

Purchase Order Terms and Conditions

1 AGREEMENT

- 1.1 Our contract with you regarding the works, plant/equipment, goods and/or services (together the **Supply**) specified in our Purchase Order is contained in the Purchase Order, these terms and conditions and any special conditions, specifications, drawings and other documents supplied by us to you (together the **Agreement**).
- 1.2 By commencing the Supply, you agree that you accept the terms of the Agreement (unless you have notified us otherwise within 3 working days of receiving the Purchase Order).
- 1.3 If there is an inconsistency between a provision in the documents comprising the Agreement, the Purchase Order will control unless any other document provided by us expressly states otherwise. Any other inconsistency will be resolved in our discretion.

2 SCOPE

- 2.1 You agree to perform the Supply in accordance with the Agreement.
- 2.2 The Supply must, and you warrant that the Supply will be:
 - (a) of good quality, free of defects and fit for the purpose communicated to you or reasonably inferable;
 - (b) performed in a good and workmanlike manner;
 - (c) comprised of only new and good quality materials; and
 - (d) made and performed in compliance with our directions, requirements and code of conduct, and all applicable laws, regulations, standards and requirements of any authority.
 These warranties are in addition to any which may exist or be implied under applicable laws.

3 PERFORMANCE

- 3.1 You must commence and complete the Supply on the dates stated in the Purchase Order (with time being of the essence).
- 3.2 You must pay us liquidated damages at the rate stated in the Purchase Order for every day that completion of the Supply is late. You agree that the liquidated damages reflect a genuine pre-estimate of our loss in the event that the Supply is late and does not constitute a penalty. Where no amount of liquidated damages is stated in the Purchase Order (or liquidated damages are noted as being '\$0/N/A/not applicable' or words of similar effect), we retain our right to common law damages for delay.
- 3.3 The Supply must be accompanied by a complete set of plans where applicable and any necessary instructions and technical documentation, including operating and service manuals.
- 3.4 If the Supply benefits from any third party guarantee or warranty, you must assign or transfer it to us or if it cannot be assigned or transferred, you must hold the benefit of it as trustee for us and on our behalf.
- 3.5 You agree to allow us to inspect, examine, review and witness the performance of the Supply including related records and any testing of the Supply, and to carry out site inspections at your premises.

4 PERSONNEL

- 4.1 You must:
 - (a) provide (at your cost) all personnel, equipment, tools and materials required for provision of the Supply;
 - (b) ensure (and you warrant) that you and your personnel have the requisite skill, ability, experience and equipment to perform the Supply, and are appropriately trained, licensed, accredited and supervised by a person who has the requisite experience and qualifications to undertake that supervision;
 - (c) comply with all applicable laws, industrial awards and workplace agreements relating to the engagement of your personnel;
 - (d) not impede operations or work by us or third parties; and
 - (e) ensure that your personnel complete induction training as directed by us.
- 4.2 If the behaviour of any of your personnel results in or contributes to any non-compliance with the Agreement, our code of conduct or is not otherwise acceptable to us, we may give you notice and you must ensure that they immediately cease work in connection with the Supply and do not perform work for us in future.

5 OCCUPATIONAL HEALTH AND SAFETY

You must comply with (and not cause us to be in breach of) our directions and all laws, regulations, standards and requirements of any authority concerning occupational health and safety, environment, dangerous goods, hazardous materials and building and electrical safety.

6 PAYMENT

- 6.1 We agree to pay only the price for the Supply stated in the Purchase Order where all aspects of the Supply has been performed in accordance with, and fulfils all requirements of, the Agreement.
- 6.2 We will pay you the undisputed amount of any payment claim (less any amount due to us by way of set off) within the payment period specified on the Purchase Order after receiving an acceptable tax invoice from you.
- 6.3 The price excludes Goods and Services Tax (GST). If GST is payable for the Supply, we will pay you the amount due for GST in addition to the price.
- 6.4 The price is fixed, not subject to escalation, and is inclusive of all costs and expenses necessary to perform and complete the Supply including packaging, freight, delivery, installation, insurance and all duties and taxes (except GST).
- 6.5 You must maintain accurate and detailed accounting records relating to the Supply. Where the price is calculated on a 'cost plus', 'schedule of rates' or similar basis, we may audit your records to verify the price.
- 6.6 You must apply for and pass to us the benefit of any available exemption or concession with respect to the Supply.
- 6.7 Payment is made on account only and is not proof or admission that the Supply is to our satisfaction and shall not be deemed to limit, reduce or waive the requirements in clause 2 of these terms and conditions.
- 6.8 Without limiting clause 6.1, we may, in our absolute and unfettered discretion, set-off from payment any amount otherwise due by you to us, and the amount of any costs or damages we consider you may be liable to us for, including:
 - (a) any amount referred to in clause 12;
 - (b) any amount due by you to us, or liability by you to us, under or in relation to another contract or agreement with us; and
 - (c) any amount due as a result of a right of set-off arising at law or in equity.

