

TERMS AND CONDITIONS OF PURCHASE

1. Definitions.

- 1.1. **SELLER** means the person or entity to whom the Purchase Order is addressed. In the event that no purchase order is issued, **SELLER** means the person or entity which have supplied or are to supply Goods and/or Services to the Company.
- 1.2. **COMPANY** means the respective Rutherford Group company, associated companies, successors, assigns, contractors and agents.
- 1.3. **CONTRACT** is defined in **clause 2**
- 1.4. **GOODS** means any goods supplied or to be supplied by the Seller to the Company pursuant to these Terms and Conditions and/or any contract hereunder, including but not limited to, goods hired.
- 1.5. **INSOLVENCY EVENT**, in relation to a party, means:
 - 1.5.1. The party is (or states that it is) insolvent (as defined in the *Corporations Act 2001* (Cth)); or
 - 1.5.2. The party has a Controller (as defined in the *Corporations Act 2001* (Cth)) appointed to any part of its property; or
 - 1.5.3. The party is in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, has been or is in the process of being wound up, or has had a receiver or a receiver and manager appointed to any part of its property; or
 - 1.5.4. The party is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved; or
 - 1.5.5. The party is taken to have failed to comply with a statutory demand (pursuant to section 459F(1) of the *Corporations Act 2001* (Cth)); or
 - 1.5.6. The party is the subject of an event described in section 459C(2) or section 585 of the *Corporations Act 2001* (Cth), or it makes a statement from which the other party reasonably deduces it is so subject; or
 - 1.5.7. The party is otherwise unable to pay its debts when they fall due.
- 1.6. **LOSS** means damage, loss, cost, expense, suit, charge, action, right or action, or liability (whether actual or contingent).
- 1.7. **PRICE** means the price payable for the Goods and/or Services as agreed between the Company and the Seller in accordance with **clause 9** of these Terms and Conditions.
- 1.8. **PURCHASE ORDER** means a purchase order issued by the Company to the Seller in respect to the provision of Goods and/or Services which shall be subject to the terms of the Contract
- 1.9. **RELATED BODY CORPORATE** has the same meaning as in the *Corporations Act 2001* (Cth).
- 1.10. **SERVICES** means any services supplied or to be supplied by the Seller to the Company pursuant to these Terms and Conditions and/or any contract hereunder.
- 1.11. **TERMS AND CONDITIONS** means these terms and conditions of purchase.

2. Contract

The Contract contains:

- 2.1. the Purchase Order;
- 2.2. these Terms and Conditions; and
- 2.3. any other document which is attached to, or incorporated by reference in the Purchase Order or these Terms and Conditions

3. Precedence.

In the event of any conflict between these Terms and Conditions and those that may be included in or implied by any document forming part of any quotation, tender, invoice, order acknowledgment, confirmation, acceptance, bill of lading, enquiry, specification, order or contract, then these Terms and Conditions will prevail, except in so far as they are expressly varied by the Company in writing or otherwise by law.

4. Entire Agreement

- 4.1. The Contract contains the entire agreement between the Company and the Seller and supersedes all prior negotiations between the Company and the Seller, unless it is expressly indicated in writing that they are to form part of the Contract.
- 4.2. No terms or conditions submitted by the Seller that are in addition to, different from or inconsistent with those contained in the Contract, including, without limitation, terms and conditions contained in any quotation, tender, invoice, order acknowledgment, confirmation, acceptance, bill of lading, enquiry, specification, order, contract or other instrument shall be binding upon either party unless agreed to in writing and signed by both the Company and the Seller.
- 4.3. The provisions of the Contract will prevail over any terms and conditions of trade of the Seller whether or not any inconsistency arises.

5. Amendments

No amendment or variation of the Contract is to be made unless there is a written agreement signed by the Company and the Seller.

6. Purchase Orders.

- 6.1. A written Purchase Order issued by the Company to the Seller is an offer to purchase Goods and/or Services from the Seller and will not create any contract for the supply of Goods and/or Services except in accordance with **clause 6.2**.
- 6.2. A contract for the supply of Goods and/or Services is made when the Company places an order and/or communicates to the Seller its request for Goods and/or Services and the Seller communicates in writing its acceptance of the individual purchase order or request.
- 6.3. The Company may withdraw, revoke or vary a purchase order at any time prior to its acceptance.
- 6.4. Unless otherwise indicated in writing by the Company, if not accepted in accordance with **clause 6.2** the purchase order will lapse thirty (30) days after the date of the purchase order, unless otherwise indicated in writing by the Company.

