

Purchase Order Terms and Conditions

1 GENERAL

- 1.1 These are the terms and conditions regulating the interaction between the entity to which invoices are to be directed, as stated in the Purchase Order (**Purchaser**) and the supplier to which the Purchase Order is addressed (**Supplier**) where there is no procurement contract in place between the Purchaser and the Supplier. If a procurement contract exists then the terms and conditions of the procurement contract apply and override these terms and conditions to the extent of any inconsistency. Where no procurement contract exists, the terms and conditions of purchase are comprised of these general conditions of purchase and the Purchase Order (including any special conditions contained in that Purchase Order) (**Agreement**).
- 1.2 Where no procurement contract exists, this Agreement constitutes the entire agreement between the parties as to the purchase of Goods and/or Services. This Agreement supersedes all prior representations and agreements in connection with the supply of Goods and/or performance of Services.
- 1.3 No quotation, confirmation, shipment or delivery docket, invoice or other document issued by or on behalf of the Supplier in relation to the supply of Goods and/or performance of Services will vary this Agreement. The acceptance of, or payment for Goods and/or Services by the Purchaser does not constitute acknowledgement or acceptance of the Supplier's terms and conditions.
- 1.4 Acceptance of these terms by the Supplier occurs when the Supplier accepts the Purchase Order in writing or supplies the Goods and/or performs the Services (whichever occurs first).

2 AGREEMENT TO SELL GOODS AND/OR SERVICES

- 2.1 The Supplier agrees to sell the Goods and/or perform the Services and the Purchaser agrees to purchase the Goods and/or accept the Services on the terms set out in this Agreement.

3 PRICE AND PAYMENT

- 3.1 Unless otherwise stated, price/s include all applicable duties, impost, levies and taxes, delivery to the Site nominated by the Purchaser, packing, crating and insurance.
- 3.2 To be paid, the Supplier must submit a valid tax invoice which states its name, Australian Business Number (ABN), Purchase Order Number, Work Order Number (if supplied by the Purchaser), the Purchaser's contact name (requester), item number, description of the Services and/or Goods provided, the amount claimed and contain such other details as the Purchaser may reasonably require.
- 3.3 The Supplier is required to submit invoices electronically to the email address listed on the Purchase Order with sufficient detail to allow payment. Invoices that provide insufficient detail will be returned to the Supplier for rectification.
- 3.4 The terms of payment are:
- (a) 30 days from the date on which the Supplier's correctly rendered invoice is issued; or
 - (b) in the case of work of a type within the meaning of s67U of the *Queensland Building and Construction Commission Act 1991* (Qld), 25 Business Days after receipt of a correctly rendered invoice; or
 - (c) in the case of work of a type within the meaning of s67W of the *Queensland Building and Construction Commission Act 1991* (Qld), 15 Business Days after receipt of a correctly rendered invoice.
- 3.5 The Purchaser may withhold payment of any amount which it disputes in good faith until the dispute is resolved and it is determined that the amount is payable.

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4 RISK AND TITLE

- 4.1 Full unencumbered title to, and property in any Goods passes to the Purchaser on the earlier of delivery and the Purchaser making any payment for materials, but risk in the Goods remains with the Supplier until the Purchaser has accepted them.

5 DELIVERY AND ACCEPTANCE

- 5.1 The Supplier must deliver the Goods to, or perform the Services at, the Site by the Delivery Date during normal business hours or at any other time agreed between the Supplier and the Purchaser.
- 5.2 The Supplier must promptly notify the Purchaser if it believes it will not be able to meet any delivery date or other timeframes specified in the Purchase Order. If the Supplier cannot meet the timeframes specified in the Purchase Order, then the Purchaser may terminate the Purchase Order at no cost to the Purchaser.
- 5.3 All Goods and/or Services delivered or provided by the Supplier are subject to inspection and acceptance by the Purchaser.
- 5.4 the Purchaser accepts the Goods and/or Services if:
- (a) the Purchaser advises the Supplier in writing that the Goods and/or Services have been accepted (but signing for delivery does not constitute acceptance); or
 - (b) the Purchaser has not rejected the Goods and/or Services within 14 days of delivery or performance (as the case requires).
- 5.5 Despite title and/or risk passing under clause 4.1, the Purchaser may reject the Goods or Services if:
- (c) any warranties provided by the Supplier are, in the Purchaser's reasonable opinion, untrue; or
 - (d) the Goods and/or Services are not of merchantable quality or unfit for the Purchaser's purpose or defective or not in accordance with the provisions of this Agreement or any samples provided to the Purchaser or specifications referred to in the Purchase Order.
- 5.6 Any Goods rejected must be removed from the Site at the Supplier's cost.
- 5.7 If the Goods are damaged or destroyed prior to delivery, the Purchaser may cancel the relevant Purchase Order and is entitled to recover the whole or part of any payment made in relation to the damaged or destroyed Goods.

