



Conditions of Purchase

1. Definitions

The following definitions shall be used for the purpose of interpreting the Purchase Order and these Conditions of Purchase: Buyer means the Nepean entity so named in the Purchase Order Supplier means the entity (including an individual, firm or corporate entity) so named in the Purchase Order. Goods means machinery, plant, equipment, apparatus, materials, articles, erection works, services and things of all kinds to be supplied, delivered or performed by Supplier in accordance with the Purchase Order

2. Contract

a) These Conditions of Purchase and the Purchase Order shall constitute a binding Contract between the Supplier and the Buyer for the Goods.
b) The Contract terms apply to the exclusion of any preceding, subsequent or other terms and conditions, unless stated on the Purchase Order or as expressly agreed to in writing by the Buyer. If other terms are proposed these terms are deemed to be reoffered to and accepted by the Supplier on delivering the Goods. Where there is variation between what is stated on the Purchase Order and these Conditions of Purchase, the Purchase Order takes precedence.
c) No other representations are made by the Buyer in relation to the purchase of Goods.
d) The Buyer reserves the right at any time in relation to the Goods to revise the Purchase Order to correct any errors or omissions therein or to make any changes including in respect of specifications, quantity and delivery.

3. Price

a) Unless otherwise stated on the Purchase Order, the price is in Australian dollars and includes the cost of delivery, including insurance, duties, taxes (other than GST), packing and any other costs or concessions associated with manufacturing, delivery and supply of the Goods.
b) The price is not subject to change without the express written agreement of the Buyer.

4. Goods and Services Tax (GST)

a) The price is exclusive of GST.
b) If GST is payable, the Buyer shall reimburse the Supplier for the GST payable in respect of any supply made under the Contract, subject to the Supplier providing a tax invoice for the supply.
i) The Buyer may reject, without payment, any invoice that is not a tax invoice.
c) Where there is an adjustment in relation to the supply:
i) The Supplier must refund to the Buyer the amount by which the amount reimbursed pursuant to clause a) above exceeds the adjusted GST on the supply; or
ii) The Buyer must pay to the Supplier the amount by which the adjusted GST on the supply exceeds the amount reimbursed pursuant to clause a) above.
d) Where the Buyer is required to pay for or reimburse an expense or outgoing of the Supplier under this Contract, the amount to be invoiced to the Buyer is the amount of the expense or outgoing less any input tax credit in respect of such expense or outgoing that the Supplier is entitled to.

5. Delivery

a) The Supplier must deliver Free into Store (FIS) the Goods at the nominated delivery address in the Purchase Order.
b) The Supplier shall be deemed to have delivered the Goods only where it obtains a receipt or signed delivery docket, quoting the Purchase Order number, item number and a detailed description of the Goods, from an authorised officer of the Buyer.
c) All goods shall be suitably packaged, labelled, stored and transported in compliance with relevant standards and

regulations relative to the goods being supplied and in such a size and manner acceptable to the Buyer to ensure delivery in an undamaged condition. Goods ordered may not be substituted unless approved by the Buyer in writing. If specified goods are unavailable the Supplier must immediately on receipt of the Purchase Order advise the Buyer.

d) Risk of the Goods shall pass to the Buyer on acceptance of the Goods, which shall be deemed to be accepted by the Buyer 14 days after the later of:

i) successful performance acceptance testing; or

ii) delivery,

iii) if the Buyer has not previously advised the Supplier that the Goods are not in conformity with the Contract.

e) Title to and property in the Goods, including packaging, shall pass to the Buyer on delivery of the Goods to the delivery address or payment by the Buyer, whichever is the earlier.

f) The quantity delivered shall not be in excess of that ordered, any excess shall be returned at the Suppliers cost. The Supplier is responsible for any misinterpretation or errors appearing on any Purchase Order.

g) Where a delivery is not in conformity with the Contract and the Goods have not been accepted, the Supplier shall collect the Goods at the Supplier's cost.

6. Time

a) Where a delivery time is stated on the Purchase Order, that time is made of the essence and must be met in accordance with the terms of the Contract. If at any time Supplier discovers that the time of delivery will not be met, it shall notify the Buyer within two (2) working days of discovery stating cause of delay and earliest possible delivery date.

b) If the Goods are not supplied by the time stipulated in the Purchase Order the Buyer may, without prejudice to any other rights and remedies, rescind the Contract, unless the delay is caused by factors outside the reasonable control of the Supplier, as determined by the Buyer.

c) The Buyer shall not be liable to the Supplier in respect of any cost, expense, loss or damage whatsoever incurred or suffered by the Supplier as a direct or indirect result of the rescission of the Contract.