7. Delivery.

- 7.1. Delivery of Goods must be accompanied by a delivery docket/advice note quoting the Company's order number, item number(s) and giving a detailed description of the Goods.
- 7.2. Goods are to be suitably packaged for delivery, with packing becoming the property of the Company upon acceptance of the Goods.
- 7.3. Time is of the essence for the Contract. The Company reserves the right to cancel any order, or part thereof, without obligation if delivery is not made within the time specified.
- 7.4. The Goods are consigned at the Seller's risk for damage, loss or other diminution in value during the course of transit and until such Goods become the property of the Company.

- 7.5. Goods delivered before the specified date will be assumed to have been delivered on the specified date for the purpose of payment.

8. Price, Seller Invoice and Payment.

- 8.1. The Purchase Order is raised on a GST inclusive basis.
- 8.2. The Price includes fees, duties (eg. Stamp Duty), surcharges and all other imposts of any government authority (*governmental imposts*) unless expressly stated otherwise.
- 8.3. The Price is that indicated in the written Purchase Order issued by the Company to the Seller. If price is omitted from the order, it is agreed that the Seller's price will be the lowest prevailing market price, including GST, and in no event is the order to be filled at a higher price than the last previously quoted or charged without the written consent of the Company.
- 8.4. Unless otherwise agreed by the Company in writing, payment for Goods and/or Services supplied will be made in full by the end of the second month following the month during which the Goods are delivered and/or Services provided, on the basis that the Company receives a valid tax invoice in accordance with **clause 9.1** within 3 days from the end of the month in which the Goods were delivered and/or Services provided and on the basis that no dispute has arisen in relation to the Goods and/or Services provided.
- 8.5. The amount in an invoice referred to in **clause 8.6** and **clause 8.7** must be in Australian Dollars (AUD).
- 8.6. The Seller must render an invoice to the Company in relation to the provision of the Goods and/or Services at the end of each month during the period in which the Goods and/or Services are provided and calculated by reference to the Price, fees and other amounts specified in the Purchase Order.
- 8.7. Invoices must be in a form acceptable to the Company and include the following information:
 - 8.7.1. the number of the Purchase Order to which the invoice relates;
 - 8.7.2. a brief description of the Goods and/or Services provided in the period covered by the invoice;
 - 8.7.3. the GST exclusive price;
 - 8.7.4. the GST amount; and
 - 8.7.5. any further verification or documentation in relation to the invoice and reasonably required by the company.
- 8.8. If the invoice is not in a form specified in **clause 8.7** it may delay payment
- 8.9. If the invoice is not in a form specified in **clause 8.7** the Company will return the invoice to the Seller and no liability shall be recognized until such time as an acceptable invoice is provided to the Company.
- 8.10. Invoices may be:
 - 8.10.1. Posted to the Company at the address of their place of business; or
 - 8.10.2. Sent via email.This will be sufficient notice of the amount due under the invoice.
- 8.11. If the Company disputes any amount shown on an invoice, it must notify the Seller within 21 days of receipt of the invoice and must pay any amounts not in dispute, provided that the payment by the Company of any amount the subject to a disputed invoice is not to be considered as an acceptance of the amount in dispute or of the Company's liability to make that payment.
- 8.12. If there are errors with the invoice the Seller and the Company must jointly review the nature of the errors or exceptions and the Seller must, if appropriate, take prompt corrective action and adjust the relevant invoice or refund of overpayments.

9. Termination

- 9.1. A Contract may, in the sole discretion of the Company, be terminated in the following circumstances:
 - 9.1.1. The Seller has not complied with the obligations of the Contract; or
 - 9.1.2. In the opinion of the Company, any change of circumstances, including without limitation, changes in the Seller's constitution, composition, ownership, membership, control status or ability to provide security for payments of amounts which have been or are likely to be payable by the Company, makes the continued operation of the contract undesirable or unsatisfactory; or
 - 9.1.3. The Seller is subject to an Insolvency Event;
 - 9.1.4. The Seller, being a partnership, dissolves, threatens or resolves to dissolve, or is in jeopardy of dissolving; or
 - 9.1.5. The Seller, being a natural person, dies; or
 - 9.1.6. The Seller is otherwise in breach of its obligations under these Terms and Conditions and/or any other Contract that the Seller has with the Company.