7 SUPPLY OF GOODS

- 7.1 All goods delivered as part of the Supply must be accompanied by a delivery slip. We are not required to pay for goods unless a delivery slip is signed by us.

- 7.2 You must ensure that all goods are suitably packed to avoid damage in transit or storage.
- 7.3 Our signing a delivery slip does not constitute our approval of the goods or prejudice any claims we may have. We may inspect the goods after delivery and reject any we consider to be defective. Clause 12 will then apply.

8 INTELLECTUAL PROPERTY

- 8.1 All intellectual property (IP) rights in any work product created by you in connection with the Supply (**Supply IP**) will vest in us from the time of creation.
- 8.2 We grant you a non-exclusive, non-transferrable, royalty free, revocable licence to use our IP (including the Supply IP) as necessary to provide the Supply.
- 8.3 You grant us a non-exclusive, perpetual, transferrable (with rights to sub-licence), royalty free, non-revocable licence to use your IP as necessary for the use of the Supply.
- 8.4 You warrant that the Supply and your performance of it will not infringe any IP rights.

9 TITLE AND RISK

- 9.1 Unencumbered legal title in the Supply will pass to us on payment or part payment of the price. Risk in the Supply passes to us when we have inspected and accepted it at the delivery point.
- 9.2 You acknowledge that we have a purchase money security interest in the Supply (and any proceeds derived from the Supply) and may register our security interest on the *Personal Property Securities Act 2009* (Cth) (**PPSA**) register. You will provide us with any information or documents and take such other steps as we require to perfect that interest and effect that registration. You agree to irrevocably and unconditionally waive your right under section 157 of the PPSA to receive notice from us in connection with such registration and that section 95 and chapter 4 of the PPSA will not apply to the extent possible.

10 LIABILITY

- 10.1 You agree to indemnify and hold us harmless against all losses, costs (including legal fees on an indemnity basis), liabilities and claims in connection with:
 - (a) any:
 - (i) claims, including for economic loss, by any person against us in relation to personal injury or death;
 - (ii) loss of or damage to property; or
 - (iii) infringement of IP rights,
 in relation to the performance or non-performance of the Supply; or
 - (b) your negligence or breach of the Agreement.
- 10.2 Your liability under clause 10.1 will be reduced proportionately to the extent that our negligence contributed to the loss, cost, liability or claim.
- 10.3 Our maximum liability to you in connection with the Agreement (other than for the price) will not exceed 10% of the price stated in the Purchase Order. We will not be liable to you for loss of revenue, profit, business or opportunity, punitive damages or other indirect or consequential loss.

11 INSURANCE

- 11.1 You must take out and maintain the following insurances as well as any other insurances required by law:
 - (a) Workers compensation insurance as required by law;
 - (b) public and products liability insurance with limits of not less than \$20,000,000 per occurrence and \$20,000,000 in the annual aggregate with respect to Products Liability;
 - (c) where required by us, contract works insurance for any works included in the Supply and/or Goods in Transit insurance for any goods included in the Supply with limits of not less than the value of those works/goods;
 - (d) motor vehicle insurance covering all registerable mechanically propelled vehicles used in connection with the Supply with limits of not less than \$20,000,000 for third party property damage per any one occurrence;
 - (e) professional indemnity insurance where the Supply includes professional and/or design services with limits of not less than \$10,000,000, which insurance must be maintained in effect for not less than 6 years following completion of the Supply; and
 - (f) such other insurance as may be stated in the Purchase Order.
- 11.2 Your insurances must:
 - (a) name us as an additional insured party (other than professional indemnity insurance);
 - (b) contain a waiver of subrogation rights against us; and
 - (c) be with an insurer rated no lower than A- (Standard & Poor's) and otherwise on terms acceptable to us.
- 11.3 You must provide evidence of such insurance to our satisfaction before commencing the Supply and when requested by us.

12 DEFECTS RECTIFICATION

- 12.1 At our request, you must correct any defect in the Supply (or any part of it) and any damage caused by the defect (or any part of it), at your own cost.
- 12.2 If you fail to correct the defect and damage within a reasonable time, in addition to and without limiting
 - (a) our right to withhold payment for the Supply, pursuant to clause 6.1; and
 - (b) our other rights and remedies at law or in equity,
 we may:
 - (c) correct the defect and you must reimburse us for the costs we incur in doing so;
 - (d) withhold any payment that is or becomes due to you until you correct the defect; and/or
 - (e) reject the part of the Supply containing the defect and reduce the price by an amount reflecting the losses we have suffered as a result of the defect.
- 12.3 The term defect is intended to include any non-compliance of the Supply with the Agreement.
- 12.4 No request by us, or decision by us not to make a request, pursuant to clause 12.1, shall be taken to reduce, limit or waive:
 - (a) the requirements in clause 2; or
 - (b) our right to withhold payment for the Supply pursuant to clause 6.1.

