

GENERAL CONDITIONS OF PURCHASE

Unless otherwise agreed in writing, this "Purchase Order", which is subject to the following terms and conditions, only applies to the supply of goods and materials (**Merchandise**) and/or subcontracting and/or consulting services (**Services**) (Merchandise and Services are the **Deliverables** under this Purchase Order), by the supplier named on the front cover of this Purchase Order (**Seller**) to the ATCO entity named on the front cover of this Purchase Order (**Buyer**) that do not exceed a value of AUD\$100,000. Unless otherwise agreed in writing, Deliverables which exceed that value must not be supplied in accordance with this Purchase Order.

1. When these terms and conditions apply

- (a) These terms and conditions do not apply where there is a current executed contract between the parties for the supply of the Deliverables, unless otherwise expressly stated in that contract.
- (b) No terms or conditions submitted by either party that are in addition to, different from or inconsistent with those contained in this Purchase Order, including, without limitation, the Seller's printed terms and conditions, and any terms and conditions contained in any Seller's quotation, invoice, order acknowledgement, confirmation, acceptance, bill of lading or other instrument, shall be binding upon either party unless specifically and expressly agreed to in writing signed by a duly authorised representative of both parties.
- (c) These terms and conditions are negotiable between the Seller and the Buyer. The Seller is taken to have accepted these terms and conditions on the earlier of the date of acknowledgement of receipt of the Purchase Order or the date the Seller delivers the Deliverables.

2. Governing Law

The laws of the state or territory of Australia in which the Buyer issues this Purchase Order (the **Place**) shall apply to this Purchase Order. The courts of that Place shall have non-exclusive jurisdiction to decide any matter arising out of this Purchase Order.

3. Sale and Purchase of Deliverables

The Buyer agrees to buy and receive, and the Seller agrees to sell and deliver, each of the Deliverables in accordance with the terms of this Purchase Order.

4. Delivery

Time is of the essence in this Purchase Order and the Seller must reimburse to the Buyer all costs incurred and damages suffered or sustained whether directly or indirectly by the Buyer in relation to any delays in the delivery of the Deliverables to the extent caused or contributed to by the Seller. Delivery shall be deemed not to be complete until the Deliverables have been accepted by the Buyer (acting reasonably). Unless otherwise agreed in writing by the parties, the Buyer may cancel this Purchase Order if delivery is delayed by more than 60 days from the agreed delivery date.

5. Title and Risk

Title to the Deliverables passes to the Buyer on the earlier of payment for the Deliverables or the performance or delivery of the Deliverables in accordance with this Purchase Order (as the case requires). If directed by the Buyer, the Seller must provide evidence suitable to the Buyer of the Seller's title to the Deliverables. Deliverables shall be at the Seller's risk until completion of delivery.

6. Quality

Unless otherwise agreed in writing, the Seller will comply with AS/NZ ISO 9001:2000- Model for quality assurance in design, development, production, installation and servicing in relation to the performance of and delivery of the Deliverables. The Deliverables must conform with the description of the Deliverables and any applicable specification or technical standard which forms part of that description. Merchandise shall be new and of good merchantable quality and fit for the known purpose for which the Merchandise is supplied. If the Deliverables do not comply with the requirements of this Purchase Order then, if apportionable, that portion of the Deliverables which do not comply with the requirements of this Purchase Order may be rejected by the Buyer and returned at the Seller's expense (or if not apportionable or the Buyer has reasonable concerns that the failure to comply, even in part, may cause or contribute to a health or safety issue, the entire Deliverables may be rejected). The Buyer may, acting reasonably, at its cost and with reasonable notice to the Seller, carry out an inspection of the Deliverables at the Seller's premises.

7. Occupational Health and Safety

No construction work may be done under this Purchase Order. Each party must comply and must assist the other party to comply with its obligations at law in relation to the health and safety of its employees and any third parties.

8. Warranties

- (a) The Seller must, to the maximum extent possible including to enforce, obtain for the benefit of the Buyer any manufacturer's warranties applicable to the Deliverables.
- (b) These terms and conditions are deemed to include all consumer guarantees that the Buyer would be entitled to as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent state or territory legislation (**Australian Consumer Law**) as if the Buyer were a 'consumer' within section 3 of the Australian Consumer Law. The consumer guarantees are incorporated into these terms and conditions as warranties given by the Seller to the Buyer.
- (c) The warranties referred to in clauses 8(a) and 8(b) are in addition to any express warranty provided by the Seller or the manufacturer, including a warranty against defects.

9. Variations

There will be no variations to the performance of the Deliverables unless otherwise agreed in writing.

10. Firm Price and GST

The Buyer must pay the Seller the price for the Deliverables (the **Price**) in accordance with the period for payment. Each Price stated in the Purchase Order is, unless otherwise agreed in writing:

- (a) exclusive of Goods and Services Tax ("GST");
- (b) fixed and not subject to any escalation or other change; and
- (c) inclusive of all costs incurred by the Seller in the delivery or performance of the Deliverables (including any costs related to negotiating and performing this Purchase Order).

