

## STANDARD TERMS AND CONDITIONS FOR PURCHASE ORDERS

The following terms and conditions of purchase (**Terms**) shall apply to and form part of any Purchase Order or contract for the supply of Goods and/or Services to Territory Trade Services Pty Ltd (**TTS**) by another party the Supplier (**Supplier**).

### 1. Purchase Order

- 1.1. This Purchase Order by **TTS** shall be deemed to be an offer to the **Supplier** to enter into a contract upon the Terms contained herein. The offer set out in this Purchase Order will be taken to be accepted by the **Supplier** accepting this Purchase Order in writing or by delivering the Goods and/or Services, whichever is the first to occur.
- 1.2. Subject to clauses 1.3 and 1.4:
  - (a). this Purchase Order is not capable of acceptance on any other terms;
  - (b). the Terms, together with the Purchase Order, constitute the entire agreement between the parties in respect of the supply of Goods and/or Services; and
  - (c). the parties agree that the Terms shall supersede and replace any other term, condition, agreement, contract, arrangement, understanding, negotiation and correspondence between the parties in respect of the supply of the Goods and/or Services.
- 1.3. **TTS** may include additional terms into this Purchase Order by providing a written copy of them to the **Supplier**. Upon acceptance of this Purchase Order in accordance with clauses 1.1 and 1.2, such additional terms form part of the Purchase Order.
- 1.4. These Terms may only be modified or varied by writing signed on behalf of **TTS**.

### 2. Supply of Goods & Services

- 2.1. The **Supplier** must supply the Goods and/or Services set out in this Purchase Order:
  - (a). to the reasonable satisfaction of **TTS**;
  - (b). in accordance with relevant standards of the Standards Association of Australia, the specifications and the law; and
  - (c). at the reasonable times directed by **TTS**.
- 2.2. If the **Supplier** discovers any inconsistency, ambiguity or discrepancy in or between the Purchase Order or quote and the specifications relevant to the Goods and/or Services, the **Supplier** must immediately notify **TTS** and seek direction as to how the inconsistency, ambiguity or discrepancy is to be resolved.
- 2.3. The **Supplier** warrants that:
  - (a). any Goods will be fit for the purpose for which goods of the same kind are commonly supplied and for any other purpose made known to the **Supplier**, must meet the safety performance requirements of the intended purpose and will be suitable, new and free of defects;
  - (b). any Services will be carried out in a proper and skilful manner and must be performed by appropriately qualified and trained personnel and must be fit for the purpose for which those type of services are commonly bought and for any other purposes made known to the **Supplier**;
  - (c). it holds all licences required to supply the Goods and/or Services; and
  - (d). the provision of any Goods and/or Services by it will not infringe the rights including without limitation intellectual property rights of any third party.
- 2.4. The **Supplier** must provide to **TTS** at **TTS**' request:
  - (a). copies of all technical materials relating to the Goods and/or Services;
  - (b). a detailed program for the projected supply of the Goods and/or Services.
- 2.5. **TTS** has the right to cancel the Purchase Order (or any part thereof) if in its sole opinion the Goods and/or Services supplied do not comply with any of the requirements set out in this Purchase Order or are otherwise unsatisfactory, or the **Supplier** breaches any of these Terms. **TTS** shall not be liable for any loss, damage, cost or expense howsoever arising from such a cancellation.

### 3. Packaging

- 3.1. The **Supplier** shall suitably pack or otherwise prepare for shipment all Goods. No charge shall be made for wrapping, packaging, cartons, crating, boxing or the like, unless expressly provided in this Purchase Order. No charge shall be

made for any transport or handling costs whatsoever, including, without limiting the generality of the foregoing, any charges for freight, carriage or shipping, unless expressly provided for in this Purchase Order.

- 3.2. The **Supplier** shall, at its own expense, comply with all applicable Australian and international laws, regulations, standards and other applicable requirements relating to the packaging, storage, handling and use of the Goods.
- 3.3. All hazardous Goods must be clearly marked by the **Supplier** as hazardous in accordance with international danger symbols, must display the name of the material and be accompanied by applicable Materials Safety Data Sheets.
- 3.4. The **Supplier** shall, at its own expense, be responsible for preparing and providing all necessary approval documentation, packing declarations and any fumigation treatments prior to delivery of the Goods.