7. Payment

a) Invoices for Goods delivered are to accompany each delivery or be received by the Buyer within 5 days of that goods delivery.

b) The Invoice shall be for the price, value of the work performed and materials supplied under the Contract as stipulated in the Purchase Order.

c) Each Invoice must include the Purchase Order number and be supported by evidence of the amount due to the Supplier and such other information as the Buyer shall reasonably require.

d) Without limiting the Buyers rights under any other provision of the Contract, the Buyer may deduct from or set off against any monies which may be or thereafter become payable by the Buyer to the Supplier, including:

i) any debt due from the Supplier to the Buyer; and

ii) any claim which the Buyer may have against the Supplier under or by virtue of any provision of the Contract or otherwise at law or in equity.

e) If the Buyer doesn't dispute the Supplier's invoice, the Buyer shall pay the Supplier within 60 days from the end of month the invoice is received or as otherwise agreed in writing by the Buyer. In the event payment is not made by the payment date the Supplier has no right to suspend or cancel undelivered orders, to charge interest or any surcharge, administration or other fee, or to take proceedings for recovery, without giving the Buyer 21 days written notice.

8. Insurance

a) At the Suppliers own cost it must insure the Goods for any loss or damage, until acceptance of the Goods by the Buyer.

b) The Supplier warrants that it has and will maintain:



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- i) Public and Products Liability insurance policy for at least \$20 million for any one occurrence;
- ii) Professional Indemnity insurance policy for at least \$10 million for any one occurrence;
- iii) Workers Compensation insurance or equivalent;
- iv) Transit insurance to the value of the goods per shipment;
- v) such other insurances required by the Buyer to provide the Goods stated on the Purchase Order;
- vi) the Buyer shall be noted as an interested party on the Supplier's insurance policy; as a minimum, relevant insurances shall be retained for the term of the Contract;
- vii) Certificates of Currency shall be provided upon request by the Buyer.

9. Indemnity

- a) The Supplier shall indemnify and keep the Buyer indemnified:
 - i) from and against all actions, claims, loss, damage, expense or liability expense of any kind incurred by the Buyer, or damage of any kind suffered by the Buyer; or
 - ii) personal injury to any person or loss of or damage to any property,
 - iii) arising out of or by reason of anything done or not done by the Supplier in respect of the supply of the Goods.
- b) The Supplier shall indemnify the Buyer in respect of any loss, damage, expense, claim or liability suffered or incurred by the Buyer as a result of a claim by a third party, including any alleged infringement of any intellectual property right in relation to the Goods provided under this Contract.

10. Warranty

- a) The Supplier warrants the Goods for a minimum of 24 months from date of acceptance by the Buyer and that the Goods:
 - i) meet the description in the Purchase Order and conform to all specifications, drawings and samples provided by the Buyer to the Supplier;
 - ii) are free of any omissions, defects or failures arising from faulty design, materials or workmanship, or any other failures which render them unsuitable for the Buyer's requirements and will operate satisfactorily and reliably under all conditions;
 - iii) are fit for the purpose for which they are intended;
 - iv) are made with new materials and are themselves new, unless otherwise specified on the Contract;
 - v) are of the quality specified or are the best merchantable quality;
 - vi) are free of all charges, duties, liens and encumbrances and the Supplier has title to them;
 - vii) do not violate any copyright or patent rights;
 - viii) where a licence is granted by the Supplier, it does not infringe the intellectual property rights of any third party; and
 - ix) compliance with all relevant Acts, Regulations, By-laws, Codes, Standards, statutory requirements, applicable laws, notices, directions and requirements.
 - x) all information contained in catalogues, price lists, photographs, brochures and other illustrations or advertising material and drawings and information otherwise directly or indirectly produced by the Supplier is accurate and correct and is not misleading or deceptive in any way and that the Supplier has the necessary expertise and qualifications to provide that information.
- b) The Supplier extends equivalent warranty and guarantee as is provided to the Buyer, to the customer of the Buyer for the Goods Supplied in the Purchase Order.
- c) Pursuant to clause a) and b) the Supplier shall be liable for any resulting costs and expenses incurred directly or indirectly by the Buyer or the Supplier and must at the request of the Buyer:
 - i) refund the price;
 - ii) repair, modify or replace;
 - iii) resupply Goods which are in the opinion of the Buyer, not

supplied in accordance with the Contract.

- d) The Buyer may, at its option, arrange the repair, modification, replacement or resupply of the Goods referred to in clause c) by a third party or itself, whereby all resulting costs and expenses shall be borne by the Supplier.
- e) All warranties, conditions, undertakings, covenants and other provisions implied by law relating to the Goods or their supply and delivery form part of the Contract and these Conditions do not exclude, restrict or modify the application to the Contract or any provision of the Competition and Consumer Act 2010 or equivalent legislation.

