

## TERMS & CONDITIONS OF PROCUREMENT

These terms and conditions (**Conditions**), subject to any variations we agree to in writing, apply to the purchase of goods and services the **Company** from the purchaser (our **Company, we or us**) identified in our purchase order to the supplier identified in our purchase order (**you**). Any terms and conditions notified to us by you will apply only to the extent that we accept them in writing. Your supply of the goods and/or services described in our purchase order (**Goods and Services**) constitutes acknowledgment and acceptance of these Conditions.

You will be deemed to have been accepted our purchase order, giving rise to a contract for the supply of the Goods and/or Services subject to these Conditions unless you reject the purchase order within two business days of its delivery.

You acknowledge and agree that our liability to pay under these Conditions falls solely on the Company entity that issued our purchase order, but that the obligations you accept and warranties you make under these Conditions are accepted and made for the benefit of all of the Company entities and that the Company entity issuing our purchase order contracts as agent on behalf of each other related Company entity.

### 1. Warranties and Liability

1.1 You warrant and agree in relation to the Goods that:

- (a) you have title, free of all liens, charges, encumbrances, mortgages and other security interests whatsoever, and title will transfer to us in accordance with these Conditions;
- (b) they are fit for the purpose for which they are ordinarily used or, if we have disclosed it, our purpose, and are of merchantable quality;
- (c) they conform with any technical specifications and performance specifications specified by us, published by you in relation to them, or implied by our proposed use of them;
- (d) they conform entirely with their description in our purchase order;
- (e) if you have provided a sample of the Goods, then this is a contract for sale by sample as well as by description;
- (f) they comply with all applicable laws; and
- (g) they will be appropriately packed for transport to us, so that they will not be damaged in transit.

1.2 You warrant and agree in relation to the Services that:

- (a) they will be provided with due skill and care to a standard expected of an organisation experienced in the delivery of Services of this kind;
- (b) you will comply with any of our applicable policies and procedures as they relate to the performance of the Services;
- (c) you will procure and maintain all licenses, permits and authorisations necessary for you to supply the Services; and
- (d) in supplying the Services, you will comply with, and not do anything which would cause us to contravene, any applicable laws.

1.3 In addition to our other rights, we are entitled to the rights provided under Part V Div. 2 of the *Trade Practices Act 1974* (Cth) as if that Act applied to the supply of the Goods and Services.

1.4 You indemnify us, and will keep us indemnified, in respect of all losses, costs, expenses and damage of any nature (including consequential loss) arising directly or indirectly as a result of any breach by you of these Conditions, and any claims by third parties for compensation for personal injury or loss or damage to property as a result of your act or omission. This clause applies notwithstanding anything in your trading terms which might otherwise exclude or limit such liability.

### 2. Warranty Period

2.1 In addition to our rights under clause 1, you warrant that the Goods will be free from any defects, deficiencies or other faults in their design, workmanship, material and satisfactory mechanical and electrical functioning, from the date of acceptance by us for a period of eighteen months (or such other period we agree in writing) (**Warranty Period**).

2.2 You will repair any defects, deficiencies or other faults in the Goods which become apparent during the Warranty Period or promptly replace the Goods, if necessary, at no cost to us.

2.3 A fresh warranty for the same period commences in relation to any item repaired or replaced from the date of repair or replacement.

### 3. Price and Payment

3.1 We will pay you the price specified in our purchase order (**Price**). The Price is inclusive of any sales tax and duty, but exclusive of GST. Except to the extent expressly provided in our purchase order:

- (a) we will pay no charges for packing or carriage of the Goods, expenses, duties, other taxes or imposts or any of your other costs; and
- (b) you will not be entitled to any adjust the Price due to fluctuations in exchange rates, material costs, taxes, duties or labour costs.

3.2 Unless otherwise specified in our purchase order, you may invoice us after completing delivery of the Goods and Services, and we will pay your invoice within 30 days of the end of the month in which it is received. We may pay you by cheque, credit card, electronic funds transfer or cash.

### 4. GST

4.1 If, and to the extent that, the supply of Goods and/or Services is a *taxable supply* then, subject to our receipt of a valid *tax invoice*, in addition to and at the same time as we pay the Price, we will pay any GST payable for the *taxable supply*.

