

**TERMS OF PURCHASE**

**1. MEANINGS AND BASIS OF PURCHASE ORDER**

- (1) Unless the context otherwise indicates:
- (a) **"Deliver To Address"** is the address stated against 'Deliver To' on the front sheet of this Purchase Order;
  - (b) **"Goods"** means the goods identified under 'Description' on the front sheet of this Purchase Order;
  - (c) **"GST"** has the meaning given in the GST Act;
  - (d) **"GST Act"** means the *A New Tax System (Goods and Services) Act 1999* (Cth);
  - (e) **"Promised Delivery Date"** is the relevant date stated under 'Delivery Date' on the front sheet of this Purchase Order;
  - (f) **"Purchase Order"** means this Standard Purchase Order, including these Terms of Purchase;
  - (g) **"Purchaser"** means the party identified on the front sheet of this Purchase Order to whom the Goods must be delivered; and
  - (h) **"Supplier"** means the party to whom this Purchase Order is addressed, as identified on the front sheet of this Purchase Order.

(2) The addresses of the parties are stated on the front sheet of this Purchase Order.

(3) This Purchase Order including these Terms of Purchase:

- (a) will be deemed to be accepted by the Supplier for the delivery of the Goods and its other obligations under this Purchase Order from the Supplier's commencement of work relevant to the delivery of the Goods after receipt of this Purchase Order; and
- (b) contains the entire agreement between the parties and no regard will be had to any prior dealings. Any terms that may have been attached or embodied in the Supplier's tender or offer or other correspondence are deemed to have been withdrawn in favour of the terms stated in this Purchase Order.

**2. GOODS**

- (1) The Goods to be supplied by the Supplier are described in this Purchase Order.
- (2) The Supplier warrants that the Goods will:
- (a) comply with any drawings, specifications and/or other technical documents included with and/or identified in this Purchase Order or otherwise provided by the Purchaser;
  - (b) comply with all relevant standards and statutory requirements;
  - (c) be new (unless stated otherwise), of good merchantable quality, free of defects and fit for their intended purpose;
  - (d) upon delivery to the Purchaser, be free of all liens, charges and other encumbrances; and
  - (e) be supplied to the Purchaser strictly in accordance with the terms of this Purchase Order except to the extent that the Purchaser may agree or direct otherwise in writing.
- (3) The Supplier must allow the Purchaser and other persons authorised by the Purchaser access at all reasonable times to:

- (a) any place where the Goods are being manufactured or stored; and/or
- (b) any quality assurance records or technical documentation relevant to the Goods.

(4) The Supplier indemnifies the Purchaser against any action, suit, claim, demand, cost, loss, expense or damage arising out of or in any way connected with the infringement of any intellectual property rights relevant to or in any way connected with the Goods including the use of the Goods.

(5) The Supplier is responsible for the care and insurance of the Goods until their delivery and acceptance by the Purchaser. If loss or damage occurs to the Goods while the Supplier is responsible for their care, unless otherwise directed by the Purchaser, the Supplier must promptly make good the loss or damage.

**3. DELIVERY**

(1) Unless agreed otherwise in writing by the Purchaser, the Supplier must deliver the Goods on the Promised Delivery Date. The Promised Delivery Date may be extended by the Purchaser pursuant to clause 4.

(2) The Supplier must:

- (a) liaise with the Purchaser prior to the Promised Delivery Date to confirm the arrangements for delivery of the Goods;
- (b) label the Goods as directed by the Purchaser;
- (c) store the Goods until the date and time arranged with the Purchaser for the delivery of the Goods;
- (d) deliver the Goods packaged as reasonably required by the Purchaser; and
- (e) deliver the Goods to the Deliver To Address on the Promised Delivery Date and at the time arranged with the Purchaser.

(3) Unless agreed otherwise in writing by the Purchaser, ownership of the Goods will pass to the Purchaser upon their delivery to and acceptance by the Purchaser.

(4) At the time of delivery the Supplier must provide the Purchaser with a delivery docket in duplicate setting out the details of the Goods delivered and accepted by the Purchaser, for signature by the Purchaser and the Supplier must retain one copy so signed.

(5) Delivery and acceptance by the Purchaser of the Goods does not constitute approval of the Goods.

**4. DELAY**

(1) The Supplier must give immediate notice to the Purchaser upon becoming aware of any event or circumstance likely to delay delivery of the Goods by the Promised Delivery Date.