11. Confidentiality

- a) The Supplier shall keep confidential the terms, conditions and all information in relation to the Contract and shall only disclose them as required by law or to those employees, servants or agents as necessary to enable the Supplier to meet the Contract requirements.
- b) All information, including but not limited to specifications, plans, designs, drawings and documentation remains the property of the Buyer.

12. Intellectual Property

- a) The Supplier hereby grants to the Buyer a perpetual non-exclusive, non-transferable, worldwide, royalty-free licence in respect of intellectual property in the Goods to the extent reasonably necessary to use the Goods for their intended purpose and any related purposes.
- b) The title to and intellectual property rights in all material created by the Supplier and brought into existence after the date of acceptance and as a result of this Contract shall vest in the Buyer.

13. Subcontract or Assignment

- a) The Supplier must not assign, sub-licence, sub-contract or transfer in whole or in part any of its interest or obligations under the Contract without the Buyer's prior written consent, which consent may be granted, withheld or granted subject to conditions in the Buyer's absolute discretion.
- b) Where the Buyer grants consent under clause a), such consent shall not relieve the Supplier from its obligations under the Contract. Further, any sub-contractors or agents are equivalently bound by the conditions of this Contract.

14. Buyers Rights

- a) The Buyer reserves the right to enter the Suppliers premises and inspect all or any part of the contracted work, including sub- contracted work.
- b) The Buyer reserves the right to suspend the Contract, at no cost or liability to the Buyer, where the reason for doing so is beyond the reasonable control of the Buyer. The Supplier must comply with the notice and recommence supply when notified by the Buyer.

15. Breach and Termination

- a) In addition to any other rights, the Buyer may terminate the Contract by written notice to the Supplier, where:
 - i) the Supplier is in breach of a term of the Contract and fails to remedy the breach within 14 days of receipt of a written notice from the Buyer specifying the breach and its rectification;
 - ii) the Buyer is of the reasonable opinion that the Supplier is unable or unwilling to comply with its obligations under the Contract with due diligence or in a competent manner; or
 - iii) if the Supplier becomes bankrupt, insolvent, goes into liquidation or an order is made for the winding up or is in receivership.
- b) Termination of the Contract pursuant to this clause shall be without prejudice to the rights of either party.
- c) The Supplier shall be liable to the Buyer for any loss whether direct, consequential, economic or otherwise suffered by the Buyer and arising out of or in connection with such termination or



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prior breach.

d) The Buyer shall not be liable to the Supplier for any loss (including loss of profit, loss of opportunity), whether direct, indirect, consequential, and economic or otherwise, suffered by the Supplier and arising out of or in connection with termination of the Contract pursuant to this clause.

e) If the Supplier breaches a term of the Contract, the Buyer shall not be bound to perform its obligations under the Contract until the breach is remedied by the Supplier.

16. Dispute Resolution

a) Any dispute between the parties arising out of or in any way connected with the Contract, which is not resolved by the parties within 7 days, shall be escalated to the parties senior executive for resolution within 14 days after issue of a written notice of the dispute by either party on the other party. Should resolution not be achieved, it shall be referred for mediation to the Institute of Arbitrators and Mediators within 30 days after service of the written notice of the dispute.

b) Nothing in this clause shall prevent either party seeking urgent interlocutory relief.

17. Force Majeure

a) Neither party shall be liable to the other in performing the obligations in the Contract caused by any occurrence beyond its reasonable control, including fire, national strike, national industrial disturbance, riot, war, act of God, government order or regulation, provided that the affected party gives written notice to the other within 7 days of the date of occurrence.

18. Law

a) The Contract shall be governed by the laws of the appropriate State the Commonwealth of Australia in which the Purchase Order is issued and the parties agree to submit to the jurisdiction of the courts of that State.

b) Where any provision or part of the Contract is unenforceable it shall not affect any other condition under the Contract and shall be read down only to the extent necessary to make the rest of the Contract enforceable.

19. Proportionate Liability

a) Each Party agrees that the Proportionate Liability Legislation, to the extent that the same may be lawfully excluded, is excluded from operation with respect to any Dispute, claim or action brought by one Party against the other Party arising out of or in connection with:

- i) this Contract; and
- ii) any of the Supplier's Subcontractors or the Subcontractors' Personnel.

b) for the purposes of this clause *Proportionate Liability Legislation means:*

- i) if the Governing Law is the Law of Western Australia, then Part 1F of the Civil Liability Act 2002 (WA);
- ii) if the Governing Law is the Law of New South Wales, then Part 4 of the Civil Liability Act 2002 (NSW);
- iii) if the Governing Law is the Law of Queensland, then Chapter 2, Part 2 of the Civil Liability Act 2003 (Qld);
- iv) if the Governing Law is the Law of Tasmania, then Part 9A of the Civil Liability Act 2002 (Tas);
- v) if the Governing Law is the Law of the Northern Territory, then the Proportionate Liability Act 2005 (NT);
- vi) if the Governing Law is the Law of Victoria, then Part IVAA of the Wrongs Act 1958 (Vic); or
- vii) if the Governing Law is the Law of South Australia, then Part 3 of the Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 (SA).