4.2 All rebates, discounts or other reductions in price will be calculated on the GST exclusive price.

4.3 Any costs to be reimbursed or indemnified exclude any amount of GST for which an *input tax credit* can be claimed.

4.4 Expressions in italics in this clause 4 have the same meaning as given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

### 5. Right of Rejection

5.1 We may reject any of the Goods if you fail to comply with these Conditions, or they do not meet our specifications. Upon any such rejection:

- (a) we will notify you of the rejection in writing and you must (at your cost) collect the rejected Goods;
- (b) we have no obligation to pay for the rejected Goods; and
- (c) you remain liable under clause 1.4 for any cost, loss, damage or liability suffered in relation to the rejected Goods or our rejection of them.

5.2 Our payment for Goods, signing of a delivery docket or other acknowledgment of delivery does not prejudice our right of rejection.

### 6. Delivery

6.1 The Goods and Services must be delivered at the time and place specified in our purchase order or as otherwise specified by us in writing.

6.2 We have no obligation to accept or pay for Goods or Services not delivered in accordance with clause 6.1 unless:

- (a) the failure was caused by circumstances beyond your control; or
- (b) we consent in writing to a change to the time or place of delivery.

6.3 You must advise us immediately in writing if:

- (a) delivery is unlikely to take place on the due date; or
- (b) there is a partial loss of, damage to, or defects in any delivery of Goods or Services; and

you must take all necessary steps to avoid or minimise any delay and must immediately replace any lost or damaged Goods or rectify any defect in the Services at your cost, if we so require.

### 7. Passing of Title and Risk

7.1 Title to the Goods passes to us on delivery.

7.2 The Goods remain at your risk until they have passed our inspection and performance tests and have been accepted by us in writing.

7.3 All tools, dies, patterns, jigs, equipment and drawings created or used in the performance of the Services or manufacture of the Goods and which are paid for by us are our property and must not be used without our authority.

### 8. Intellectual Property

8.1 You warrant that the Goods and any materials supplied to us in the performance of the Services do not infringe any patent, trademark, registered design, name, copyright or other protected right (**Intellectual Property**) and that we will be free to use them without infringing any such Intellectual Property.

8.2 To the extent that use of the Goods requires a licence of rights in Intellectual Property belonging to a third party you must procure for us a perpetual, royalty-free, transferable licence to use that Intellectual Property in respect of our use of the Goods.

8.3 You agree that we will own all Intellectual Property arising as a result of the provision of the Services and you assign to us all rights and title to such Intellectual Property. You must procure all necessary arrangements with your personnel to give effect to this clause.

### 9. Insurance

You must have, and must ensure that any sub-contractors have, public liability and workers' compensation insurance in amounts reasonably acceptable to us. We may require evidence of that insurance at any time.

### 10. Termination

10.1 We may, without penalty and without prejudice to any of our other rights, cancel our purchase order immediately by written notice if you:

- (a) breach these Conditions and fail to remedy the breach within 14 days of our notice of the breach to you;
- (b) become bankrupt or insolvent, unable to pay your debts as they fall due or enter into or become subject to any form of insolvency administration;
- (c) do anything which in our reasonable opinion has the potential to prejudice our reputation; or
- (d) notify us of an anticipated delay in the delivery of Goods or Services and we consider the delay will significantly affect our business.

10.2 We may cancel our purchase order in respect of Services at any time on seven days' notice, provided that we will pay you for any Services performed prior to termination or a portion of the Price reasonably attributable to Services performed prior to termination.

10.3 Termination will not affect any rights accrued prior to termination.

### 11. General

11.1 Defined expressions bear their defined meaning wherever used in these Conditions, unless the context requires otherwise.

11.2 If a party comprises two or more persons, these Conditions apply to those persons jointly and each of them individually.

11.3 If any part of these Conditions is illegal or unenforceable, it will be severed from these Conditions and the remaining terms and conditions will continue in full force and effect.

11.4 We may set-off any amounts owed by us to you against amounts owed by you to us on any account whatsoever.

11.5 Our confidential information may be used only for the supply of the Goods and/or Services and you must keep our confidential information secret.

11.6 These Conditions are governed by the laws of the State or Territory of Australia where our purchase order originated and you submit to the jurisdiction of the courts of that State or Territory.