#### 4. Insurance

- 4.1. The **Supplier** must take out on or before the date of the acceptance of the Purchase Order, and maintain until 2 years after the completion of the Services, the following:
  - (a). product and public liability insurance to an amount not less than \$10,000,000 for each occurrence;
  - (b). if the supply is a professional or advice service, professional indemnity insurance to an amount not less than \$10,000,000;
  - (c). comprehensive motor vehicle insurance for all vehicles used to provide the Goods and/or Services;
  - (d). workers compensation or any like insurance as required by law.
- 4.2. Upon request by **TTS**, the **Supplier** must produce evidence of the existence and currency of any insurances.
- 4.3. If the **Supplier** fails to provide proof of insurance to the satisfaction of **TTS** within 7 days of a request by **TTS**, **TTS** may in its absolute discretion take out and maintain any insurance the **Supplier** is required to maintain under these Terms. Any amount paid by **TTS** in respect of the insurance will be a debt due by the **Supplier** to **TTS** and may be set-off by **TTS** against any amount due to the **Supplier** by **TTS**.

#### 5. Price

- 5.1. **TTS** will pay the **Supplier** the price specified in the Purchase Order or quote, which may not be varied without the prior written consent of **TTS**.
- 5.2. Unless agreed otherwise, the price is inclusive of:
  - (a). all charges for packing, packaging, insurance and delivery of the Goods in accordance with this Purchase Order;
  - (b). the cost of the Goods and/or Services;
  - (c). all Taxes including GST.
- 5.3. The price may not be increased, without **TTS**' prior written consent.

#### 6. Invoicing, Payment & GST

- 6.1. Unless otherwise agreed, **TTS** will pay the **Supplier** within 30 days from the end of the month in which the **Supplier**'s valid tax invoice is received by **TTS** or the **Supplier** has delivered the Goods and/or Services, whichever is the later, except where:
  - (a). **TTS** retains part of the price as provided in these Terms; or
  - (b). **TTS** disputes the invoice, in which case the undisputed part of the relevant invoice (if any) will be paid and the remainder will be paid upon resolution of the dispute.
- 6.2. **TTS** may reduce any payment due to the **Supplier** under these Terms by any amount for which the **Supplier** is liable to it, including costs, charges, damages and expenses. This does not limit **TTS**' right to recover those amounts in other ways.
- 6.3. Where progress payments are to be made, the **Supplier** must invoice **TTS** on the last business day of each calendar month (or other period specified in the Purchase Order) for Goods delivered and/or Services performed by the **Supplier** in that month or that period (as the case may be).
- 6.4. **TTS** has the right to withhold any payment of money due to the **Supplier** under the Purchase Order until such time as the Goods and/or Services comply with the Purchase Order.
- 6.5. All invoices must include all relevant records to enable **TTS** to confirm the amount of the invoice, together with the number of this Purchase Order.
- 6.6. If GST is imposed on any supply made by the **Supplier** under or in connection with this Purchase Order, the **Supplier** may recover from **TTS**, in addition to the Price, an amount equal to the GST payable in respect of that supply.
- 6.7. Where a party to this Purchase Order (the "**Supplier**") makes a Taxable Supply under or in connection with this Order or in connection with any matter or thing occurring under this Order to **TTS** and the price payable for the Taxable

Supply does not include GST, the **Supplier** will be entitled to recover from the **TTS** the amount of any GST payable on the Taxable Supply at the same time and subject to the same conditions as the price.