(2) The Purchaser:

- (a) is entitled at any time in its absolute discretion to grant a reasonable, in the circumstances, extension of time to the Promised Delivery Date; but
- (b) is not obliged to grant an extension of time to the Promised Delivery Date except to the extent that the Supplier is delayed in delivering the Goods by the Promised Delivery Date by an act of prevention by the Purchaser.

- (3) The Supplier must:
- (a) take all practical steps to avoid or minimise any delay to the Promised Delivery Date; and
  - (b) where a delay does not cause the Promised Delivery Date to be extended, take whatever action is necessary to deliver the Goods by the Promised Delivery Date.

**5. PAYMENT**

(1) The rates stated in this Purchase Order are deemed to include everything necessary (labour, plant, equipment and other things) for the Supplier to deliver the Goods to the Deliver To Address and to fulfil all of its other obligations under this Purchase Order. Accordingly, the value of Goods delivered to and accepted by the Purchaser will be:

- (a) an amount calculated by multiplying the relevant quantity and rate for the Goods stated in this Purchase Order; less
- (b) the reasonable costs incurred by the Purchaser in remedying any default by the Supplier of its obligations under this Purchase Order; less
- (c) the amount of any costs, losses or damage suffered by the Purchaser if the Supplier does not fulfil its obligations under this Purchase Order or otherwise.

(2) Unless stated or agreed otherwise by the Purchaser, payment for the Goods will only be made for those Goods delivered to and accepted by the Purchaser and for which the Supplier has submitted a payment claim to [accounts.payable@sedgman.com](mailto:accounts.payable@sedgman.com) setting out the value of those Goods as described in clause 5(1).

(3) The Supplier may only make a payment claim on the last day of each month (each a "relevant time") if:

- (a) its employees and subcontractors have been paid all amounts due and payable to them; and
- (b) it has complied with all applicable statutory obligations, in respect of the Goods.

(4) If the Supplier submits a payment claim earlier than the relevant time, that payment claim will not be taken to have been submitted until the relevant time, and the early submission of the payment claim will not require the Purchaser to make a payment in respect of that payment claim any earlier than would have been the case if the Supplier had actually submitted the payment claim at the relevant time.

(5) The Purchaser may, at any time and as a condition precedent to payment, require the Supplier to provide evidence satisfactory to the Purchaser that its employees and subcontractors have been paid all amounts due and payable to them and that it has satisfied all statutory obligations with respect to the Goods.

(6) Subject to clauses 6, 7 and 8 and unless stated otherwise, payment will be made within 60 days of the end of the month in which the payment claim is received by the Purchaser.

(7) At the Purchaser's discretion, payment will be made by electronic funds transfer or by cheque. Unless expressly stated otherwise, all amounts stated in this Purchase Order and all payments made pursuant to this Purchase Order will be in Australian dollars and are GST exclusive.

**6. GOODS & SERVICES TAX (GST)**

(1) In this clause 6:

- (a) **"GST Amount", "GST exclusive Consideration", "Recipient", "RCTI", "Supply Party"** and **"Tax Invoice"** have the meanings given in this clause 6; and
- (b) other terms used that are defined in the GST Act, have the same meanings in this clause 6.

(2) Each party acknowledges and agrees that:

- (a) at the time of entering into this Purchase Order, it is registered for GST;
- (b) it must promptly provide written evidence of its GST registration if so requested by the other party;
- (c) it must indemnify the other party against any loss that may arise from it not being registered for GST; and
- (d) it must promptly notify the other party in writing if it ceases to be registered for GST.

(3) In respect of payments to be calculated under or in connection with this Purchase Order:

- (a) when calculating the amount payable or other consideration to be provided for a supply, the amounts used in the calculation are to exclude any GST component; and
- (b) if the amount payable in respect of the Goods delivered to and accepted by the Purchaser is increased or decreased by an amount calculated by reference to a cost, expense or loss suffered or incurred by a party, then the amount will be reduced by any input tax credit to which that party, or the representative member of any GST group of which that party is a member, is entitled in respect of that cost, expense or loss.

(4) For each supply made by a party ("**Supply Party**") under or in connection with this Purchase Order on which GST is imposed:

- (a) the consideration payable or to be provided for that supply under the Purchase Order but for the application of this clause 6(4) ("**GST exclusive Consideration**") will be increased by, and the recipient of the supply ("**Recipient**") must also pay to the Supply Party, an amount ("**GST Amount**") equal to the GST exclusive Consideration multiplied by the prevailing rate of GST; and
- (b) the GST Amount must be paid to the Supply Party by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive Consideration is payable or to be provided,

subject to a valid tax invoice ("**Tax Invoice**") being provided in respect of the GST exclusive Consideration.