6 GOODS AND SERVICES TAX

- 6.1 If a party (**supplier**) makes a Taxable Supply on which GST is imposed, where the Consideration payable is not described as GST inclusive, the Consideration payable or to be provided for that Taxable Supply but for the application of this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**recipient**) must also pay to the supplier, an amount equal to the GST payable by the supplier on that Taxable Supply. However, the recipient need not pay any amount referable to GST unless they have received a valid Tax Invoice (or valid Adjustment Note) for that Taxable Supply.
- 6.2 If a payment to a party under or in connection with this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment must be reduced by the amount of any Input Tax Credit to which that party is entitled for that loss, cost or expense. That party is assumed to be entitled to a full Input Tax Credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.
- 6.3 Words or expressions used in this clause which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and related imposition and amending Acts have the same meaning in this schedule.

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6.4 This clause will continue to apply after expiration or termination of this Agreement.

7 SUPPLIER OBLIGATIONS

7.1 The Supplier must:

- (a) use its best endeavours at all times to faithfully and honestly discharge its duties in the course of providing the Goods and/or Services to the Purchaser;
- (a) in completing the Services or providing the Goods, comply with the Standard Requirements and all reasonable requests and directions of the Purchaser or its Personnel in connection with its duties and responsibilities under this Agreement (including in undertaking any necessary orientation or induction and complying at all times with the Purchaser's site safety, and other policies, procedures and protocols);
- (b) provide the Purchaser with such information as may be required by it from time to time;
- (c) ensure that the warranties set out in this Agreement are and remain true and correct at all times;
- (d) obtain and maintain at all times necessary regulatory approvals and hold all other licences, qualifications, permits and authorisations necessary for, or incidental to, providing the Goods and/or the Services;
- (e) provide the Goods and/or Services:
 - (i) with all due care and skill;
 - (ii) in a proper, competent and professional manner;
 - (iii) in a timely and expeditious way; and
 - (iv) in a way which will prevent injury or death or persons and damage or destruction to property; and
- (f) comply with and ensure that it or its Personnel do not breach any Laws.

8 RING-FENCING REQUIREMENTS FOR SERVICE PROVIDERS

8.1 Where the Supplier is performing Services under this Agreement, the Supplier must comply with the 'Ring-fencing Requirements for Service Providers' as updated and amended from time to time.

8.2 Notwithstanding any other provision of this Agreement, the Supplier must not engage in any conduct which, if undertaken by a distribution network service provider, would constitute a breach of the Australian Energy Regulator's Ring-fencing Guideline – Electricity Distribution, as amended from time to time, and acknowledges and agrees that the Purchaser has not encouraged or incentivised the Supplier to engage in any such conduct.

9 WORK HEALTH AND SAFETY

9.1 The Supplier must ensure that all Services are carried out in accordance with Work Health and Safety Law and the Heavy Vehicle National Law.

9.2 Without limiting clause 9.1, the Supplier must at all times:

- (a) discharge its duties under Work Health and Safety Law and the Heavy Vehicle National Law; and
- (b) ensure its officers, employees, agents and subcontractors and its subcontractors' officers, employees and agents (**Supplier's Personnel**) discharge their respective duties under Work Health and Safety Law and Heavy Vehicle National Law, in connection with the performance of the Services

9.3 The Supplier must:

- (c) develop and implement in connection with the performance of the Services a safety management system which incorporates a safe system of work, work method statements

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and plans necessary to ensure the performance of the Services is carried out safely and in compliance with Work Health and Safety Requirements (**Safety Management System**);

