

PURCHASE ORDER TERMS AND CONDITIONS

1. GENERAL

- 1.1 The face sheet of this document, including any Special Conditions is referred to as the Purchase Order ("Purchase Order")
- 1.2 These accompanying terms and conditions are referred to as the Contract ("Contract")
- 1.3 The parties to this Purchase Order and Contract are the relevant AE Smith entity as detailed on the Purchase Order ("AE Smith") and the person, company or organisation named as supplier or subcontractor in the Purchase Order ("Company").
- 1.4 Subject to clause 3, this Contract takes precedence over any terms or conditions issued by the Company to AE Smith whether they were presented as part of a quote or tender, or otherwise, and whether they were presented to AE Smith before or after the issue of this Contract.
- 1.5 Where there is a relevant subcontractor agreement or supply agreement in place ("Umbrella Agreement") between the parties, to the extent of any inconsistency between the Umbrella Agreement and this Contract and the Purchase Order, the documents should be read with the following order of precedence: (1) Purchase Order (including any Special Conditions); (2) the Umbrella Agreement; and then (3) this Contract.
- 1.6 Any variation of the Purchase Order or Contract is not legally binding upon either party unless in writing and signed by both parties.

2. ACCEPTANCE

- 2.1 The Company is taken to have accepted the terms and conditions of this Contract by indicating its acceptance by oral or written communication to AE Smith, or by its conduct. For example, where the Company starts to perform its obligations under the Contract even though it has not expressly advised AE Smith of its acceptance.

3. SPECIAL CONDITIONS

- 3.1 The conditions of this Contract include any Special Conditions referred to in the Purchase Order. If any such Special Conditions are inconsistent with this Contract or any authorised contract, the Special Conditions will, to the extent of the inconsistency, prevail.

4. GOODS AND SERVICES

- 4.1 The Company must perform any services specified in the Purchase Order, this Contract or relevant specification ("Services") to a high standard in accordance with any head contract between AE Smith and its principal (AE Smith's "Head Contract") and relevant best practice. Any goods specified in the Purchase Order, this Contract or in a relevant specification ("Goods") must be free from defects in performance, meet their purpose and be complete.
- 4.2 The Company must perform the Services and/or provide the Goods in accordance with any time frame, as advised by AE Smith and/or as set out in the Purchase Order.
- 4.3 If the Services are not provided according to specifications and/or scope of works, AE Smith may, by notice, require the Company to remedy any default in the performance of the Services, redo the Services, or complete the Services, at its discretion and at no additional cost to AE Smith. If there is a defect in the Goods or the Goods are not delivered or are not in accordance with the specifications or the warranty in the Purchase Order or this Contract, or the Goods do not meet their purpose AE Smith may by notice require the Company to remedy the defect, complete the Goods, or take other action at its discretion and at no additional cost to AE Smith. Alternatively, and at its discretion, AE Smith may elect to terminate the Contract and Purchase Order as per the Termination clause below.
- 4.4 Where the Company fails to comply with AE Smith's direction under clause 4.3 within 3 days after notification by AE Smith, AE Smith may perform the work or have it performed. The cost of doing so will be offset against any fees payable to the Company under the Purchase Order and this Contract, and if the costs exceed any remaining payments under the Purchase Order or Contract, AE Smith may recover the direct and indirect costs and any legal fees from the Company, including from under any other agreement the Company may have with AE Smith, or its related entities.
- 4.5 Where the Company fails to carry out or complete the Services or deliver the Goods in the timeframe advised by AE Smith, the Company will be responsible for any cost, loss or damage suffered by AE Smith's principal under its Head Contract either in common law or by way of Liquidated Damages. The Company agrees that any Liquidated Damages claimed are a true and genuine pre-estimate of the loss that would be suffered by AE Smith or its principal under its Head Contract if the Company is late in completing the Services.
- 4.6 The Company must have all relevant permits and licenses and must provide all materials, plant and equipment required for the provision of the Services unless otherwise agreed in writing with AE Smith. All materials, plant and equipment supplied by the Company must be fit for purpose, checked regularly for damage and replaced as required.
- 4.7 AE Smith may inspect the Goods at any time.
- 4.8 Without additional cost to AE Smith, the Company must provide access to its premises and all other necessary assistance to AE Smith representatives to inspect any manufacture or assembly of the Goods.
- 4.9 If AE Smith require, the Company must submit samples of Goods, and the Company must not proceed to bulk manufacture until AE Smith have approved the samples.

5. PASSING OF PROPERTY

- 5.1 Property in, and risk of loss or damage to the Goods passes to AE Smith when the Goods are delivered to AE Smith.

