

## PURCHASE ORDER TERMS AND CONDITIONS

### 1. Supply

The goods and services described in this Purchase Order (respectively the Goods and Services) shall be supplied by the Supplier to the Buyer strictly in accordance with the terms set out in this Purchase Order and no alteration shall be made to these terms without the written authorisation of both the Supplier and Buyer.

The terms "Goods" and "Services" shall be read and applied to either the Goods or the Services, or both, which are the subject of this Purchase Order, as may be required.

### 2. Time of the Essence

The Supplier is to supply the Goods and Services by the date (or dates) specified in this Purchase Order. Should any change in delivery date (or dates) be proposed by the Supplier for any reason, immediate written notice shall be given to the Buyer who may in its absolute discretion accept or reject the proposal.

### 3. Supplier's Default

If the Supplier fails to comply with any condition contained in this Purchase Order, the Buyer may, at any time from then on and without affecting any of its other rights:

- (a) in relation to Goods:
  - (i) refuse Goods delivered to or left at the delivery site which have not become its property in accordance with Clause 5 of this Purchase Order: and/or
  - (ii) procure similar goods elsewhere, and
- (b) in relation to Services:
  - (i) refuse the Services provided; and/or
  - (ii) procure similar services elsewhere, and

the Supplier shall be liable for any additional costs incurred by the Buyer as a consequence of the Supplier's default.

### 4. Buyer's Default

If the Buyer fails to comply with any condition contained in this Purchase Order, the Supplier may, at any time from then on and without affecting any of its other rights:

- (a) in relation to Goods, refuse to supply Goods not already delivered to or left at the delivery site which have not become the Buyer's property in accordance with clause 5 of this Purchase Order: and/or
- (b) in relation to Services, refuse the supply of Services; and

the Buyer shall be liable for any additional costs incurred by the Supplier as a consequence of the Buyer's default.

### 5. Property in the Goods

The property in the Goods delivered to or left at the delivery site nominated by the Buyer shall not pass from the Supplier to the Buyer and shall remain at the risk of the Supplier until the Buyer has:

- (a) expressly accepted the Goods after inspection;
- (b) installed the Goods; or
- (c) paid for the Goods,

whichever shall first occur. Any inspection carried out by the Buyer shall be without prejudice to any rights the Buyer may have in respect of a breach of the Supplier's warranties in accordance with Clause 7 of this Purchase Order.

### 6. Inspection and return

Where, upon inspection by the Buyer, the Goods or Services are not acceptable to the Buyer, the Buyer may at the Supplier's expense:

- (a) in relation to Goods:
  - (i) return the Goods to the Supplier; and
  - (ii) at its election, deduct from any money payable to the Supplier, under this Purchase Order or any other contract or agreement between the Buyer and the Supplier, the cost of returning the Goods including all taxes, levies, duties and fees; and
- (b) in relation to Services:
  - (i) request that the Supplier promptly rectify the Services so that they are acceptable to the Buyer; or
  - (ii) engage another supplier for the purpose of completing the Services.

### 7. Suppliers warranties in relation to Goods

The Supplier warrants to the Buyer that:

- (a) the Goods delivered:
  - (i) comply with the Buyer's specifications and the description in the Purchase Order,
  - (ii) comply with all applicable Australian standards;
  - (iii) comply with all applicable legislation;
  - (iv) comply with any warranties or guarantees contained in the Purchase Order or ordinarily supplied by the Supplier and manufacturer of the Goods;
  - (v) are free of all liens, charges and encumbrances;
  - (vi) are of good merchantable quality and fit for purpose;
- (b) it will comply with all relevant international laws, statutes, standards and regulations relating to the ethical sourcing of goods and human rights;
- (c) it is the legal and beneficial owner of the Goods;

- (d) it has the necessary skills, resources and experience to supply the Goods; and
- (e) it has all the intellectual property rights (including any patents, trademarks and copyright and 3<sup>rd</sup> party consents) necessary to supply the Goods.

Notwithstanding the above, any special warranty or service guarantee applicable to the Goods is not revoked or varied by this clause.

