

## General Terms and Conditions of Purchase Order

### 1. GENERAL

#### 1.1. Definitions

- (a) "Business Day" means a day other than:
  - (i) a Saturday, Sunday, public holiday in the State of Queensland; and
  - (ii) 27, 28, 29, 30 or 31 December;
- (b) "day" means calendar day;
- (c) "Defect" means any failure, fault, deficiency, defect, non-compliance with the Purchase Order or any Legislative Requirement or poor workmanship;
- (d) "Delivery Address" means the address identified in the Details as the location for delivery of the Goods;
- (e) "Delivery Date" means the date identified in the Details as the date for delivery of the Goods to the Delivery Address;
- (f) "Goods" means all goods, materials, article, plant, equipment, parts or any other property to be supplied by the Supplier under the terms of the Purchase Order including all associated activities and works in connection with such supply;
- (g) "Incoterms" means the international commercial terms published by the International Chamber of Commerce which at the date of the Purchase Order are known as "Incoterms 2020";
- (h) "Legislative Requirements" means approvals, laws, ordinances, regulations, proclamations, orders, rules, codes, standards and the lawful requirements of any authorities;
- (i) "Principal Contractor" has the same meaning as in the Work Health and Safety Legislation;
- (j) "Purchaser" means the person or entity ordering the Goods and issuing this Purchase Order, as identified in the Details;
- (k) "Purchase Order" means this order issued by the Purchaser to the Supplier and comprising of the documents listed in General Obligations - clause 3;
- (l) "Purchase Price" means the total amount payable by the Purchaser to the Supplier for the supply of Goods under the Purchase Order, as adjusted by any variations;
- (m) "Separate Warranty Period" means a period of 3 months commencing at 4.00pm on the date the rectification of an identified Defect in the Goods is completed;
- (n) "Supplier" means the person or entity providing the Goods, as identified in the Details;
- (o) "Warranty Period" means a period of 18 months commencing at 4.00pm on the date that all of the Goods are delivered to the Delivery Address;
- (p) "Supporting Documents" means the documents (if any) identified in the Details; and
- (q) "Work Health and Safety Legislation" means the *Work Health and Safety Act 2011* (Qld) and *Work Health and Safety Regulation 2011* (Qld).

### 2. AGREEMENT

#### 2.1. Entire Agreement

The Purchase Order constitutes the entire agreement between the Purchaser and Supplier in relation to supply of the Goods and supersedes all previous agreements, undertakings and communications including any tender or quote provided by the Supplier prior to the Purchase Order. The Purchaser shall not be bound by or be liable for any statement, representation, promise or understanding not set out in the Purchase Order.

#### 2.2. Incoterms

The Incoterms identified in the Details shall apply to the Purchase Order as if they were set out in full in the Purchase Order. For the purposes of the applicable Incoterms, the destination address is deemed to be the address of the Site.

#### 2.3. Ambiguities

If the Supplier becomes aware of any ambiguity or discrepancy in the Purchase Order (or in the documents forming the Purchase Order), it shall immediately notify the Purchaser in writing. The Purchaser shall then determine the correct interpretation and direct the Supplier accordingly. The Supplier must, at its own cost, comply with such direction.

#### 2.4. Confidentiality

Any information provided by the Purchaser to the Supplier, including but not limited to the Purchase Order documents, shall:

- (a) remain the Purchaser's property and be returned to the Purchaser upon written demand; and
- (b) not be copied, used nor reproduced for any purpose other than for supply of the Goods.

The Supplier shall keep all aspects of this Purchase Order and all matters arising from it (including the works in connection with the Goods) confidential and shall not disclose these details to any third party except to the extent required by law. The obligations under this clause shall be continuing and shall survive the completion or termination of the Purchase Order.

### 2.5. Subcontracting and Assignments

The Supplier shall not subcontract nor assign any part of the Purchase Order without the prior written approval of the Purchaser.

The Purchaser's approval under this clause shall have no effect on the warranties provided by the Supplier under the Purchase Order and in no way relieve the Supplier of any of its obligations under the Purchase Order.