6. WARRANTY

- 6.1 The warranty period commences on: (a) the date of delivery or acceptance of the Goods; (b) the date of completion of the Services pursuant to the Purchase Order or this Contract or (c) the date of completion of the works under the Head Contract, whichever is the later, and shall be valid for 12 months, or the length of the Company's or the manufacturer's standard warranty period, whichever is longer ("Warranty Period").
- 6.2 The Company warrants that: (a) it is the legal and beneficial owner of the Goods, free from any third party interests; and (b) for the Warranty Period, the Goods are free from defects in design, materials and workmanship.

7. CONTRACT PRICE

- 7.1 The contract price for the Goods or Services is specified in the Purchase Order includes GST.
- 7.2 Subject to 8.1, the Company will be liable for all taxes, duties or government charges relating to the delivery of the Goods or performance of the Services.

8. PAYMENT

- 8.1 Unless otherwise agreed in writing, AE Smith will pay for the Goods or Services no later than 60 days from the end of the month after its acceptance of the Goods or Services or the satisfactory provision of the Services and receipt of a correctly rendered Tax Invoice.
- 8.2 An Invoice is correctly rendered if it is complete, it contains the Company's bank account details, the amount has been calculated in accordance with the Purchase Order and accompanied by documentation substantiating the amount claimed, and is sent to the address for payment of invoices shown in the Purchase Order.
- 8.3 AE Smith reserves the right to withhold retentions from Invoice payments in the amount of 10% per invoice up to a total of 5% of the contract price. One half of the retentions will be returned to the Company on successful completion of the Services and the second half of the retentions will be returned to the Company upon expiry of the Warranty Period. The Company may choose to provide unconditional Bank Guarantees in lieu of retentions with AE Smith's written consent.

9. INTELLECTUAL PROPERTY

- 9.1 Intellectual property includes all copyright in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), design, and circuit layouts, and all other rights resulting from intellectual activity.
- 9.2 Unless otherwise agreed or notified between the parties all intellectual property created under the Purchase Order and the Contract and relating to the Goods or Services is, from the time of creation, owned by AE Smith.

10. CONFLICT OF INTEREST

- 10.1 The Company warrants that, at the date of entering into the Purchase Order and Contract, no conflict of interest exists or is likely to arise in the performance of its obligations under the Purchase Order and Contract. If, during the term of the Contract, a conflict or risk of conflict of interest arises, the Company will notify AE Smith immediately.

11. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY

- 11.1 The Company is not by virtue of the Purchase Order or this Contract, and must not represent itself to be, and must ensure that none of its employees or agents represents himself or herself to be, AE Smith's employee, partner or agent or otherwise able to bind or represent AE Smith in performing the Company's obligations under the Purchase Order and Contract.

12. COMPLIANCE WITH LEGISLATION

- 12.1 The Company must comply with all applicable laws of the Commonwealth, any State, Territory or local authority, and with Environmental Health & Safety policies, Quality Assurance and with the Principles contained in the Privacy Act 1988 (Cth).

13. SUBCONTRACTING AND ASSIGNMENT

- 13.1 The Company must not, without AE Smith's prior written consent, subcontract the whole or any part of the work, or assign its rights, under the Purchase Order or this Contract. Despite any approval to sub-contract, the Company remains fully responsible for the performance of its obligations under the Purchase Order and Contract.

14. INDEMNITY, INSURANCE AND COMPLIANCE

- 14.1 The Company indemnifies AE Smith, its officers and agents against all loss, damage, injury or expense it may sustain or incur as a result, whether directly or indirectly: (a) of any breach of the Purchase Order or this Contract including any action or claim for alleged infringement of any patent, copyright, registered design, trade mark or any other intellectual property rights, by reason of or use of the Goods or Services; or (b) of any act or omission on the Company's part in relation to the provision of Goods or Services under the Purchase Order or this Contract.
- 14.2 The Company will, for so long as any obligations remain in connection with the Purchase Order and Contract, effect and maintain appropriate insurance policies as follows: (a) Public Liability insurance for \$20,000,000 per occurrence and unlimited in the aggregate; (b) Workers Compensation insurance as required by law; and (c) any other policies as advised by AE Smith from time to time.
- 14.3 The Company will maintain all licences required of it that are applicable to the type of work it is performing or undertaking for AE Smith pursuant to this Purchase Order and Contract and the Company will provide AE Smith with proof of these licenses in a form acceptable to AE Smith.

15. TERMINATION

- 15.1 AE Smith may immediately, and without cause, terminate the Purchase Order and this Contract or reduce the scope of the Goods or Services by giving written notice to the Company.
- 15.2 On such termination AE Smith can: (a) cease payments under the Purchase Order and Contract; (b) recover from the Company all sums paid for Goods or Services not provided; and (c) purchase similar services from alternative suppliers and, where entitled under this Contract, claim by way of indemnity from the Company any loss it may incur in doing so.