- (d) provide to the Purchaser a copy of the Safety Management System before commencing the performance of any Services if requested;
 - (e) constantly review and update the Safety Management System as necessary throughout the period of this Agreement and immediately provide the Purchaser with a copy of any updated Safety Management System; and
 - (f) ensure that the Safety Management System, as a minimum, ensures the requirements of all other Work Health and Safety Requirements (including those provided for or on behalf of the Purchaser) are fully met.
- 9.4 The Supplier must ensure that the Supplier and Supplier's Personnel:
- (a) comply with the directions of the Purchaser (or any other person nominated by the Purchaser as having the authority to give directions (**Purchaser's Nominee**) in connection with health and safety;
 - (b) consult fully with the Purchaser and the Purchaser's Nominee in respect of:
 - (i) any matter relevant to health and safety; and
 - (ii) without limiting subparagraph (i), how the performance of the Services can be undertaken in a way which prevents or minimises all risks to health and safety of all persons including identifying potential hazards associated with the performance of the Services;
 - (c) complete a full site induction program which complies with the requirements of this Agreement and Work Health and Safety Requirements before commencing the performance of the Services;
 - (d) comply strictly with the Work Health and Safety Requirements;
 - (e) throughout the period of this Agreement maintain all qualifications, competencies and licences:
 - (i) held at the commencement of the performance of the Services; or
 - (ii) required by Work Health and Safety Requirements.
 - (f) consult fully with the Purchaser or the Purchaser's Nominee in respect of, and demonstrate to the Purchaser or the Purchaser's Nominee, compliance by the Supplier and Supplier's Personnel with the requirements of this clause 9 and Work Health and Safety Requirements;
 - (g) maintain adequate records of all health and safety matters (including in accordance with Work Health and Safety Requirements);
 - (h) audit the Supplier's health and safety records and compliance with Work Health and Safety Requirements regularly and whenever requested by the Purchaser provide to the Purchaser a copy of the findings of that audit; and
 - (i) satisfy themselves as to, and only treat as minimum requirements, those Work Health and Safety Requirements prepared or provided by or on behalf of the Purchaser.
- 9.5 The Purchaser may at any time conduct its own audit of the Supplier's health and safety records and compliance with Work Health and Safety Requirements (including the Supplier's Safety Management System) and the Supplier must:
- (a) co-operate fully with the Purchaser in connection with that audit (including by providing all necessary access, relevant documents or other information); and
 - (b) immediately address and ensure the Supplier's Personnel address any issues identified by the Purchaser from its audit and notified to the Supplier.
- 9.6 The Supplier must immediately notify the Purchaser of:
- (a) any breach or potential breach by the Supplier or any Supplier's Personnel of Work Health and Safety Requirements; or

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- (b) any notice or direction received by the Supplier or any Supplier's Personnel under or in connection with Work Health and Safety Law (including by providing a copy of the notice or direction to the Purchaser).
- 9.7 Despite any other provision of this Agreement, the Purchaser's rights under this Agreement relating to health and safety (including without limitation the rights under this clause 9, to give directions to the Supplier, carry out an audit of the Supplier's records or practices, provide, approve or review any plan or other document to be implemented or relied upon by the Supplier (including any Work Health and Safety Requirements) or exercise rights of suspension or termination under this Agreement) (**Safety Enforcement Rights**):
- (a) are for the benefit of the Purchaser;
 - (b) may be exercised by the Purchaser in its absolute discretion (without the Purchaser being under any obligation to do so); and
 - (c) do not prejudice or otherwise affect the Supplier's full responsibility for ensuring strict compliance with all of the Supplier's obligations under this Agreement and under Work Health and Safety Requirements.
- 9.8 The Supplier must provide to the Purchaser, and also to any person who the Supplier is aware has been or will be engaged by the Purchaser to undertake any activities relating to the performance of the Services, all information relevant to the performance of the Services:
- (a) required to be disclosed by the Supplier in the discharge of its duties under Work Health and Safety Law; and
 - (b) received (or which should have been received) by the Supplier or any subcontractor of the Supplier from any other person required to disclose the information to the Supplier or any subcontractor in the discharge of that person's duties under Work Health and Safety Law.

10 INSURANCE

- 10.1 The Supplier must hold all insurances reasonably necessary for the performance of its business and promptly provide such evidence as the Purchaser reasonably requires confirming this coverage.

11 WARRANTIES FOR GOODS

- 11.1 Without limiting any conditions or warranties implied by Law, and regardless of whether the Purchaser has accepted the Goods, the Supplier represents and warrants to the Purchaser that:
- (a) it is the legal and beneficial owner of the Goods and has the right to sell the Goods and provide the Purchaser with free and clear title and quiet possession of the Goods; and
 - (b) the Goods:
 - (i) match the specification or description (including performance criteria) referred to in the quote or Purchase Order;
 - (ii) match any sample provided to the Purchaser;
 - (iii) meet any representations made about performance;
 - (iv) comply with any relevant Australian or International Standards;
 - (v) are fit for any purpose the Purchaser made known to the Supplier before purchase;
 - (vi) are of merchantable quality and free from defects; and
 - (vii) comply with all relevant Laws.