### 8. Supplier's Warranties in relation to Services

The Supplier warrants that:

- (a) the Services shall:
  - (i) be of a good, tradesman-like quality or good merchantable quality that is acceptable to the Buyer;
  - (ii) comply with all applicable Australian standards and legislation;
  - (iii) not cause unnecessary delays, inconveniences to the Buyer and unnecessary damage including the removal of other infrastructure; and
  - (iv) comply with all relevant international laws, statutes, standards and regulations relating to the ethical sourcing of any goods and human rights used in the supply of services;
- (b) it is practicable to complete the Services in the manner envisaged and in the time required;
- (c) it has the necessary skills, resources and experience to supply the Services;
- (d) it has all the intellectual property rights (including any patents, trademarks, copyright and 3<sup>rd</sup> party consents) necessary to supply the Services; and
- (e) the completed Services shall remain free from all faults, defects and remain fit for use for a period of one year from the date they are provided unless otherwise specified in the Purchase Order.

### 9. Indemnity

The Supplier indemnifies the Buyer, its successors, assigns, customers and users of the Goods and Services from and against all actions, suits, claims, demands and costs arising out of or in any way connected with any breach of the Supplier's warranties in Clauses 7 and 8 of this Purchase Order.

### 10. Further liability of the Supplier

The Supplier is liable for and indemnifies the Buyer against any loss or damage caused to or suffered by the Buyer as a result of any act or omission by the Supplier, its agents, subcontractors and employees occurring on any property under the ownership or control of the Buyer.

### 11. Price

The price for the Goods and Services is fixed unless otherwise specified in this Purchase Order or agreed in writing by the Buyer and the Supplier. No prices listed on this Purchase Order are subject to escalation unless the Buyer expressly agrees in writing (signed by an authorised representative of the Buyer) to such escalation.

Unless otherwise specified in this Purchase Order or agreed in writing by the Buyer and the Supplier, all payments made in relation to this Agreement are to be made in Australian dollars.

The price includes all taxes, levies, duties and fees (including goods and services tax) which are payable in relation to the supply and delivery of the Goods and Services. The Supplier must pay any such taxes, levies, duties and fees.

The Supplier must deliver to the Buyer an invoice for the price of the Goods. The invoice must be in the form of a tax invoice.

All payments will be on account only and will not be an admission that the Goods or Services comply with this Purchase Order.

### 12. Use of Items and information provided by the Buyer

All tools, patterns, materials, drawings, specifications and other data provided by the Buyer in connection with this Purchase Order:

- (a) remain the property of the Buyer;
- (b) must be used solely for the purpose of supplying the Goods or Services;
- (c) must not be passed to or divulged to any third party except with the express consent of the Buyer in writing; and
- (d) must be returned by the Supplier to the Buyer on delivery of the Goods or completion of the Services.

### 13. Bankruptcy of Supplier

If the Supplier:

- (a) is a person or a partnership and becomes bankrupt or assigns his estate for the benefit of his creditors; or
- (b) is a company, and the company:
  - (i) goes into liquidation (other than for amalgamation or reconstruction);
  - (ii) has a receiver or voluntary administrator or provisional liquidator appointed to its affairs; or
  - (iii) enters into a deed of arrangement or composition with its creditors,

this Purchase Order shall be automatically cancelled and the Buyer shall be under no liability for payment of any Goods or Services not then delivered to, completed or accepted by the Buyer, as the case may be.

**14. Notices**

Notices under this agreement may be delivered by hand, by mail or by email to the addresses specified in the Purchase Order.

**15. Entire Agreement**

The Supplier acknowledges that this Purchase Order constitutes the entire agreement between the parties and that no prior or subsequent representations or agreements whether verbal or in writing by the Buyer or the Supplier or any employee or agent thereof shall bind the parties unless set out in or subsequently endorsed on this Purchase Order by the Buyer.

**16. Purchase Order is paramount**

This Purchase Order and its conditions prevail over any other terms or conditions, including those issued by the Supplier.

**17. Electronic Signatures**

The Buyer and Supplier agree that the electronic signature of a party to this Purchase Order will be accepted as valid as an original signature and will be effective to bind such party to this Purchase Order.

**18. Law**

The contract constituted by this Purchase Order shall be construed according to the laws of the State of New South Wales and the parties accept the jurisdiction of Courts exercising jurisdiction in that State.