

PURCHASE ORDER TERMS & CONDITIONS

1. DEFINITIONS

In these Conditions:

Buyer means Meklek ABN 36 120 494 706;

Contract Price is the lump sum specified in the Purchase Order or, the total sum calculated by the method stated in the Purchase Order;

Delivery Date means the date specified in the Purchase Order;

Goods means the goods and services specified in the Purchase Order;

Head Contract means the head contract under which Buyer is to carry out works for which the Goods are required;

Payment Period means 30 days (or such other period specified in the Purchase Order) from the last day of the month in which delivery of the Goods to the Buyer's satisfaction is completed or a tax invoice for the Goods is received (whichever is the last to occur).

Principal means the entity specified as the Principal in the Purchase Order;

Seller means the entity specified as the Seller in the Purchase Order;

Site means the address specified as the Site in the Purchase Order.

2. SUPPLY OF GOODS

The Seller must supply the Goods to the Buyer at the Site, in accordance with the terms of this Purchase Order and any directions of the Buyer, by the Delivery Date.

3. SPECIFICATION

Goods shall be in accordance with any specification, drawing, sample or other description (if any) stated in the Purchase Order or otherwise provided by the Buyer to the Seller.

4. WARRANTY

The Seller warrants that:

- (a) the Goods (and any workmanship and materials used in the Goods) will be free from all defects, be fit for the purpose for which goods of the same kind are commonly supplied and any other purpose made known to the Seller;
- (b) the Goods are free and clear of all charges, liens and encumbrances and it has good and marketable title to the Goods;
- (c) without limiting any other obligation of the Seller, it will exercise the highest standard of skill, care and diligence in the supply of the Goods which would be expected of a competent, qualified and experienced provider of the Goods.

5. DELIVERY

The Contract Price includes delivery to the Site and the off-loading of the goods by the Seller at the point of destination.

Upon the Seller despatching all or any of the Goods to the Buyer, the Seller must give to the Buyer a written notice of the despatch which specifies the number of the Purchase Order, the time of the despatch, the description and quantity of Goods despatched, and the route and method by which the Goods are to be delivered. The Goods must be packed, marked and transported as specified in the Purchase Order or, if not specified, in a suitable manner having regard to the nature of the Goods. The Seller is liable for any additional freight charges arising from its failure to follow any transport instructions in the Purchase Order or to properly describe the Goods transported. Buyer and Seller will assist each other in obtaining documents and other information desirable for the prosecution of claims against carriers. Buyer is not liable for any loss or damage to the Goods in transit.

The Seller shall deliver the Goods at the Site by the Delivery Date. Time shall be of the essence as regards the Seller's obligations under this clause.

If during the performance of this Contract the Seller is delayed by any cause or causes (including causes for which the Seller is not entitled to an extension of the Delivery Date) in such a matter as might reasonably be expected to delay delivery of the Goods until a date after the Delivery Date, the Seller shall immediately upon the cause of the delay first arising, give written notice of the delay to the Buyer.

If the delay was due to:

- (a) any breach, act or omission on the part of the Buyer or its employees or agents; or
- (b) any other cause beyond the control of the Seller and in respect of which the Buyer has been granted or is entitled under the Head Contract to an extension of the time for completion of the works under that contract,

and if the Seller wishes to claim an extension of the Delivery Date, the Seller shall as soon as practicable, and in any event in sufficient time to enable the Buyer to comply with any time limits under the Head Contract for submitting extension of time claims, give the Buyer a written extension of time claim identifying the cause of the delay and a fair and reasonable time by which, in the Seller's opinion, the Delivery Date should be extended.

As soon as practicable after receiving an extension of time claim from the Seller, the Buyer shall give its determination in respect of the claim and grant such extension (if any) to the Delivery Date as it considers fair and reasonable, provided that where the cause of the delay was of the type mentioned in paragraph (b) of this clause, the extension of time shall be no greater than the extension of time granted to the Buyer under the Head Contract in respect of the delay.

Notwithstanding that the Seller has not claimed an extension of time or is not entitled to an extension of time, the Buyer may at any time and for any reason it thinks fit, extend the Date for Delivery.

