

## TERMS AND CONDITIONS OF PURCHASE ORDER

These terms and conditions do not apply where the Supplier and the Purchaser have entered into a written Supply, Services or Consulting Agreement or other agreement specifying the terms and conditions which are to apply to the provision of Goods or Services. Any special conditions contained in this Purchase Order shall also apply and shall take precedence over these terms and conditions.

### 1. DEFINITIONS

'Contract' means the contract between the Supplier and the Purchaser consisting of this Purchase Order, the Specifications and/or the Requirements and these terms and conditions.

'Confidential Information' means all information of the Purchaser (regardless of the form of disclosure or the medium used to store it) which the Supplier first becomes aware of through disclosure by the Purchaser, or otherwise through the Supplier's involvement with the Purchaser, and which the Purchaser treats as confidential, or based on the circumstances under which it was disclosed, a reasonable person would believe to be confidential.

'Delivery' in the case of Goods, means delivery to the site(s) specified in the Purchase Order within 30 days of the date of the Purchase Order, in the case of Services means the latest date specified in the Purchase Order as the delivery or completion date, or in either case such other date as the parties may agree.

'Documentation' means the documentation to be provided by the Supplier under clause 5.

'Goods' means the goods specified in the Purchase Order.

'GST' has the meaning given in the *New Tax System (Goods and Services Tax) Act 1999*.

'Incidental Costs' means taxes (other than GST) and duties in Australian dollars incurred by the Supplier in supplying Goods and/or Services.

'Price' for Goods and Services means the amount in the relevant currency specified as the price in the Purchase Order and shall include the Incidental Costs but does not include any amount on account of GST.

'Purchase Order' means the purchase order on the front of this document.

'Purchaser' means the party specified as such on the Purchase Order.

'Requirements' means the Purchaser's requirements for the provision of Services as notified by the Purchaser.

'Services' means any services specified in the Purchase Order or any necessary services to install or ensure the Goods (if any) perform in accordance with the warranties in clause 9 at or after Delivery.

'Specifications' for Goods means the Supplier's published technical specification for those Goods and any other requirements agreed in writing by the parties in relation to the quality, functionality, performance, interpretability, testing or any other criteria with respect to those Goods.

'Supplier' means the party specified as such on the Purchase Order.

'Tax' includes any tax, withholding tax, charge, rate, duty or impost imposed by any authority at any time, but does not include any GST or taxes on income or capital gains.

'Tax Invoice' has the meaning given in the *New Tax System (Goods and Services Tax) Act 1999*. 'Warranties' for Goods or Services means the warranties specified in clause 9.

'Warranty Period' for Goods means 24 months after the actual delivery of those Goods.

### 2. SUPPLY

2.1 The Supplier must supply the Goods and/or Services in accordance with the Contract by the date for Delivery.

2.2 The Supplier must ship the Goods to the site(s) specified in the Purchase Order in accordance with the Purchaser's packaging, shipping and delivery procedures notified to the Supplier, or as specified in the Purchase Order or if none are notified or specified, in a manner that ensures safe delivery.

### 3. PAYMENT

3.1 The Supplier will after actual delivery to the Purchaser, issue an itemised valid Tax Invoice for the Price of the Goods and/or the Services, which, without limitation, shall specify the Incidental Costs. The Purchaser will not accept any liability or increased cost whatsoever in relation to currency fluctuations from time to time.

3.2 The Purchaser will (except to the extent that the valid Tax Invoice is in dispute) pay the Supplier's valid Tax Invoice 45 days from the end of month of valid Tax Invoice receipt.

3.3 In addition to the Price, the Purchaser will pay an amount equal to the GST on the supply of the Goods and/or Services, as itemised in the valid Tax Invoice (unless the price is expressly stated as being inclusive of GST).

3.4 If the Purchaser is obliged to make any deduction or withholding on account of Tax in connection with the Purchase Order, it will withhold the relevant amount from the gross amount due to the Supplier and will promptly pay that amount to the relevant authority. The Purchaser will have no obligation to pay any additional amount to the Supplier in relation to the withheld amount.

### 4. TITLE AND RISK IN GOODS

Title and risk in Goods passes to the Purchaser on actual delivery to the Purchaser.

### 5. DOCUMENTATION

5.1 On Delivery of Goods or Services the Supplier must supply the Purchaser with:

- all user documentation containing sufficient information in a form usable by the Purchaser to enable it to operate, make full use of and maintain Goods; and
- any other documentation specified in the Purchase Order or usually supplied with the Goods or Services.