- 6.8. Where a party is entitled, under or in connection with this Purchase Order or in connection with any matter or thing occurring under this Purchase Order, to recover all or a proportion of its costs or is entitled to be compensated for all or a proportion of its costs, the amount of the recovery or compensation shall be reduced by the amount of (or the same proportion of the amount of) and Input Tax Credits available in respect of those costs.
- 6.9. A party will not be obliged to pay any amount in respect of GST to the other party unless and until a valid tax invoice (being an invoice that complies with the GST Legislation) has been issued in respect of that Taxable Supply.
- 6.10. If the amount paid by **TTS** to the **Supplier** in respect of GST differs from the GST on the Taxable Supply (taking into account any Adjustment Events that occur in relation to the Taxable Supply), an adjustment shall be made. If the amount paid by the **TTS** exceeds the GST on the Taxable Supply, the **Supplier** shall refund the excess to **TTS**. If the amount paid by **TTS** is less than the GST on the Taxable Supply, the **TTS** shall pay the deficiency to the **Supplier**.
- 6.11. In this Clause 6, "Adjustment Event", "GST", "Input Tax Credit" and "Taxable Supply" have the meaning given to them in the GST Legislation.

## 7. Title, Risk and Delivery

- 7.1. Title of any Goods or part thereof passes to **TTS** when **TTS** pays for that part or whole of the Goods.
- 7.2. The **Supplier** warrants that:
  - (a). it has complete ownership of the Goods free of any liens, charges and encumbrances and will provide the Goods to **TTS** on that basis; and
  - (b). **TTS** will be entitled to clear, complete and quiet possession of the Goods.
- 7.3. Risk in any goods does not pass to **TTS** until the **Supplier** has delivered the Goods at the place specified in the Purchase Order (or as otherwise agreed) and **TTS** has accepted the Goods.
- 7.4. Time is of the essence. If the Goods and/or Services are not delivered or provided by the **Supplier** by the date and at the place specified in the Purchase Order or as otherwise agreed between the parties, **TTS** shall be entitled to cancel the Purchase Order (or part thereof) in accordance with clause 2.5.
- 7.5. Any excess transportation costs incurred in ensuring timely delivery will be at the **Supplier's** expense.
- 7.6. The **Supplier** is responsible for ensuring that the Goods are properly marked, packed and delivered, by the Delivery Date(s) and to the point of delivery, in compliance with government regulations. All deliveries must be accompanied by a delivery docket quoting the Purchase Order number.
- 7.7. **TTS** may return any Goods delivered greater than that specified in the Purchase Order to the **Supplier** at the **Supplier's** sole risk and expense. The **Supplier** must collect any excess quantities of the Goods from **TTS** as soon as possible after receiving written notification.

## 8. Confidentiality and Intellectual Property

- 8.1. In the event that the **Supplier** or its Personnel receive Confidential Information, the **Supplier** shall not, and the **Supplier** will ensure that its Personnel do not, use or disclose such information unless with the prior written consent of **TTS**, such information is already in the public domain (other than as a result of a breach of this condition), or disclosure is required by law.
- 8.2. The **Supplier** agrees that:
  - (a). **TTS** is the owner of all intellectual property rights in any plans, designs, specifications, data, reports, accounts or any material provided by **TTS** to the **Supplier** and that **TTS** retains all right title and interest in those materials;
  - (b). Any intellectual property rights created by the **Supplier** in connection with the Goods and/or Services vests in **TTS** upon its creation and the **Supplier** waives, and will procure the waiver by the **Supplier's** Personnel for any moral rights the **Supplier** or they may have in respect of that intellectual property;
  - (c). It grants, and will ensure that its Personnel grant, to **TTS** a non-exclusive, perpetual, transferable sublicense to use, adapt, and modify for any purpose any intellectual property owned by or licence to the **Supplier** that is embodied in or connected with the Goods and/or Services, and the **Supplier** warrants that the exercise of the licence will not infringe the rights (including intellectual property and moral rights) of a third party.
- 8.3. **TTS** grants the **Supplier** a non-exclusive licence to use or reproduce its materials for the term of this Purchase Order for the sole purpose of performing its obligations under that Purchase Order (Purpose). The **Supplier** must not use or reproduce such materials in whole or in part, other than for the Purpose.
- 8.4. These obligations survive termination of the Purchase Order.