20. Waiver

a) A waiver of a breach of a term of this Contract shall not be taken to be a waiver in respect of any other breach. The failure of either party to enforce a term of this Contract will not be interpreted as a waiver of that term.

b) If any of these terms are or later become void, illegal or unenforceable, the void, illegal or unenforceable part of those terms are taken to be severed from these terms, but all other terms remain in place.

21. Safety

a) The Supplier is to provide the Buyer and its customers with all relevant documents required under all health and safety and environmental laws and standards.

b) The supplier is to maintain Material Safety Data Sheets (MSDS) for all goods sold and to make these available to the Buyer on request. MSDS must show: the raw products constituting each product; the health effects of the product and first-aid instructions; precautions for use; safe handling and storage information; and are to be non-technical, in clear English with reference to Australian conditions, legislative requirements and protective equipment.

c) If the supplier has goods that contain asbestos or asbestos related materials, hazardous or carcinogenic substances, then the supplier must give written notice to the Company forthwith following receipt of the order and the supplier must affix to the goods the documents and information referred to above.

Modern Slavery Act 2018

(a) The Supplier will comply, and will ensure that the Suppliers Personnel comply with all applicable Laws, regulations, codes and sanctions, including but not limited to anti-bribery and corruption, foreign corrupt practices, anti-terrorism and anti-slavery laws and specifically the *Criminal Code Act 1995* (Cth) (Australia), the *Bribery Act 2010* (United Kingdom), the *Foreign Corrupt Practices Act 1977* (United States of America) the *Modern Slavery Act 2018* (Cth) (Australia) and the *Modern Slavery Act 2015* (United Kingdom).

(b) The Supplier will not engage in any course of conduct that would cause Nepean to be in violation of the Laws of any jurisdiction, including, without limitation, the Laws, regulations, codes and sanctions referred to in this clause. The Supplier shall ensure that it has in place and maintains policies and procedures adequate to prevent bribery and corruption, foreign corrupt practices, terrorism, slavery and human trafficking and to ensure compliance with the applicable Laws, regulations, codes and sanctions referred to in this clause.

(c) The Supplier must (and must continue to) ensure that the Supplier's Personnel shall uphold the highest standards of business ethics and conduct, and undertake not to give or receive any advantage that could be perceived as payment or receipt of a bribe, not to make facilitation payments, not to bribe a foreign public official, and not to engage in any form of modern slavery or human trafficking.

(d) The Supplier acknowledges that Nepean has obligations to comply with Modern Slavery laws, and represents and warrants to Nepean that, at the date of entering into this Contract, the Supplier:

- (i) has no knowledge of any Modern Slavery offences that have occurred or are currently occurring within its organization or supply chain;
- (ii) takes and will continue to take reasonable steps through the performance of the work under contract to identify the risk of, and prevent the occurrence of, Modern Slavery offences within its organisation or supply chains; and
- (iii) acknowledges that Nepean has the absolute discretion to terminate this contract upon becoming aware of any Modern Slavery offences having been committed by the Supplier or within the Supplier's supply chain (in which case Nepean will pay the Supplier for all work, materials or services performed up until the date of termination and in all other respects the Supplier shall have no claim whatsoever against Nepean).

(e) Without limiting the above immediately preceding clause above, the Supplier represents and warrants to Nepean that, in relation to any Services procured from or subcontracted or outsourced to third parties for the provision of the Services under this Contract, the Supplier has taken, or will, prior to procuring, sub-contracting or outsourcing any such Services from or to a third party, take, and will continue through the Contract Term to take all reasonable steps to confirm that such third party is not engaging in any Modern Slavery offences.



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(f) The Supplier will notify Nepean in writing as soon as practicable upon becoming aware of any Modern Slavery offences (or of any charges laid or orders made in relation to any Modern Slavery offences) within its organisation or supply chain.

(g) If requested by Nepean, the Supplier will, subject to any existing confidentiality requirements and any relevant law, take all reasonable steps to provide Nepean with any information, reports or documents in relation to any Modern Slavery offences or any risk of Modern Slavery offences within the Supplier's organisation or supply chain, including the completion of a self-assessment questionnaire if required or requested.