6. LATE DELIVERY

If the Seller fails to deliver the Goods by the Delivery Date:

- (a) the Seller shall pay or allow to the Buyer by way of pre-estimated and liquidated damages and not as a penalty, a sum calculated at the rate stated in Purchase Order for the period between the Delivery Date and the date the Goods are delivered;
- (b) if the Seller's delay in delivery is a substantial cause or the total cause of the Buyer being late in completing the Principal Works and thereby becoming liable to pay the Proprietor damages (liquidated or otherwise) for the late completion, the Seller shall indemnify the Buyer for any such liability either wholly or to the extent to which the Seller caused the Buyer's liability (and the Seller acknowledges that the liquidated damages for late completion under the Head Contract are as stated in Purchase Order); and
- (c) if the Seller's delay in delivery is a substantial cause or the total cause of the Buyer becoming liable to pay any of its subcontractors any loss, damages, costs or expenses (whether liquidated or otherwise), the Seller shall indemnify the Buyer against such liability either wholly or to the extent to which the Seller caused the Buyer's liability.

The pre-estimated and liquidated damages provided for in paragraph (a) of this clause do not include any amount or

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allowance for the matters covered by paragraphs (b) and (c) of this clause.

7. RISK AND PASSING OF TITLE

Goods are at Seller's Risk until delivery at the Site. Title in the Goods shall pass upon the delivery and off-loading of the Goods to the Buyer as specified in this Purchase Order. Seller shall insure the Goods for their full value from time to time against loss or damage including loss or damage in transit.

8. INSPECTION, TEST AND NON-CONFORMANCE

The Seller must allow the Buyer to inspect and to test any aspect of the Goods at any place where the Goods are being delivered or activities associated with the supply of the Goods are taking place. If, before supply of the Goods is completed, or within 52 weeks after it has been completed, the Buyer discovers (whether as a result of a test or otherwise) any aspect of the Goods which is not in conformance with the Purchase Order (including non-conformance with any sample previously provided to the Buyer), the Buyer may (without prejudice to any other right it may have):

- (a) direct the Seller to rectify that non-conformance at no cost to the Buyer; or
- (b) accept the non-conformance, in which case the amount determined by the Buyer as representing the cost of correcting the non-conformance will be a debt due and payable on demand by the Seller to the Buyer; or
- (c) notify the Seller of the rejection of the goods (whereupon the title in the rejected goods shall immediately revert in the Seller) and return them at the Seller's expense and risk to the Seller and any cost or expense incurred by the Buyer in such return will be a debt due and payable on demand by the Seller to the Buyer.

Any inspection, test or direction shall not relieve the Seller of its obligations contained in this Purchase Order. Signed delivery dockets will not mean acceptance by the Buyer of the Goods delivered, but only the quantity delivered. The acceptance of part of the Goods does not preclude the Buyer from rejecting any other part of the Goods that is defective.

9. PAYMENT

When the Seller completes delivery of the Goods to the Buyer's satisfaction, the Seller is entitled (as its sole entitlement to payment of money for the supply of the Goods, and subject to the Seller first providing a tax invoice that complies with the GST Legislation in respect of the Goods) to be paid the Contract Price. The invoice must specify the Purchase Order number and the place where the Goods were delivered.

Subject to the terms of this Contract, the Buyer shall pay the Seller within the Payment Period. All payments made to the Seller shall be payment on account only and shall not be deemed to be an approval of the Goods supplied hereunder.

The Contract Price is not subject to increase without Buyer's approval in writing.

10. DEDUCTION AND SET OFF

Any reference to any cost, expense, loss or damage recoverable by the Buyer from the Seller under the Purchase Order shall be deemed to be a debt due and payable by the Seller to the Buyer. The Buyer may set off against and deduct from any monies due to the Seller any debt, costs, damages, loss, or expense due to or recoverable by the Buyer from the Seller and any claim which the Buyer may have against the Seller whether or not the debt, costs, damages, loss, expense or claim arises by way of contract, tort, damages, debt, restitution or otherwise and whether or not the factual basis giving rise thereto arises out of this Purchase Order, any other contract or is independent of any contract.