## 9. Performance on Site

- 9.1. In carrying out the Services, the **Supplier** or its Personnel must at a minimum comply with all OHS laws and any of **TTS'** OHS requirements that are relevant to the supply. Non-compliance with OHS laws and **TTS'** OHS requirements shall entitle **TTS** to immediately cancel this Purchase Order and to require the **Supplier** or its Personnel to immediately cease all work and vacate the Site.

## 10. Extension of Time

- 10.1. If the **Supplier** will be delayed in supplying the Goods and/or performing the Services the **Supplier** must give **TTS** the earliest possible notice in writing stating:
- (a) the cause of the delay; and
  - (b) the effect on the completion of the Services and/or the delivery of the Goods (as the case may be).
- 10.2. The giving of any notice by the **Supplier** does not affect the **Supplier's** obligation to deliver the Goods and/or complete the Services by the Delivery Date and **TTS** reserves all rights, remedies and powers under the contract formed in relation to the Purchase Order and under the law in relation to any breach by **Supplier** of the Delivery Date.
- 10.3. **TTS** may, at any time, and for any reason whatever, by notice in writing to the **Supplier** extend the Delivery Date.

## 11. Acceptance of the Goods and Services

- 11.1. **TTS** is entitled to a reasonable period of time after the Delivery Date to inspect the Goods and/or Services, and to notify the **Supplier** in writing of any Defective Goods or Services.
- 11.2. Payment for the Goods and any Services or the signing of delivery receipts before inspection does not constitute acceptance of the Goods or the Services.
- 11.3. If **TTS** deems any Goods to be Defective goods, **TTS** may, at its option:
- (a) reject the Defective Goods; or
  - (b) make good the Defective Goods.
- 11.4. The **Supplier** must collect any Defective Goods, at cost to the **Supplier**, as soon as possible after receiving **TTS'** written notification.
- 11.5. If upon inspection or testing **TTS** finds any Services to be Defective Services, **TTS** may, at its option:
- (a) reject the Defective Services; or
  - (b) make good the Defective Services.
- 11.6. At **TTS'** option and request, the **Supplier** agrees to:
- (a) refund to **TTS** any payments made by **TTS** in respect of any Defective Goods and any Defective Services; or
  - (b) make good free of charge any Defective Goods and any Defective Services; or
  - (c) reimburse **TTS** for any expenses **TTS** incurs in making good any Defective Goods and any Defective Services.

## 12. Termination of the Purchase Order

- 12.1. **TTS** may immediately terminate the contract formed in relation to the Purchase Order by notice in writing to the **Supplier** if the **Supplier**:
- (a) does not comply with or is in breach of any of its obligations under the Purchase Order or these Terms and such non-compliance or breach, if capable of being remedied, is not remedied within 14 days after **TTS** requests remedy of the breach; or
  - (b) becomes insolvent or has an administrator or liquidator appointed. Such termination does not limit **TTS'** right to recover loss and damage from the **Supplier** for a breach or default of this Purchase Order resulting in termination.
- 12.2. If the Purchase Order is terminated by **TTS** then it is only liable for the cost of all accepted Goods delivered to site and/or all accepted Services actually rendered up to the date of termination.

## 13. Variation of the Purchase Order

- 13.1. **TTS** may vary the Purchase Order or part of the Purchase Order at any time upon 7 days' written notice.
- 13.2. Upon receipt of a notice of variation the **Supplier** must vary the Purchase Order in accordance with **TTS'** notice and send notification of a reasonable adjustment to the price for the Purchase Order within 14 days of the effective date of variation.
- 13.3. **TTS** has the right to accept or reject the reasonable price adjustment if **TTS** is satisfied that the adjusted Price specified is reasonable and equitable and the termination or variation of the Purchase Order is not a result of any default, act or omission on the part of the **Supplier**.

