

THE PURCHASES REFERRED TO IN THE ORDER ON THE OTHER SIDE OF THIS PAGE WILL ONLY BE MADE IN ACCORDANCE WITH THE FOLLOWING CONDITIONS, UNLESS OTHERWISE AGREED IN WRITING:

1. INTERPRETATION

- 1.1 The parties have entered into a contract for the purchase or Goods and/or Services as set out in the Order attached to these Conditions, these Conditions, the Special Conditions (if any) and any variations agreed to in writing (together, the **Contract**). In the event of any conflict or ambiguity, the Order will take precedence (save for any reference to the Seller's proposal or quotation), followed by any Special Conditions.
- 1.2 Unless the context requires otherwise, words in these Conditions have the same meaning as given to them in the Order.
- 1.3 No part of the Contract may be interpreted against the interests of the party responsible for the drafting or inclusion of that provision or part in the Contract.

2. ORDERS AND TERMS

- 2.1 The Order constitutes an offer by the Buyer to purchase the Goods and/or Services as set out in the Order at the Price and will be deemed to be accepted by the Seller unless the Seller gives the Buyer written notice of its intention not to accept the offer within 3 business days after it receives the Order.
- 2.2 In consideration of the Seller supplying to the Buyer the Goods and/or performing the Services in accordance with the Contract, the Buyer agrees to pay the Price, set out in the Order and adjusted or calculated in accordance with the Contract, which is exclusive of GST, but is inclusive of all other costs, charges, duties and taxes.
- 2.3 The Contract constitutes the entire agreement between the parties. No prior representations will bind the parties unless such representations or agreements are set out in the Order or the Special Conditions.
- 2.4 If the Seller's proposal or quotation is referenced in the Order, such reference will extend to include any technical qualifications, specifications or drawings, but any commercial terms and conditions will be excluded and will not form part of the Contract.
- 2.5 Where the Seller is certified to AS/NZS ISO 9001:2008 Quality management systems - Requirements as updated or amended from time to time in design, development, production, installation and servicing, the Contract must be fulfilled in accordance with the terms of that certification.
- 2.6 The Buyer will not be responsible for any order unless it has signed the relevant Order.

3. CHANGE

- 3.1 The Buyer may, at its discretion, amend, vary (including by omitting Goods or Service) or cancel the Order or delivery of the Goods or performance of the Services.
- 3.2 If an amendment, variation or cancellation causes the Seller to incur more or less costs than otherwise would have been incurred, the difference will be assessed by the Buyer and added to or deducted from the Price. Except as set out in this clause, the Buyer will not be liable for any other costs, losses (including loss of profit, loss of revenue, loss of opportunity, loss of contract, any other form of consequential loss, or indirect loss) or damages whatsoever.

4. QUALITY

- 4.1 The Seller warrants that the Goods:

- (a) conform with the description provided by the Seller and with any applicable specifications agreed by the Buyer and the Seller;
- (b) are of merchantable quality, are new and are fit for the purpose for which they are sold and for the specific purposes of which the Buyer has advised the Seller;
- (c) are free of defects in materials, workmanship and design;
- (d) are free from all liens and encumbrances, and that the Seller has good title to them.

4.2 The Seller warrants that:

- (a) the Services will be rendered with due care and skill by competent and trained personnel;
- (b) any materials supplied in connection with the Goods and/or Services will be of merchantable quality and will be fit for the purposes for which they are supplied; and
- (c) it will take all reasonable steps to assign any manufacturer's warranties in the Goods (where the Goods are manufactured by a third party) to the Buyer.

4.3 The warranties contained in these Conditions are in addition to any other warranties or guarantees contained in the Order, any Special Conditions or implied by law or provided by the Seller or any third party.