At any time, the Purchaser may give the Supplier a written notice advising that the Purchase Order has been, or will be novated to a third party. The novation shall not entitle the Supplier to any additional payment.

### 2.6. Notices

Where a notice or instruction has to be given under this Purchase Order, it may be given by hand, facsimile transmission, e-mail or sent by post to the address set out in the Purchase Order or a substitute address that has been notified to the other party.

### 2.7. Applicable law

Unless otherwise specified, the Purchase Order shall be governed and construed in accordance with the laws in place in the State of Queensland.

## 3. GENERAL OBLIGATIONS

### 3.1. Supplier to Inform itself

The Supplier warrants that it has:

- (a) relied only upon its own enquiries and investigations for all of its purposes and not on anything communicated to it by the Purchaser;
- (b) carefully and thoroughly examined all documents or information furnished by the Purchaser and that it relies on any such document or information entirely at its own risk; and
- (c) fully satisfied itself regarding, and allowed for, all the conditions, risks, contingencies and other circumstances which may in any way affect the supply of the Goods.

Any error or omission in the documents or information provided by the Purchaser shall have no effect on the warranties provided by, or the obligation of, the Supplier under the Purchase Order.

### 3.2. Licences and Laws

The Supplier shall comply with all Legislative Requirements (including Work Health and Safety Legislation) that are in any way related to the supply of the Goods or the work in connection with the Goods.

### 3.3. Insurances

The Supplier shall effect and maintain all policies of insurances in connection with the supply of the Goods including public liability, workers compensation (as required by law), contract works (covering the value of the Goods) and extending to goods in transit and storage and if applicable, professional indemnity.

### 3.4. Indemnity

Notwithstanding any other provision in this Purchase Order, the Supplier shall fully indemnify and keep indemnified the Purchaser and its officers, employees and agents against all claims, demands, proceedings, liabilities, costs, charges and expenses arising as a consequence of or in connection with any act, neglect or default of the Supplier or its employees, agents or subcontractors related to its obligations under the Purchase Order.

### 3.5. Waiver

No failure or delay on the part of the Purchaser in exercising any of its rights under the Purchase Order shall be construed as constituting a waiver of any such rights.

## 4. QUALITY AND PERFORMANCE

### 4.1. Representations and Warranties

The Supplier represents and warrants to the Purchaser that:

- (a) it is, at all times, suitably qualified and experienced;
- (b) it will at all times, hold all licenses, qualifications, permits, certificates, and accreditations necessary or desirable for the proper performance of the works in connection with the Goods;
- (c) it shall exercise due skill, care and diligence in performing works in connection with the Goods and perform such work in a proper and professional manner to the satisfaction of the Purchaser and in accordance with the provisions of the Purchase Order; and
- (d) the supplied Goods are fit for their intended purpose and comply with all the requirements of the Purchase Order and all applicable Legislative Requirements.

### 4.2. Materials

All materials used in the performance of works in connection with the Goods shall be new and suitable for the purpose for which they are to be used.

All Goods must be suited for the intended purpose for which they are required.

### 4.3. Inspection and Acceptance

The Purchaser shall have the right to inspect, independently test, monitor and expedite the supply of the Goods at any time prior to delivery and the Supplier shall facilitate prompt access to the Supplier's and any of its subcontractor's premises for such purpose during normal working hours.

The Goods shall not be deemed to be accepted by the Purchaser until:

- (a) the Goods have been commissioned, tested and satisfactory test results

- obtained by the Purchaser;
- (b) the Supplier's quality assurance documentation (confirming that the Goods fully comply with the requirements of the Purchase Order) have been provided by the Supplier to the Purchaser and such documentation is acceptable to the Purchaser; and
  - (c) the Goods have been delivered to the Delivery Address, inspected and approved by the Purchaser in writing.

Any inspection, testing or acceptance of the Goods by the Purchaser shall not limit, restrict or reduce the Supplier's obligations under the Purchase Order and shall not in any way impair the Purchaser's rights under the Purchase Order or otherwise at law.