5.2 The Purchaser may make an unlimited number of copies of the Documentation for use in its business operations.

### 6. DELAY AND LIABILITY FOR DELAY

6.1 The Supplier acknowledges that time is of the essence in effecting Delivery of Goods and/or Services.

6.2 If Delivery of Goods or Services is delayed for more than seven (7) days, the Purchaser may, with immediate effect by notifying the Supplier:

- terminate the Contract; and
- reject any Goods that have already been delivered to the Purchaser.

### 7. TERMINATION

The Purchaser may terminate a Contract with immediate effect if the Supplier becomes unable to pay its debts when they become due or by providing 14 days written notice to the Supplier.

### 8. REJECTION OF GOODS

If the Purchaser rejects Goods in accordance with the Contract or terminates the Contract, the Supplier must:

- in the case of Goods, immediately credit or refund to the Purchaser the total of all amounts paid by the Purchaser for the affected goods, and accept return of any of those Goods that have already been delivered to the Purchaser; and
- in the case of Services, immediately refund to the Purchaser that part of the Price prepaid (if any) for affected Services.

### 9. WARRANTIES

9.1 The Supplier warrants that:

(a) all Goods will:

(i) meet the functional and performance criteria set out in and otherwise conform with the Specifications;

(ii) be free from defects in design, materials, workmanship and installation;

(iii) be of good and merchantable quality and fit for use; and

(iv) when supplied to the Purchaser, be new and not used by any person (unless agreed in writing by the Purchaser);

(b) Documentation will be in English, complete and accurate, and suitable and sufficient for use by the Purchaser and its personnel to operate, to make full use of and to maintain the Goods or Services as the case may be;

(c) all Services will be supplied in a good, workmanlike and timely manner and be carried out by competent and trained personnel and, without limitation, in accordance with the Requirements;

(d) in providing the Services, it will not be in breach of any obligation owed to any person and that it holds all licences and approvals necessary for or incidental to providing the Services; and

(e) it will comply with all laws, ordinances, rules, regulations, codes and the requirements and direction of any relevant Commonwealth, State and Local Government departments or bodies in force from time to time.

9.2 If at any time during the Warranty Period for Goods the Supplier becomes aware or the Purchaser notifies the Supplier of any failure of those Goods to comply with any of the warranties given under clause 9.1, the Supplier, at its cost, will promptly correct that failure. This clause 9 applies notwithstanding anything to the contrary in any documentation accompanying, or provided by the Supplier in connection with, the Goods or Services.

### 10. INSURANCE

The Supplier must effect and maintain statutory workers compensation insurance and public liability insurance to cover any and all costs and expenses of whatsoever kind or nature which the Purchaser may suffer or incur as a result of or in connection with any claim, demand, action or proceeding brought by any party including any officer, employee or sub contractor of the Supplier.

### 11. INTELLECTUAL PROPERTY RIGHTS

11.1 The Purchaser will own all material created by the Supplier in performing Services. To facilitate this the Supplier:

(a) assigns to the Purchaser all future intellectual property rights in all such material (whether that material is created alone or jointly with the Purchaser); and

(b) acknowledges that no additional documentation is necessary to complete the assignment and by virtue of this clause all such future intellectual property rights will vest in the Purchaser.

11.2 To the extent that Goods or Services contain existing intellectual property rights, the Supplier hereby grants to the Purchaser an irrevocable, perpetual licence to copy, use and modify, same.

### 12. CONFIDENTIAL INFORMATION

The Supplier will take all reasonable precautions to ensure that all Confidential Information is treated as confidential and not disclosed to any person(s) or used other than for the purposes of the Contract and will return all Confidential Information immediately upon request by the Purchaser.

### 13. CONTINUING OBLIGATIONS

Clause 9 (Warranties), clause 10 (Insurance) and clause 11 (Intellectual Property Rights) continue after termination or completion of the Contract.

### 14. SEVERABILITY

The whole or any part of any clause of the Contract that is illegal or unenforceable will be severed and will not affect the continued operation of the remaining provisions of the Contract.

### 15. WAIVER

The failure of a party at any time to insist on performance of any obligation under the Contract by another party is not a waiver of its right:

(a) to insist on performance of that obligation or to claim damages unless that party acknowledges in writing that the failure is a waiver; and

(b) at any other time to insist on performance of that or any other obligation under the Contract.

### 16. GOVERNING LAW AND JURISDICTION

The Contract is governed by the laws applicable in New South Wales and each party submits to the jurisdiction of the courts of that State.

### 17. ENTIRE AGREEMENT

17.1 This Contract constitutes the entire agreement between the parties and, in relation to its subject matter, supersedes all previous agreements, arrangements and representations between the parties.

17.2 No confirmation, shipment or delivery docket, invoice or other such document issued by or on behalf of the Supplier in relation to the Goods or Services will vary this Contract.