The Seller will at all times remain responsible for making, and hereby indemnifies the Buyer against all necessary deductions in respect of personnel who will be performing the Services including any income, payroll or fringe benefits tax, superannuation, workers' compensation and leave entitlements. Without limiting any of its other rights, the Seller acknowledges and agrees that the Buyer may deduct from the Price any amounts for which the Buyer has been indemnified under this clause.

11. Patents, Trademarks & Copyrights

The Seller warrants that the sale and use of the Deliverables will not infringe or contribute to the infringement of any patents, trademarks or copyrights within or outside of Australia. The Seller indemnifies the Buyer against any loss or damage (including legal fees on a full indemnity basis and any other costs of defending an action) arising out of or in any way related to the breach of this warranty.

12. Packaging

Deliverables shall be properly and adequately packed and all wrappers and containers must bear markings and labels and otherwise comply with any applicable law. Packages must also be marked with the Purchase Order Number, item number, destination, contents, quality, date and method of dispatch and weight of each package.

13. Insurance

The Seller must obtain and maintain any insurance that a reasonable and prudent supplier of Deliverables would obtain in like circumstances to the supply of Deliverables under this Purchase Order. Without limiting the condition in the previous sentence, the Seller must obtain and maintain all statutorily required workers' compensation insurance applicable to the performance of the Deliverables. Upon written request from the Buyer, the Seller must provide evidence of, or certificates of currency with respect to, the insurance policies held by the Seller that are relevant to the supply of the Merchandise and/or the Services the subject of this Purchase Order.

14. Invoices

Invoices for each separate Deliverable must be sent to the address of the Buyer set out on the front page of this Purchase Order. An invoice must contain at least the following information:

- (a) sufficient detail so as to make the invoice a valid "tax invoice" or "adjustment note" (as the case requires);
- (b) Seller's Australian Business Number ("ABN") clearly identifiable on the invoice;
- (c) description of the Deliverable (or any relevant part thereof);
- (d) quantity delivered and Price relevant to the quantity;
- (e) total invoice amount (including the GST inclusive amount);
- (f) delivery point, date and dispatch docket number;
- (g) evidence of acceptance of the Deliverable;
- (h) this Purchase Order number; and
- (i) the Seller's contact person's name.

The Buyer may return incorrectly produced invoices and the period for payment will not commence until the Buyer receives a correctly produced invoice. Invoices must not be sent until after acceptance of the Deliverables.

15. Assignment, Subcontracting and Proportionate Liability

The Seller may not subcontract the performance of any of the obligations under this Purchase Order unless it obtains the prior written consent of the Buyer, which consent may be withheld at the discretion of the Buyer. Unless otherwise agreed in writing, the Seller remains entirely responsible for the performance of all of the obligations under this Purchase Order despite any subcontracting of them allowed by the Buyer. Part 1F of the *Civil Liability Act 2002* (WA) has no operation if the Place is in Western Australia and, to the extent permitted by law, the equivalent provision of the written law in each other state and territory have no operation.

16. Indemnity

The Seller is solely responsible for and indemnifies and holds the Buyer harmless against all suits, proceedings or demands, damages, actions, losses, costs or expenses of any kind that the Buyer suffers, sustains or incurs arising from any one or more of the following:

- (a) a breach by the Seller of any laws in operation in the Place at the time that the Seller accepts these terms and conditions;
- (b) a breach by the Seller of any of the Seller's obligations (including any warranty) under this Purchase Order; and
- (c) any negligent act or omission or willful misconduct by the Seller arising out of the performance of this Purchase Order.

17. Termination for Default

In the event of a breach by a party (the **Defaulting Party**) of any of the terms of this Purchase Order, then unless the Defaulting Party has remedied the breach within 10 business days after receiving a written notice from the other party (the **Non-Defaulting Party**) requiring the breach to be remedied, the Non-Defaulting Party may, at its option, immediately terminate the Purchase Order by written notice to the Defaulting Party. Termination of this Purchase Order by the Non-Defaulting Party will be without prejudice to any of its other rights at law.

18. Notices

Service of any notice or other communication under this Purchase Order must be in writing and sent to the address set out in the front page of this Purchase Order.

19. Entire Contract

This Purchase Order states all of the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understanding and agreements in respect of its subject matter.

20. Severability

A provision or part of a clause of this Purchase Order that is illegal or unenforceable may be severed from this Purchase Order and the remaining provisions or parts of the provisions of this Purchase Order continue in force.

21. Waiver and Amendment

No waiver of any right under this Purchase Order will be binding on a party unless in writing and signed by the party giving that waiver. This Purchase Order may not be amended except with the agreement in writing of each party.

22. Integrity

Any purchasing irregularities can be reported to the ATCO Integrity Line at www.atcointegrity.com or by telephoning 1-800-238-497 in Australia or 00-1-604-7831 (collect call) outside Australia.