must not, without Amana Living's consent in writing, assign the supplier's rights under the contract.

13. Subcontracting

- 13.1. The supplier must not, without Amana Living's consent in writing, subcontract the whole or any part of the work of manufacture or provision of the supplies;
- 13.2. The supplier will be liable to Amana Living for the acts and omissions of any subcontractor as if those were the acts or omissions of the supplier.

14. Applicable law

The contract will be governed by and construed in accordance with the laws in force in Western Australia.

15. Statutory Requirements

- 15.1. The supplier shall, in its dealings with its employees, have due regard to Commonwealth policies on employment, including equal employment opportunity, slavery, access and equity, affirmative action, occupational health and safety and workplace diversity.
- 15.2. The supplier shall ensure that its supply and delivery of the goods or services satisfies all of the requirements of all relevant Acts of Parliament and all ordinances, regulations, by-laws, orders and proclamations made that are relevant to the purchase order.

16. Term/Further Term and Termination

- 16.1. Either party may terminate this agreement by giving no less than 30 days' written notice to the other party.
- 16.2. If the supplier:
 - 16.2.1. fails to deliver the goods or service by the date required by the contract;
 - 16.2.2. is in breach of any other material term of the contract;
 - 16.2.3. being an individual, commits an act of bankruptcy, becomes a bankrupt, executes a deed of assignment or deed of arrangement under Part 10 of the **Bankruptcy Act 1966** as amended or a creditor accepts a composition under that Act or

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any analogous overseas law; or

16.2.4. being a corporation (other than for the purpose of a reconstruction or amalgamation):

16.2.4.1. is the subject of a compromise or arrangement with its creditors;

16.2.4.2. in respect of property of which a receiver and/ manager is appointed; or

16.2.4.3. in respect of which a provisional liquidator is appointed.

Amana Living can, without prejudice to any other rights and remedies it has under the contract or otherwise, terminate the contract in whole or part immediately.

16.3. On such termination Amana living can:

16.3.1. cease payment under the contract

16.3.2. recover from the supplier all sums paid for undelivered goods

16.3.3. purchase similar goods from alternative suppliers and claim by way of indemnity from the supplier any loss it may occur in doing so.

16.4. In the event this agreement is terminated through no fault of the Service Provider and the Service Provider has performed some or all of its obligations under this agreement without breach or default, the Fee for Services shall be paid on a pro rata basis according to the portion of service carried out/goods delivered as at the date when notice is given and up until the new termination date.

16.5. If Amana Living continue to purchase goods or services from the Service Provider after the end of the Term and no further written agreement has been entered into, the current agreement will continue to apply until either Party gives the other Party at least one month's written notice of its intention to terminate, amend or renew the agreement.

17. Dispute Resolution

17.1. If any difference or dispute shall arise between the parties as to the interpretation of this agreement or concerning any act matter or thing to be performed or observed in this agreement (Dispute) either party may give written notice to the other party specifying the Dispute and requiring its resolution under this clause (Notice of Dispute).

17.2. Where a Notice of Dispute is issued, the parties must use their best endeavors to resolve the Dispute within 21 days of the days on which the Notice of Dispute is served (or within such longer periods as the parties may agree).

17.3. If the parties are unable to resolve the Dispute within the time specified in clause 15.2, the Dispute shall be submitted to mediation in accordance with, and subject to the Mediation Rules of the Resolution Institute.

17.4. Each party must continue to perform their agreement despite the Dispute or the commencement of proceedings.

18. Privacy Laws

18.1. The Service provider acknowledges that Amana Living must comply with, and is at all times bound by, the Privacy Laws.

18.2. In providing the Services, the Service Provider must comply with the Privacy Policy and Privacy Laws.

19. Confidential Information

19.1. The Service Provider acknowledges that in performing the Services, the Service Provider will have access to Confidential Information of Amana Living.

19.2. The Service Provider shall use the same degree of care in safeguarding the Confidential Information of Amana Living as it uses for its own confidential information of like importance, but no less than reasonable care. Upon discovery of any disclosure or misuse of Confidential Information, the Service Provider will promptly notify Amana Living and will act to prevent any further disclosure or misuse.

19.3. The Service Provider may disclose or use such confidential Information as is necessary for the proper performance of the Services or when required by law.

19.4. If the Service Provider is required to disclose Confidential Information, the Service Provider must notify Amana Living in writing of the disclosure, or the impending disclosure as soon as is reasonably practicable.

19.5. All Confidential Information will remain the property of Amana Living, and the Service Provider will promptly return or delete all copies and excerpts thereof to Amana Living upon request.

19.6. The obligations in this clause will survive for a period of 12 months from the date of cessation of the Services or termination of this document.

20. Intellectual Property

The extent to which the Service Provider may need to use the Amana Living name, logos and other things which Amana Living has copyright in, is limited. Amana Living grants the Service Provider a non-exclusion license to use these things, for the sole purpose of enabling the Service Provider to perform its obligations under this agreement, during the Term and provided

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Amana Living has given consent to the use.

21. Material Safety Data Sheets

As per Occupation Safety and Health Act, 1984, the supplier shall forward all necessary information re: chemical composition, safety measures and product treatment, via Material Safety Data Sheets before the delivery of goods to Amana Living.

22. Waiver

A party's failure or delay to exercise a power or right does not operate as a waiver of the power or right. A waiver is not effective unless it is in writing.

23. Variation

This contract will only be varied by written agreement between Amana Living and the supplier. Amana Living and the supplier shall act reasonably in deciding whether to agree to a variation, as requested by the other party.

24. Negation of employment, partnership and agency

This contract does not create a relationship of employment, agency or partnership between the supplier and Amana Living.

25. Price

25.1. The contract price for the supplies includes:

25.1.1. all taxes, duties and other imposts for which the contractor is liable;

25.1.2. all insurance costs;

25.1.3. all amounts payable for the use (whether in course of performance of the services or their enjoyment) of patents, copyright, registered designs, trademarks and other intellectual property rights;

25.1.4. all charges for performances of the services;

25.1.5. Freight charges are to include all insurance and other charges in or in connection with the forwarding of goods or services to Amana Living.

26. Execution of separate documents

26.1. This document is properly executed if each party executes this document or an identical document. In the former case, this document takes effect when the last party executes this document. In the latter case, this document takes effect when the last of the identical documents is executed.

26.2. Evidence of execution of this document by a party may be shown by fax, email or a PDF copy of this document.

27. Time of the Essence

Time shall be of the essence as regard to any date or period under the terms and conditions.

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