12 WARRANTIES FOR SERVICES

- 12.1 Without limiting any conditions or warranties implied by Law, and regardless of whether the Purchaser has accepted the Services, the Supplier represents and warrants to the Purchaser that in relation to the performance of the Services that the Supplier:

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- (a) will use parts, materials and other goods which are new and merchantable quality and fit for the intended purpose, and which meet or exceed current industry standard;
- (b) will use proper and tradesman like workmanship;
- (c) has informed itself of the nature of the Services and the materials necessary for the performance of the Services; and
- (d) has thoroughly inspected the Site at which the Services are to be performed.

13 LIMITATION OF LIABILITY

13.1 To the extent permitted by Law:

- (a) subject to clause 13.1(b), the aggregate liability of the Supplier to the Purchaser arising out of or in connection with this Agreement will not exceed in the aggregate an amount equivalent to the aggregate amount of money paid or payable by the Purchaser to the Supplier under this Agreement; and
- (b) the limitation of liability set out in clause 13.1(a) does not apply to liability in respect of:
 - (i) fraud, fraudulent concealment or dishonesty;
 - (ii) any infringement of intellectual property rights;
 - (iii) any unlawful, negligent or wrongful act or omission of the Supplier in connection with its performance of its obligations under this Agreement;
 - (iv) death or personal injury of any person; or
 - (v) property damage.

13.2 Neither party will have any liability to the other party for Consequential Loss.

14 SUPPLIER ENTERS SITE AT OWN RISK

14.1 The Supplier acknowledges that if it enters on to the Site, it does so at the Supplier's own risk. The Supplier must ensure that its Personnel are also aware that they enter onto the Site at their own risk.

15 DEFAULT AND TERMINATION

15.1 In addition to the Purchaser's other rights and remedies, the Purchaser may, by written notice to the Supplier, cancel any Purchase Order and terminate this Agreement with immediate effect if the Supplier:

- (a) suffers an Insolvency Event;
- (b) fails to supply the Goods and/or Services by the nominated Delivery Date;
- (c) commits a breach of these terms that, in the opinion of the Purchaser is incapable of being remedied or is not remedied within seven days of the Purchaser giving the Supplier notice requiring it to remedy the breach.

15.2 Upon termination of this Agreement no party has further rights or obligations under this Agreement, except rights and obligations accruing prior to termination.

16 INTELLECTUAL PROPERTY

16.1 The Supplier is responsible for obtaining and maintaining all industrial and intellectual property rights in connection with the Goods (and any goods used in performing the Services) and indemnifies the Purchaser and its Personnel against all Loss from a claim by a third party that the Goods and/or Services supplied, or the use of those Goods and/or Services breaches any third party rights.

16.2 The Supplier agrees:

- (a) that nothing in this Agreement transfers ownership in, or otherwise grants any rights in, any

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industrial or intellectual property rights of the Purchaser; and

- (b) title to, copyright in and other intellectual property rights in any documents, plans, specifications, designs, drawings, sketches, reports and materials produced for or in connection with the performance of the Services vests in the Purchaser on creation and the Purchaser grants to the Supplier a royalty free, non-exclusive licence to use that material for the purpose of performing of the Services until the Delivery Date for those Services.
- 16.3 Except as required by Law, the Supplier must not (and must ensure that the Supplier's Personnel do not) disclose any information about the Purchaser's technical and commercial operations without the Purchaser's prior written consent.

17 WITHHOLDING TAX

- 17.1 Whenever the Supplier does not have a valid ABN or the Purchaser otherwise reasonably considers itself bound to do so, the Purchaser shall be entitled to withhold from any payment otherwise due to the Supplier under or in connection with the supply, tax calculated and to be held in accordance with the *Taxation Administration Act 1953 (Cth)*.
- 17.2 The Supplier warrants that it is not an entity covered by Schedule 1, 12-315(2) of the *Taxation Administration Act 1953 (Cth)* (**Foreign Resident**). If requested by the Purchaser the Supplier must provide the Purchaser with evidence to the Purchaser's satisfaction that the Supplier is not a Foreign Resident, failing which the Purchaser shall be entitled to withhold from any payment otherwise due to the Supplier under or in connection with the supply, tax calculated and to be held in accordance with the *Taxation Administration Act 1953* in respect of Foreign Residents.