4.4 The Buyer may reject Goods not conforming for any reason whatsoever to the Order or the Contract.

5. LIABILITY

- 5.1 The Seller will, without limitation, indemnify and keep indemnified the Buyer against any loss, damage, cost, charge, expense, claim, liability, interest, penalty or fine suffered or incurred by the Buyer, whether consequential or otherwise, as a result of a failure to comply with the Contract or any claim by a third party alleging infringement of any intellectual property.
- 5.2 Regardless of clause 5.1, the Seller shall repair or replace at the option of the Buyer all Goods which are or become defective or otherwise fail to comply with the Contract within thirty days of notification of such defect or failure being sent by the Buyer. Such repairs or replacements shall be subject to the warranties contained in clause 4 and the liabilities contained in this clause.
- 5.3 Regardless of clause 5.1, where any Services are performed in such manner that they fail to comply with the Contract, the Seller shall at its expense ensure that those Services are performed again in compliance with the Contract within thirty days of notification of any defects or failures or breaches of warranty being sent by the Buyer or, alternatively, the Seller shall pay the cost of having the Services rendered again. Any further Services shall also be subject to the warranties contained in clause 4 and the liabilities contained in this clause.
- 5.4 The Seller's obligations under clauses 5.2 and/or 5.3 continue until the expiry of 12 months of the delivery of the Goods or completion of the Services (**Warranty Period**). This period may be extended by the parties by written agreement.
- 5.5 The Buyer may reject Goods at any time if the Goods do not comply with the Contract, in which case, the Seller shall reimburse the Buyer for any Price paid by the Buyer with respect to rejected Goods and any costs reasonably incurred by the Buyer in connection with the rejection of such Goods, including the cost of obtaining the Goods from a third party.

6. DELIVERY, TITLE AND RISK OF GOODS

- 6.1 If the Order provides that the Seller is to deliver Goods, the Seller must deliver the Goods to the Delivery Address by the Date for Delivery and, unless directed otherwise by the Buyer, is responsible for unloading the Goods.
- 6.2 Time is of the essence so far as it applies to the obligations of the Seller. If any Goods are not delivered by the Date for Delivery, the Buyer may either:
- (a) refuse to accept such Goods and terminate the Contract and/or obtain the Goods from a third party, and the cost to obtain the Goods from the third party will be a debt due and payable by the Seller; or
 - (b) require the Seller to deliver the Goods by the most expeditious means, and any additional costs shall be borne by the Seller.
- 6.3 If, on delivery, the Buyer or any third party signs a delivery docket or similar, or inspects the Goods, the Buyer will not be taken to have accepted any terms or conditions of such documents or that the Goods comply with the Contract.
- 6.4 The Seller shall make good free of charge to the Buyer any loss or damage to or defect in the Goods arising during transit.
- 6.5 Title to and risk of loss in the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with this clause 6, but without prejudice to any right of rejection or other rights which may apply to the Buyer under the Contract.

7. PERFORMANCE OF SERVICES

- 7.1 If the Order provides that the Seller must perform Services, the Seller must perform the Services by the Date for Delivery.
- 7.2 Time is of the essence so far as it applies to the obligations of the Seller. If the Services are not performed by the Date for Delivery, the Buyer may either:
- (a) cancel the Services and terminate the Contract and/or obtain the Services from a third party and the cost to obtain the Services from the third party will be a debt due and payable by the Seller; or
 - (b) require the Seller to perform the Services by the most expeditious means (subject to compliance with the Contract), and any additional costs shall be borne by the Seller.

8. PRICE AND PAYMENT

- 8.1 Subject to the Seller complying with its obligations under the Contract, the Buyer will pay the Seller the Price (as set out in the Order or calculated or adjusted in accordance with the Contract).
- 8.2 The Price of the Goods or the Services shall be that specified in the Order and shall be fixed and not able to be varied without the prior written agreement of the Buyer or adjustment under the Contract.
- 8.3 The Price specified in the Order shall include the cost to deliver (and, if applicable, unload) the Goods or all costs associated with the performance of the Services, where the risk and obligation to deliver the Goods to the Buyer or perform the Services remains with the Seller, unless otherwise agreed.
- 8.4 The Seller must submit an invoice payment claim for all Goods and Services supplied.
- 8.5 Where Goods and Services Tax is charged by the Seller, the Seller's invoice payment claim shall be in the form of a Tax Invoice. Goods and Services Tax must be charged at the legislated rate prevailing at the time of invoicing.