Nothing in this clause shall affect the right of the Buyer to recover from the Seller the whole of the debt, costs, damages, loss, expense or claim or any balance that remains owing. This clause shall survive the termination of the contract.

11. VARIATION

The Buyer may direct the Seller to change any aspect of the Goods (including by increasing or reducing the scope of the Goods) by issuing a written "Variation Order". If such a direction is given, the Buyer will adjust the Contract Price by a reasonable amount or, if the amount of the adjustment has been agreed, the agreed amount.

12. SUSPENSION AND CANCELLATION

The Seller acknowledges that the Buyer may cancel the purchase of any unshipped Goods in total or part. The Buyer may at any time direct the Seller to suspend (or recommence) the delivery of the Goods. In any case of suspension or cancellation, the Buyer must pay the Seller reasonable compensation for irrecoverable expense reasonably incurred prior to cancellation or suspension but the Buyer is not liable for loss of profit or consequential loss of any kind.

13. TERMINATION

If the Seller suffers, in the Buyer's opinion, an adverse or potentially adverse alteration in its financial capacity, or does not remedy a breach of contract within the time specified in a notice requiring it to remedy the breach, the Buyer may, without prejudice to any other rights it may have, immediately terminate the Purchase Order by giving a notice of termination to the Seller. In that case, the Seller will forfeit any right to payment of money under the Purchase Order and the Buyer will be entitled to recover from the Seller any costs, losses or damages suffered or incurred by it as a result of, arising out of or in any way connected with such termination.

14. PATENTS TRADEMARKS AND COPYRIGHT

Seller agrees to defend, protect and hold harmless Buyer, its successors, assigns, customers and users of the Goods from and against any claim arising by reason of the supply or use of the Goods, including all claims for actual or alleged infringement of any letters patent, trade marks, copyright, design, confidential information or other intellectual property right whether such rights arise under the laws of Australia or any foreign state.

15. COMPLIANCE WITH LAWS

The Seller must comply with any law, and the requirements of any organisation having jurisdiction in connection with the Supply, applicable to the Goods (including any laws, and requirements of the Buyer, in respect of occupational health, safety and rehabilitation management) and, to the extent that they are not inconsistent with the Purchase Order, all relevant Australian Standards.

16. INSTALLATION AND FITTING

Where the Goods includes the work of installation or fitting of goods on Site, or the Seller is otherwise required to attend on Site to perform work in connection with or in relation to the Goods, the following shall apply:

- (a) All work shall be carried out in a proper and workmanlike manner to the reasonable satisfaction of the Buyer and in accordance with this Purchase Order;
- (b) The Seller shall supply all labour, tools, equipment and materials necessary to complete the work and assumes all risk in respect of these items;
- (c) All materials used in the work shall be new (unless expressly stated otherwise), of merchantable quality and fit for the purpose for which they are used;