10. Claims.

- 10.1. The Company reserves the right to inspect all shipments after delivery and reject those items found to be defective or not in accordance with the specifications provided.
- 10.2. The Company will, within seven (7) business days of the supply of any Goods and/or Services (time being of the essence), notify the Seller of any alleged defect, error, omission, shortage in quantity, damage or failure to comply with the Purchase Order, description or quotation.
- 10.3. The Company will if requested in writing by the Seller allow the Seller to inspect the alleged defect, error, omission, shortage in quantity, damage or failure to comply within a reasonable time of receiving notification.
- 10.4. Upon receipt of a notification of defect, error, omission, shortage in quantity, damage or failure to comply with the description or quotation the affect items or parts must be redesigned, repaired or replaced as appropriate by the Seller at no cost to the Company prior to the expiration of time specified in the notice, usually not less than 30 days after service.

11. Installation.

- 11.1. Where used throughout this clause, **PREMISES** means the premises upon which the Seller will carry out an installation of Goods and/or provision of Services for the Company.
- 11.2. Where the Contract requires that the whole or part of the Goods are to be executed or installed and/or Services provided on premises owned by the Company, the Seller shall, at the Seller's own cost, cover by appropriate insurance in which the Company's interest is disclosed and is directly insured, the liability of the Seller and the Company under the Workers' Compensation Act of NSW for any worker employed in the execution of the work to be done on the Premises.
- 11.3. No part of the Contract shall be subcontracted by the Seller without the prior approval of the Company.