- 8.6 The terms of payment by the Buyer unless otherwise stated or agreed in writing are thirty (30) days from the completion of the month of invoice. Payment shall be made in Australian dollars.
- 8.7 The Buyer may set-off or deduct any amount which the Buyer reasonably asserts is or will be due from the Seller under or in connection with the Contract (including the costs of having a third party supply the Goods or perform the Services) against any amount due from the Seller to the Buyer (whether under the Contract or otherwise).
- 8.8 Payment by the Buyer does not prejudice its rights under clauses 4 and 5 of these Conditions or any other right it may have under the Contract.

9. PACKAGING, STORAGE AND HAZARDOUS GOODS

- 9.1 The Goods shall be properly packed to avoid being damaged during delivery or loading and unloading. All packages shall be clearly marked with the Order number and location of delivery.
- 9.2 The Seller shall comply with all applicable Australian and international laws, regulations and other relevant requirements relating to the transport, packaging, storage, handling and use of the Goods.
- 9.3 All Goods which are hazardous must be marked by the Seller with international danger symbols and display the name of the material and be accompanied by appropriate instructions. Delivery and other documentation must include disclosure of the hazards and name of the material.
- 9.4 All information held by or reasonably available to the Seller regarding any potential hazards known or believed to exist in the transport, packaging, storage, handling or use of the Goods shall be immediately communicated to the Buyer.
- 9.5 The Goods shall be packed in accordance with any packaging requirement or specifications contained in the Order or otherwise communicated by the Buyer to the Seller. Any proposed alteration to the Buyer's packaging requirements or specifications shall be subject to the Buyer's prior approval.

10. HEALTH, SAFETY AND THE ENVIRONMENT

- 10.1 The Seller must carry out and complete its obligations under the Contract in accordance with the WHS Requirements and Environmental Requirements, consult with the Buyer in relation to how its obligations under the Contract can be undertaken in a way that prevents or minimises all risks to health, safety and the environment, and comply with all lawful directions of the Buyer.
- 10.2 In these Conditions, WHS Requirements or Environmental Requirements mean all statutory and common law obligations, all directions, plans, statements, policies and procedures of the Buyer or any statutory authority relating to workplace health and safety or the environment, respectively.

11. INSURANCE AND RECALLS

- 11.1 The Seller shall maintain at its expense adequate insurance including, without limitation, public liability, product liability, workers' compensation (including common law liability), automotive and other means of transportation/freight liability insurance and product damage insurance on such terms and for such amounts as are reasonable in the circumstances of the Order.
- 11.2 In all circumstances, the amount of public liability and product liability insurance should be at least AUD\$10million or a greater amount as specified in the Order.
- 11.3 If in the Buyer's reasonable assessment it becomes necessary to recall any Goods because of a real danger

of loss or injury being caused or contributed to by those Goods, the Seller will indemnify the Buyer and keep it indemnified for all costs, losses or damages of any kind incurred or suffered by the Buyer as a result of the recall.

12. BUYER'S RIGHTS IN SPECIFICATIONS

12.1 Any specifications, plans, drawings, process information, patterns or designs supplied by the Buyer to the Seller in connection with the Contract shall remain the property of the Buyer and any information derived therefrom or otherwise communicated to the Seller in connection with the Contract shall be kept confidential and shall not, without the written consent of the Buyer, be published or disclosed to any third party or made use of by the Seller except for the purpose of implementing the Contract.

12.2 Any invention or improvement made by the Seller and attributable in whole or in part to such specifications, plans, drawings, process information, patterns or designs shall be the property of the Buyer.

13. INTELLECTUAL PROPERTY

13.1 The Seller warrants that the Goods and/or Services in no way infringe the intellectual property rights of any third party and indemnifies the Buyer against all losses, damages, liabilities, claims and expenses (including legal costs) arising from any infringement of intellectual property rights in connection with the Goods or Services.

13.2 All intellectual property created as a result of, for the purposes of or in connection with the supply of Goods or performance of Services under the Contract will vest in and be owned by the Buyer, unless otherwise agreed in writing by the parties.

13.3 The Contractor will take all steps necessary to give effect to the assignment of all intellectual property created as a result of, for the purposes of or in connection with the supply of Goods or performance of Services under the Contract.

13.4 The Seller grants the Buyer an irrevocable, perpetual, transferable and royalty free licence to use any pre-existing intellectual property required to use the Goods or works the subject of the Services.