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- (d) The work shall be performed as and when directed by the Buyer. The Seller shall use its best endeavours not to impede or interfere with other work in progress on the Site. The Seller shall attend all co-ordination meetings as requested by the Buyer and shall supply all necessary time and resources to co-ordinate the works with the Buyer and others on the Site. The Seller shall not be entitled to recover any additional payment resulting from any failure to so co-ordinate;
- (e) Seller enters the Site at its own risk and shall be liable for and will keep the Buyer indemnified against any fines, penalties, costs, losses, damages, claims or other liability arising directly or indirectly out of the performance of the work or the Seller's presence on the Site;
- (f) Seller shall comply with the safety regulations of the Buyer and with the reasonable directions of the Buyer in respect of any work or thing under the Purchase Order including but not limited to the programming, execution, quality, character or extent of the work;
- (g) Seller shall be deemed to perform all work as an independent contractor and not as an agent or employee of the Buyer;
- (h) Seller shall comply with all industrial awards, site agreements and registered or approved industrial or enterprise agreements applicable to the work to be done by the Seller under the Purchase Order. Seller assumes sole responsibility for and must manage all aspects of industrial relations. The Buyer may in its absolute discretion direct the Seller to remove any employee or subcontractor from the Site and the Seller must immediately comply with such direction;
- (i) Seller may use the Buyer's erected scaffolding only with the express permission of the Buyer and on the condition that the Seller shall be fully responsible for ensuring that the same complies with any scaffolding regulations and for ensuring the safety of all persons using the same. The Seller will indemnify the Buyer against any liability, loss, damage, expense or claim which the Buyer may suffer or incur or which may be made against it as a result of non-compliance by the Seller with this clause. Seller shall be responsible for the cost of making good any damage to or loss of the Buyer's scaffolding caused by the Seller or any of its employees, agents or subcontractors and such costs shall be a debt due by the Seller to the Buyer;
- (j) Seller is responsible for the craneage, handling and movement of materials onto and around the Site. Subject to availability, Buyer may make available its craneage and hoisting facilities to the Seller for which the Buyer may charge current trade hire rates;
- (k) Seller is responsible for all levels and dimensions as set out by its employees, agents or subcontractors from setout points, recovery marks and datum levels as may be established by the Buyer;
- (l) Before commencing work on Site, the Seller must have in place the following insurances:

Workers Compensation - Seller shall insure against liability for death of or injury to persons employed by the Seller including liability by statute and common law. Such insurance shall be in the maximum amount insurable.

Public Liability – Seller shall be solely liable for and shall indemnify the Buyer in respect of and shall insure against any liability, loss, claim or proceeding whatsoever arising under any statute or at common law (including liability for negligence or breach of statutory duty but excluding liability

which is required by law to be insured under a workers compensation policy of insurance) in respect of or in connection with the death of or injury to any person or any loss of or damage to any property arising out of or in any way connected with or caused by the Goods. Such insurance shall be for the amount of not less than \$5 Million or such greater amount as may be specified in the Purchase Order.

Contractors All Risk – Seller shall be solely liable for and shall indemnify the Buyer against in respect of and shall insure against all other risks in respect of the Goods which the Buyer bears and is obliged to insure under the Head Contract and, in particular, Seller shall take out a contractors all risk policy which shall cover any loss of, damage or injury to or in respect of (inter alia) the whole of the Goods to the extent of their full value.

Such insurances shall be taken out with insurers and on terms to the satisfaction of the Buyer and evidence of currency of such insurances shall be furnished to the Buyer prior to the commencement of work on Site and at anytime thereafter upon request.

17. GENERAL INDEMNITY

If the Seller commits any breach of this Contract (other than a delay in delivery as mentioned in Clause 6) and that breach is a substantial or the total cause of the Buyer being in breach of the Head Contract and thereby becoming liable to pay the Principal any loss, damages, costs or expenses (whether liquidated or otherwise), then the Seller will indemnify the Buyer against such liability either wholly or to the extent to which the Seller caused the Buyer's liability.

18. REPRESENTATIONS

The Seller acknowledges that, in accepting this Purchase Order, it has not relied upon any representation or undertaking given by or on behalf of the Buyer which is not expressly set out in this Purchase Order. Modification of these terms and conditions of this Purchase Order expressed in any document of the Seller shall not apply and be of no effect unless expressly accepted in writing by the Buyer.

19. INTERNATIONAL SUPPLIERS

Where the Seller is located outside of Australia (but not otherwise), the following subclauses shall apply:

- (a) The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Purchase Order; and
- (b) Any dispute or difference whatsoever arising out of or in connection with this Purchase Order (whether arising before or after the completion or termination of the Purchase Order) shall be submitted to arbitration in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Rules for the Conduct of Commercial Arbitrations. The place of arbitration shall be Brisbane, Australia. The law governing this agreement to arbitrate and the conduct of the arbitration is the law of Queensland,

20. APPLICABLE LAW

The law governing this Purchase Order and its interpretation is the law of the State or Territory where the Site is located and the parties submit to the non-exclusive jurisdiction of the Courts of that State or Territory.