#### **4.4. Quality Assurance and Standards**

The Supplier shall maintain and implement an acceptable quality assurance system that demonstrates that the Goods fully comply with the quality standards specified in the Purchase Order. If no particular standards are specified in the Purchase Order, the Supplier shall demonstrate that the Goods comply with the highest quality standards applicable to the class of Goods concerned.

### **5. WORK HEALTH AND SAFETY**

#### **5.1. General obligation**

The Supplier must comply with all Work Health and Safety Legislation including obligations relating to designers, manufacturers and suppliers of plant and structures and perform its obligations under the Purchase Order in a manner which ensures that the Purchaser is not in breach of any Work Health and Safety Legislation.

#### **5.2. Compliance with directions of Principal Contractor**

When attending the Delivery Address, the Supplier must ensure that its employees and subcontractors comply with any reasonable direction of the Purchaser and/or the Principal Contractor in relation to health and safety at the Delivery Address.

### **6. WARRANTY AND DEFECTS**

#### **6.1. Warranties**

The Supplier warrants that the Goods shall:

- (a) be free from any liens, charges, mortgages or other title defects;
- (b) be free from any Defects including defects in design, materials and workmanship;
- (c) be new and made to the specified quality;
- (d) conform to all requirements of the Purchase Order; and
- (e) conform to all applicable Legislative Requirements.

The above warranties are in addition to any statutory warranties applicable to the Goods.

#### **6.2. Defects and Rectification**

During the Warranty Period, the Purchaser shall give written notice to the Supplier of any Defect identified in the Goods. The Supplier shall, without delay and at its cost, rectify the Defect in a manner acceptable to the Purchaser. Any Goods (or part thereof) rectified under this clause shall be subject to a Separate Warranty Period, unless otherwise confirmed in writing by the Purchaser.

#### **6.3. Failure to Rectify**

If the Supplier fails to rectify any Defects within a period notified by the Purchaser to the Supplier, the Purchaser may rectify the Goods itself or have the necessary rectification undertaken by a third party. All costs so incurred by the Purchaser shall be a debt due and payable by the Supplier and may be deducted in full or in part from any moneys otherwise owed by the Purchaser to the Supplier.

### **7. DELIVERY**

#### **7.1. Requirements**

The Supplier shall, at its cost, ensure that the Goods are:

- (a) adequately packaged and protected to ensure safe delivery;
- (b) properly loaded and transported to the Delivery Address; and
- (c) delivered to the Delivery Address by the Delivery Date.

#### **7.2. Delivery docket**

Each delivery shall be accompanied by a delivery docket which must:

- (a) clearly show the Purchase Order number;
- (b) identify the quality and nature of the Goods being delivered; and
- (c) be signed by a duly authorised representative of the Purchaser at the Delivery Address evidencing the Purchaser's receipt of the Goods.

#### **7.3. Ownership and Responsibility**

The Goods shall become the property of the Purchaser upon delivery (as evidenced by the corresponding delivery docket signed by the Purchaser's duly authorised representative). Notwithstanding that the Purchaser has taken delivery of the Goods, the Supplier shall remain responsible for:

- (a) any loss or damage to the Goods which may have occurred prior to acceptance of the Goods by the Purchaser; and
- (b) any Defect in the Goods.

#### **7.4. Essential term**

The Supplier's obligation under clause 7.1(c) to deliver the Goods to the Delivery Address by the Delivery Date is an essential term of the Purchase Order.

If the Supplier fails to deliver the Goods by the specified Delivery Date:

- (a) the Purchaser may at any time prior to delivery of the Goods to the Delivery Address, immediately terminate the Purchase Order by written notice to the Supplier; or
- (b) if the Purchaser does not terminate the Purchase Order pursuant to clause 7.4(a), the Supplier must pay the Purchaser liquidated damages (at a rate as stated in the Details) for the period commencing on the Delivery Date up to and including the actual date of delivery of the Goods to the Delivery Address.

The payment of liquidated damages shall not limit the Purchaser's right to enforce any other remedy which it may have under the Purchase Order or otherwise at law or to claim loss or damage in excess of any liquidated damages paid by the Supplier to the Purchaser under the Purchase Order.