A Tax Invoice must be provided either by:

- (a) subject to agreement between the parties, if the Purchaser is the Recipient of the supply, the Purchaser providing the Supplier with a recipient created tax invoice ("**RCTI**") on or before making payment in respect of the supply; or
- (b) if paragraph (a) does not apply, the Supply Party providing the Recipient with a Tax Invoice before the due date for payment of the supply.

(6) If clause 6(5)(a) applies:

- (a) the Supplier must not issue a Tax Invoice in respect of any supply it makes to the Purchaser; and
- (b) the Purchaser must notify the Supplier if it ceases to comply with any of the requirements of any taxation ruling issued by an authority relating to the creation of RCTIs.

(7) If and to the extent an adjustment event arises in respect of a supply made under or in connection with this Purchase Order, then:

- (a) if the Supply Party's corrected GST Amount is less than the previously attributed GST Amount, the Supply Party must refund the difference to the Recipient;
- (b) if the Supply Party's corrected GST Amount is greater than the previously attributed GST Amount, the Recipient must pay the difference to the Supply Party; and
- (c) the Supply Party must issue an adjustment note to the Recipient (unless clause 6(5)(a) applies, in which case the Purchaser will issue an adjustment note to the Supplier).

**7. DEFAULT**

Without limiting the Purchaser's rights under clause 8, if the Supplier fails to:

- (a) deliver the Goods to meet the requirements of this Purchase Order;
- (b) promptly and properly make good or replace any defective Goods or make good any damage or loss for which the Supplier is responsible;
- (c) remove rubbish or other items belonging to the Supplier from the Deliver To Address; and/or
- (d) comply with any other obligation it has under this Purchase Order (including, without limitation, failing to deliver the Goods by the Promised Delivery Date),

then:

- (e) the Purchaser may, at its discretion and without obligation, remedy or mitigate that failure on behalf of the Supplier and the cost of doing so will be a debt due from the Supplier to the Purchaser and may be recovered by the Purchaser in accordance with clause 5(1)(b); and
- (f) any cost, loss and damage that the Purchaser has incurred or is likely to incur as a result of the Supplier's default will be a debt due from the Supplier to the Purchaser and may be recovered by the Purchaser in accordance with clause 5(1)(c).

**8. TERMINATION**

(1) In the event that:

- (a) the Supplier fails to comply with its obligations under this Purchase Order (including, without limitation, failure to comply with its obligations in a timely manner);
  - (b) in the Purchaser's opinion, the Supplier is or is likely to become (in any jurisdiction) insolvent, bankrupt, wound up, unable to pay its debts when due or subject to any administration, receivership, external management, creditor action or court proceedings relating to its financial condition; or
  - (c) the Supplier dies,
- then the Purchaser, may at its sole discretion, terminate this Purchase Order.

(2) Upon termination under clause 8(1):

- (a) the Purchaser will be liable only for those amounts which become payable for Goods delivered to and accepted by the Purchaser as at the date of termination; and
- (b) any cost, loss, and damage that the Purchaser has incurred or is likely to incur as a result of the termination will be a debt due from the Supplier to the Purchaser and may be recovered by the Purchaser in accordance with clause 5(1)(c).

**9. GENERAL**

(1) The Supplier must not novate or assign (in whole or in part) this Purchase Order or any payment or any other right, benefit or interest of the Supplier thereunder without the prior written consent of the Purchaser.

(2) The Supplier is and must remain an independent contractor and is responsible for its employees and subcontractors.

(3) This Purchase Order is governed by and must be construed according to the laws of the State or Territory of Australia in which the Deliver To Address is located.

(4) The Supplier must:

- (a) provide sufficient and suitable resources to deliver the Goods in a proper and workmanlike manner with due diligence and expedition and in accordance with the Purchase Order;
- (b) ensure that only persons who are careful, skilled, experienced and qualified in their respective trades and callings are employed in connection with the delivery of the Goods and hold all certificates and licences required by law in order for them to deliver of the Goods; and
- (c) comply with any direction that the Purchaser may give in connection with the delivery of the Goods.

(5) In the event that the terms in clauses 1 to 9 above conflict with any other terms stated in this Purchase Order including any special conditions then such other terms or special conditions will take precedence to the extent of the conflict.