13 SECURITY

You must provide us with the amount and form of security indicated in the Purchase Order in format and otherwise to our satisfaction, and we may withhold 5% of the price stated in the Purchase Order as retention security, until such time as we are satisfied that the completed Supply is and has been free from defects for a consecutive period of

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12 months. We may have recourse to the security whenever you owe us money or we suffer damages due to your default.

14 VARIATIONS

- 14.1 We may direct a variation to the Supply in writing.
- 14.2 The variation will be valued as agreed between the parties in writing, or if we cannot agree, at reasonable rates or prices as determined by us.
- 14.3 You must obtain our written consent prior to providing any Supply that is not specified in the Purchase Order or would otherwise result in the price stipulated in the Purchase Order being exceeded. If you fail to do so, we will not be liable for any amounts that exceed the price stipulated in the Purchase Order and will be entitled to retain and use the additional and/or excess Supply at no cost.

15 TERMINATION

- 15.1 We may terminate the Agreement:
 - (a) at any time by giving you notice, and will pay you (as your sole entitlement and remedy) for any Supply completed to the date of termination but for which we have not yet paid and for your reasonable direct costs of removal from our site of your workers, tools, temporary buildings, materials and rubbish if included in the price and not already paid;
 - (b) immediately if you become insolvent or breach the Agreement and do not remedy that breach within 10 days after notice from us. We will not be liable to you for any loss or cost you incur as a result of such termination.
- 15.2 We may direct you to suspend and re-commence the Supply at any time and you must comply at your own cost.
- 15.3 Termination of the Agreement will not affect any right, obligation, duty or liability of any party under the Agreement which has accrued to the date of termination.
- 15.4 You must repay us for any amount paid for Supply not completed or for Supply made that does not comply with the Agreement.
- 15.5 On termination, you must immediately remove from our site all of your workers, tools, plant, equipment, temporary structures, materials and rubbish.

16 SITE

- 16.1 We will provide you with adequate (non-exclusive) access to the site for purposes of performing the Supply.
- 16.2 You enter site completely at your own risk and we make no representation about the condition of the site and accept no liability whatsoever for conditions on the site.
- 16.3 You must:
 - (a) keep the site clean and tidy;
 - (b) attend any inductions at your own cost; and
 - (c) comply with all site requirements.

17 GENERAL

- 17.1 Nothing in the Agreement creates an obligation of exclusivity or a relationship of employment, agency or partnership between the parties.
- 17.2 In the Agreement, all references to "you" means the Supplier named in the Purchase Order, and all references to "you" or "personnel" includes that Supplier's employees, agents, contractors, subcontractors and agents performing the Supply or attending our site.
- 17.3 In the Agreement, all references to "us", "our" or "we" means the purchasing entity issuing the Purchase Order.
- 17.4 Every indemnity, limitation and other benefit we are entitled to under this Agreement will extend to protect our related bodies corporate and each of our and their respective officers, employees, agents, representatives, contractors and agents other than you (Our Group). We are entitled to recover from you any amounts due to a member of Our Group under the Agreement on behalf of that member, and will hold any amount recovered, and the benefit of the indemnity, limitation or benefit to which that member is entitled, as trustee for and on behalf of that member.
- 17.5 You must not disclose the Agreement (or its contents) or any documents, know-how or confidential information of or about us which you become aware of or generate in connection with the Supply, except to your personnel who have a need to know or as required by law.
- 17.6 The Agreement:
 - (a) constitutes the entire agreement between us and you in relation to the Supply;
 - (b) replaces and supersedes all prior related agreements (except any written agreement signed by you and us that is expressly referenced in the Purchase Order); and
 - (c) may not be varied other than in a writing made expressly for that purpose that is signed by you and us.
 Without limiting paragraphs (a) – (c):
 - (d) the inclusion of your quote number in the Purchase Order is for convenience only and does not incorporate the terms of that quote in to the Agreement; and
 - (e) any terms and conditions provided by you to us will be of no legal effect and will not form part of the Agreement even if we or any member of Our Group signs them or annexes them to the Agreement.
- 17.7 We may but you must not (without our prior written consent) assign, novate, subcontract or otherwise transfer any rights or obligations under the Agreement.
- 17.8 Any notice under the Agreement must be in writing.
- 17.9 No waiver of any breach of the Agreement will constitute a waiver of any subsequent breach of the same or any other provision.
- 17.10 If any provision of the Agreement is held invalid, unenforceable or illegal for any reason, the validity of other provisions of the Agreement are not affected.
- 17.11 The Agreement is governed by the laws of the place where the Supply is to be made and the parties submit to the exclusive jurisdiction of the courts of that place.
- 17.12 All obligations to indemnify survive termination, are separate and continuing obligations, and do not require the indemnified party to first make payment.
- 17.13 You bear all risks and loss you incur in performing the Supply.
- 17.14 Where we 'may' do or not do something, or otherwise have a discretion, the discretion is absolute and is not required to be exercised for the benefit of, or having regard to, you, and may be done or not done with conditions.
- 17.15 In the Agreement, references to 'include' or 'including' mean 'including but not limited to'.