### **8. VARIATIONS**

The Purchaser may vary the work under the Purchase Order or any condition thereof and the Supplier shall carry out any such variation as directed in writing by the Purchaser. The adjustment of the Purchase Price for any variation and any effect on the Delivery Date shall be agreed between the Purchaser and the Supplier in writing prior to the Supplier carrying out any such variation. Failing such agreement, the Purchaser shall determine the price for the variation and the revised Delivery Date for the Goods. The Supplier shall not vary the work under the Purchase Order except as directed and approved by the Purchaser in writing. No variation ordered by the Purchaser shall invalidate the Purchaser Order.

### **9. DOCUMENTS**

#### **9.1. Documents to be provided to Purchaser**

As a condition precedent to the Supplier's entitlement to submit a payment claim, the Supplier must prepare, collate and provide the Purchaser with all warranties and guarantees (in a form and on terms (including the warranty period) acceptable to the Purchaser), schedules, shop and "as built" drawings (in AutoCAD or other format acceptable to the Purchaser which must be fully detailed and capable of modification or editing by the Purchaser), documents in connection with the Goods (including operating and maintenance manuals) which are necessary for the proper and prudent use, maintenance and repair of the Goods and any other document requested by the Purchaser to evidence the Supplier's compliance with the Purchase Order.

All documents shall be in a format acceptable to the Purchaser.

#### **9.2. Intellectual property**

Copyright and property in all design and documents produced by the Supplier as part of, or in connection with the works in connection with the Goods hereby vest in the Purchaser. The Supplier must do all things necessary to perfect such vesting.

### **10. PAYMENT AND SECURITY**

#### **10.1. No rise and fall**

Unless otherwise stated in the Purchase Order, the Purchase Price shall be fixed and not subject to any variation, including but not limited to variation in the cost of labour, material or exchange rates. The Supplier shall be responsible for the payment of all relevant Australian (Federal, State and Local Government) and overseas taxes, duties and charges with respect to the Goods. The Purchase Price shall be deemed to be inclusive of all such taxes, duties and charges.

#### **10.2. Payment claim**

The Supplier is entitled to submit a claim for payment of the Purchase Price following delivery of the Goods and compliance with clause 9.1. The payment claim must include all Supporting Documents.

#### **10.3. Time for payment**

Subject to the Purchaser's receipt of a tax invoice in accordance with the GST law (otherwise withholding tax shall be deducted), payment of the Purchase Price shall be made by the Purchaser no later than 25 Business Days after submission of the Supplier's claim for payment in accordance with clause 10.2. The payment of moneys shall not be evidence that the Goods (or the works carried out in connection with the Goods) are satisfactory.

#### **10.4. Set off**

The Purchaser may withhold, deduct or set off from moneys due to the Supplier any moneys which the Purchaser claims is or may become payable by the Supplier to the Purchaser under or in connection with the Purchase Order or the Goods.

#### **10.5. Condition precedent**

Notwithstanding any other provision in the Purchase Order, the delivery of the Goods to the Delivery Address is a condition precedent to the payment of the Purchase Price.

#### **10.6. No liability**

In the event of termination of the Purchase Order prior to the condition precedent referred to in clause 10.5 being satisfied, the Supplier has no entitlement to, and the Purchaser has no obligation to pay, the Purchase Price.

### **11. DISPUTES**

#### **11.1. Notice**

If there is a dispute or difference between the parties, either party may give the other party a written notice of dispute adequately identifying and providing details of the dispute.

**11.2. Conference**

Within 7 days of a notice of dispute being issued by one party to the other, the nominated representatives of the Purchaser and Supplier must meet at least once to resolve the dispute. At such conference each party must be represented by a person having authority to agree to such resolution of the dispute.

**11.3. Without prejudice**

All aspects of every such conference except the fact of occurrence will be privileged.

**11.4. Litigation**

If the dispute has not been resolved within 21 days of service of the notice of dispute, a party may commence court proceedings in relation to such dispute.

**11.5. Continue to perform**

Notwithstanding the existence of a dispute the Supplier shall ensure that the delivery of the Goods is progressed without any delay.