12. Property.

- 12.1. Property and ownership (including legal and equitable title) in any Goods sold by the Seller to the Company will pass to the Company upon delivery, subject to their compliance with the terms of the Contract.
- 12.2. The Seller must insure (and keep insured) the Goods on the following conditions for the duration of the order until such time as the Goods have been properly delivered and accepted to the Company:
- 12.2.1. The Goods must be insured for their full insurable or replacement value (whichever is higher); and
- 12.2.2. The Goods must be insured by an insurer licensed or authorised to conduct the business of insurance in the place where the Goods will be stored.
- 12.3. Proof of these insurances shall be produced upon demand by the Company
- 12.4. The Company and the Seller agree that, until property and ownership (including legal and equitable title) of the Goods has passed to the Company:
- 12.4.1. The Company will not supply any of the Goods to any person outside of its ordinary or usual course of business;
- 12.4.2. The Company will not allow any person to have or acquire any security interest in the Goods;
- 12.4.3. The Company will not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorised by the Seller.
- 13. Limitation of Liability.**
- 13.1. Notwithstanding any other provision of these Terms and Conditions:
- 13.1.1. In no circumstances will the Company be liable to the Seller, or any assigned party in contract, tort (including without limitation negligence or breach of statutory duty) or otherwise (whatsoever the cause) to compensate the Seller or any assigned party for any special, indirect or consequential loss, including without limitation loss of production, loss of revenue, loss of profit or anticipated profit, or business interruption.
- 13.1.2. The total liability of the Company in relation to these Terms and Conditions and/or any contract hereunder is limited to the amount of the Price.
- 13.2. **Clause 15.1.3** will not apply for:
- 13.2.1. Liability out of which by law the Company cannot contract;
- 13.2.2. Liability for fraud or malicious or deliberate criminal acts or omissions on the part of the Company;
- 13.2.3. Liability for any act or failure to act by the Company which was intended to cause, or which was in reckless disregard of, or wanton indifference to, the harmful consequences that the Company knew, or ought reasonably to have known, that act or failure to act would have on the safety, property or interests of the Seller.
- 14. Release and Acknowledgement.**
- 14.1. The Seller releases the Company from any liability or obligation to the Seller or any assigned party arising out of the Company's performance or non-performance of any obligation under these Terms and Conditions and/or any contract hereunder in respect of:
- 14.1.1. Loss (including consequential Loss) in relation to property;
- 14.1.2. Personal injury, disease or illness to, or death of, persons;
- 14.1.3. Economic Loss; and
- 14.1.4. Loss in relation to the environment.
- 14.2. The Seller acknowledges and accepts that some of the locations where Services are performed are in flood and/or storm-prone areas.
- 15. Indemnity.**
- 15.1. The Seller at all times indemnifies and holds harmless the Company, its employees and agents and any Related Body Corporate of the Company from and against any Loss (including without limitation actions, proceedings, judgments, legal fees and charges) that may be incurred by, billed, made or recovered against the Company in connection with the performance or non-performance of the Seller's obligations under these Terms and Conditions and/or any contract hereunder, including without limitation:
- 15.1.1. Loss (including consequential Loss) in relation to property, including without limitation the Company's property;
- 15.1.2. Loss in respect of personal injury, disease, illness or death;
- 15.1.3. Economic Loss; and
- 15.1.4. Loss in relation to the environment.
- 15.2. The indemnity in **clause 17.1** applies to the extent that any claims, damages, expenses, losses or liabilities are caused by:
- 15.2.1. Any negligent act or omission or wilful misconduct of the Seller or the Seller's employees, agents or contractors, as the case may be; or
- 15.2.2. A breach by the Seller of any of the Seller's obligations under the Contract.
- 15.3. The Seller acknowledges that if it enters on to the Premises of the Company it does so at its own risk.
- 16. Seller's Liability.**
- 16.1. The Seller's liability for the performance of obligations under these Terms and Conditions and/or any contract hereunder is not released, discharged or relieved by anything that but for this clause might have that effect, including without limitation:
- 16.1.1. The grant of a waiver or other indulgence to the Seller or any assigned party by the Company;
- 16.1.2. Any transaction or arrangement between the Company and the Seller or any assigned party;
- 16.1.3. The Seller being subject to an Insolvency Event;
- 16.1.4. The Company being subject to an Insolvency Event;
- 16.1.5. The Company exercising, delaying or refraining from exercising any right, power or remedy given to it by law, by the Contract, or by any other document or agreement with the Seller or any assigned party;
- 16.1.6. The Seller obtaining a judgment against the Company or any assigned party for the payment of any money under these Terms and Conditions and/or any contract hereunder and/or any other document or agreement between the Company and the Buyer or any assigned party; and
- 16.1.7. Any change in circumstance of the Company or the Seller or any assigned party (including a change of circumstance of a person, the members of a partnership or the composition of a company).
- 17. Warranties.**
- 17.1. The Seller warrants, in relation to Goods supplied, that:
- 17.1.1. The Goods will be of merchantable quality;
- 17.1.2. The Goods purchases are free from defects in material and workmanship under normal use for a period of twelve (12) months; and
- 17.1.3. The Seller has good title to the Goods and the Company will receive title to the Goods free of any charge, lieu, encumbrance or other disability.
- 18. Licenses.**
- All Goods and/or Services supplied are done so on the understanding that all licences, permits and the like required under relevant statutes, ordinances, rules and regulations have been obtained by the Seller.
- 19. Drawings and Information.**
- All drawings and information issued by the Company remain the property of the Company and may not be distributed or copied without the Company's permission.
- 20. Intellectual Property.**
- 20.1. The Seller warrants that there has been no violation or infringement of a trademark, registered design, copyright, patent or common law right(s) in manufacturing or production or selling the Goods shipped or ordered, and the Seller agrees to indemnify the Company from any liability, loss or expense occasioned by any such violation or infringement of intellectual property rights of any third party.
- 21. Waiver.**
- Failure by the Company to insist upon strict performance of any Term or Condition herein will not be deemed a waiver of any rights the Company may have, including without limitation those rights arising from a subsequent breach by the Seller of any Term or Condition.
- 22. Notices.**
- Any notices to be given by one party to the other must, unless otherwise agreed, be in writing and be transmitted by prepaid mail to the last known address of the recipient party. Notice will be deemed to have been delivered on the date following posting.
- 23. Law.**
- The Contract hereunder is to be governed and interpreted in accordance with the laws of the State in which the Contract was issued. Any dispute arising under the Contract is to be heard and determined within the jurisdiction of New South Wales.
- 24. Arbitration.**
- 24.1. All disputes arising in connection with the Contract hereunder, including a dispute concerning rectification or frustration of the Terms and Conditions and/or any contract hereunder, must be referred to arbitration by a notice in writing by either party to the other party requiring that the dispute be referred to arbitration within thirty (30) days of the dispute arising.
- 24.2. Unless the parties agree upon an arbitrator, either party may request the President of the Institute of Engineers, Australia to nominate an arbitrator. The request must state that the arbitrator not be an employee of the Company or the Seller, a person who has been connected with this Contract, or a person in respect of whom there has been a failure to agree by the Company and the Seller.
- 25. Third Parties.**
- Nothing in the Contract confers or purports to confer on any third party any benefit or rights to enforce any term of the Contract.