18 OTHER TERMS

- 18.1 The Supplier must make sure that all information provided by the Purchaser is treated as confidential and is only used in connection with the supply of Goods or Services the subject of the Purchase Order.
- 18.2 No amendment to these terms is valid or binding unless made in writing and signed by all parties.
- 18.3 Nothing in this Agreement constitutes any relationship of employer and employee, principal and agent or partnership between the Purchaser and the Supplier.
- 18.4 The Supplier must not assign the benefit of this Agreement or any rights under this Agreement without the consent in writing of the Purchaser.
- 18.5 A waiver by the Purchaser of a breach of these terms is only effective if in writing and is not a waiver of any other breach.
- 18.6 The Purchaser may set-off or reduce any amount owed to the Supplier against any claim the Purchaser may have against the Supplier on any account.
- 18.7 Time is of the essence in this Agreement.
- 18.8 This Agreement is governed by the laws of Queensland.

19 DEFINITION AND INTERPRETATION

- 19.1 In these terms:

Consequential Loss means any special, indirect or consequential damage or loss, any economic loss in respect of a claim in tort, any loss of profits, loss of production, loss of revenue, loss of use, loss of contract, loss of opportunity, loss of reputation, damage to credit rating, loss of goodwill or wasted overheads whatsoever or any Loss in respect of any claim by any third party.

Delivery Date means the date set out in the Purchase Order for the delivery of the Goods or the performance of the Services.

Standard Requirements means the Purchaser's standard requirements available on the Purchaser's website or otherwise provided to the Supplier, as amended from time to time, regarding:

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- (a) quality assurance standards;
- (b) safety procedures;
- (c) the environment;
- (d) customer care;
- (e) delivery conditions and packaging requirements; and
- (f) any other standard reasonably required by the Purchaser and advised to the Supplier.

Goods means the items to be supplied by the Supplier as set out in the Purchase Order (if any).

Insolvency Event means, in relation to the Supplier, an application or order is made to or by a court or a resolution is passed for the winding up of the Supplier or notice of intention to propose such a resolution is given; or a controller (as defined in the *Corporations Act 2001* (Cth)) or an administrator under Part 5.3A of the *Corporations Act 2001* (Cth) is appointed in respect of the Supplier or the whole or any part of its undertaking or property.

Laws include any statute, regulation or subordinate legislation of the place or common law (including the principles of equity) in which the Goods are delivered or the Services rendered (as relevant) and any industry-specific codes of conduct or standards as applied from time to time.

Loss means liabilities, expenses, losses, claims, damages, and costs (on a solicitor and own client basis and whether incurred or awarded against that company) whether past, present, future or contingent.

Personnel means in respect of a party, the employees, agents, invitees, consultants, permitted contractors and permitted subcontractors of the party (and includes their respective employees and agents).

Purchase Order means the purchase order issued in writing by the Purchaser to the Supplier requesting the Goods and/or Services.

Services mean the services to be provided by the Supplier set out in the Purchase Order and any related services, functions or responsibilities not specifically described in the Purchaser Order which are reasonably required for the proper performance of the Services (if any).

Site means the location for performance of the Services or for the delivery of the Goods as set out in a Purchase Order.

Work Health and Safety Law means any Laws relating to health and safety including the *Work Health and Safety Act 2011* (Qld) and the *Work Health and Safety Regulation 2011* (Qld).

Work Health and Safety Requirements means:

- (a) any Work Health and Safety Law;
- (b) the Safety Management System required to be provided by the Supplier under clause 9; and
- (c) the requirements of:
 - (i) Standard Requirements;
 - (ii) any manufacturer's recommendations associated with any equipment or materials to be used for the purposes of performing the Services; or
 - (iii) any other provision of this Agreement relating to health and safety.

19.2 A provision of these terms must be read down to the extent necessary to be valid. If the Supplier comprises more than one person, each of those persons is jointly and severally liable under these terms. No rule of construction applies to the disadvantage of a party because that party put forward this document or any portion of it. References to "includes" or "including" or "for example" means without limitation. The meaning of general words is not limited by specific examples introduced by including, for example or similar expressions.