14. CONFIDENTIALITY

14.1 Documents and other information supplied by the Buyer or coming into existence as a result of this Contract must be regarded as confidential and must not be disclosed to a third party except with the prior written consent of the Buyer or as required by law or court order.

14.2 The Seller indemnifies the Buyer against all losses, damages, liabilities, claims and expenses (including legal costs) arising from any breach of this clause.

15. TERMINATION

15.1 If the Seller:

- (a) fails to deliver the Goods or perform the Services by the Date for Delivery;
- (b) otherwise breaches the terms of the Contract;
- (c) repudiates the Contract; or
- (d) commits an act of insolvency (becomes insolvent, commits an act of bankruptcy, stops payments of debts or calls a meeting of or enters into composition with or for the benefit of the Seller's creditors or has a receiver, receiver/manager, manager, administrator, controller or provisional liquidator appointed to its undertaking or assets or any part thereof or a winding up petition is presented against the Seller or the Seller goes into liquidation (except for the purpose of reconstruction or amalgamation)),

the Buyer may at its discretion and regardless of any default or failure and without prejudice to its other rights under the Contract or otherwise forthwith cancel or suspend the Contract or any unfulfilled part of the Contract.

15.2 In the event of cancellation or suspension as aforesaid, the Buyer shall not be liable for any loss, damages, costs or expenses howsoever arising from such cancellation or suspension.

15.3 The Buyer may terminate the Order or the Contract for its convenience at any time and for any reason whatsoever.

15.4 The only liability of the Buyer to the Seller in the circumstances set out in this clause shall be for payment of Goods delivered to the Buyer or Services performed for the Buyer which remain unpaid, subject to the Buyer's right to set-off or deduct from the Price.

16. DISPUTES

16.1 Any dispute arising out of or relating to these Conditions or the Contract, must first be discussed by the parties and failing agreement or settlement, shall be the subject of mediation, administered by the Australian Commercial Disputes Centre (**ACDC**) conducted and held in accordance with the Rules of ACDC in force at the date of the Order. Any mediation meetings and proceedings shall be held in Sydney (unless otherwise agreed).

17. Personal Property Securities Act 2009 (Cth)

17.1 Unless the context requires otherwise, words in this clause have the same meaning as given to them in the Personal Property Securities Act 2009 (Cth) (**PPSA**).

17.2 The Seller warrants that the Goods are, at the time title passes to the Buyer under clause 6.:

- (a) not the subject of any Registration under the PPSA; and
- (b) free from any Security Interest (other than any Security Interest of the Buyer).

17.3 To the extent that the Contract creates a Security Interest in favour of the Buyer, the Seller must, at its cost, take all steps necessary:

- (a) to ensure such Security Interest is enforceable, perfected (including, where possible by control in addition to registration) or otherwise effective under the PPSA;
- (b) to enable the Buyer to gain first priority for the Security Interest; and
- (c) to enable the Buyer to exercise rights in connection with the Security Interest.

17.4 To the extent that Chapter 4 of the PPSA applies to any security interest in respect of this Contract (or a transaction related to it), the Parties contract out of PPSA sections 95, 96, 117, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d), 132(4), 135, 142, and 143.

18. GENERAL

18.1 No failure, delay or relaxation on the part of either party in exercising any power or right conferred upon that party pursuant to the Contract shall operate as a waiver of the power or right.

18.2 If any provision of these Conditions or the Contract is invalid, all other provisions which are self-sustaining and capable of separate enforcement shall continue to be valid and enforceable in accordance with their terms.

18.3 Neither the Seller nor the Buyer shall be liable to the other for default or delay in performing its obligations under the Contract caused by any occurrence beyond its reasonable control including, without limitation, fires, strikes, industrial disturbances, riots, wars, acts of God,

Government order or regulation, storm, tempest or epidemics.

18.4 The Contract shall be governed in accordance with the laws of New South Wales and the parties hereto submit to the non-exclusive jurisdiction of the Courts of that State.

APPROVED BY SUPPLIER REPRESENTATIVE:

.....
(SIGNATURE)

.....
(PRINTED NAME)

.....
(POSITION)

.....
(COMPANY NAME)