## 14. Independent contractor

- 14.1. Both parties acknowledge that the **Supplier** is an independent contractor and is not **TTS**' employee or agent.
- 14.2. The **Supplier** is responsible for the payment of any taxes, duties or tariffs relating to the Goods and/or Services, any insurance relating to liability for death of or injury to persons employed by the **Supplier**, superannuation and all other entitlements which, if the **Supplier** were **TTS**' employee, **TTS** would be obliged to make.
- 14.3. The **Supplier** is responsible for managing and is liable for any costs associated with any industrial issues or disputes arising in the provision of the Goods and/or Services under this Purchase Order. The **Supplier** must inform **TTS** of any industrial issues or disputes of the **Supplier** that may affect **TTS**.

## 15. Liability and Indemnities

The **Supplier** assumes all risks and liabilities and shall indemnify and keep indemnified **TTS** and its Personnel against any claim, action, loss, damage, injury, expense and other liability of any kind whatsoever, whether consequential or otherwise resulting from, arising out of or in connection with any act, default, breach (including but not limited to a breach of any of the Terms or a breach of a statutory duty), negligence or any tort by the **Supplier** or its Personnel and against any claim by a third party alleging infringement or any intellectual or industrial property rights, but such liability will be reduced proportionally to the extent contributed to by **TTS**.

## 16. Governing Law

This Purchase Order is governed by the laws of the Australian state or territory in which the **TTS** entity issuing the Purchase Order is based and both parties agree to submit to the non-exclusive jurisdiction of the courts in that state or territory.

## 17. General

- 17.1. The **Supplier** shall not assign any of its rights or obligations under this Purchase Order.
- 17.2. Any provision of these Terms or Purchase Order that is or becomes illegal, invalid, void or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions or affecting the validity or enforceability of that provision in any other jurisdiction.
- 17.3. **TTS**' failure or delay to exercise any right or remedy provided for in the Purchase Order shall not operate as a waiver of that power or right, nor does **TTS**' single exercise of a right or remedy preclude any other exercise of it or the exercise of any other right or remedy. A right or remedy may only be waived by **TTS** in writing.
- 17.4. If the **Supplier** comprises more than one person or entity, these Terms apply to the **Supplier** jointly and severally.
- 17.5. These terms are not to be interpreted against **TTS** merely because they were prepared by **TTS**.

## 18. Definitions

In the Purchase Order unless the contrary intention appears:

**TTS** means the **TTS** entity named on the Purchase Order, being one of Territory Trade Services Pty Ltd ABN 72 143 231 994; TTS Built; Territory Sheds and Verandahs.

**Confidential Information** means information in any form or media directly or indirectly given to a party during the course of business relations, whether before, on or after the date of this Purchase Order. Confidential Information includes information concerning a party's or any related entity's business activities, strategies, plans and assets, products and their specifications, the method of production or manufacture, the type and status of major items of plant and equipment used in relevant production facilities, the markets in which products are sold and methods of distribution, a party's intellectual property rights, financial affairs, technologies, source and object codes and computer records, clients, customers, **Suppliers**, distributors and their financial affairs and agreements with them and any other information that:

- (a). is, by its nature, confidential or non-public;
- (b). is marked or designated or confirmed by a party as confidential or proprietary at the time of its disclosure; or
- (c). a party knows or ought to know is confidential, but excludes information that is:
- (d). in or enters the public domain through no fault of either party;
- (e). or was made available to a party by a person (other than the other party) who, as far as that party knows, has or then had the unrestricted legal right to do so;
- (f). or was developed by a party without that party relying on, referring to, or incorporating any of the other party's Confidential Information.

**Defective Goods** means Goods which are not in conformity with the Purchase Order or are defective in design, performance, workmanship or makeup.

**Defective Services** means Services or the results of any Services which are not in conformity with the Purchase Order, are of inferior quality or workmanship or are otherwise unsatisfactory.

**Delivery Date** means the date specified for delivery of the Goods or completion of the Services as set out in the Purchase Order.

**Goods** means the goods specified in the Purchase Order (including any part of the Goods specified).

**GST Legislation** means A New Tax System (Goods and Services Tax) Act 1999 (Cth) any related act or regulation imposing such tax or legislation that is enacted to validate, recapture or recoup such tax. OHS Laws includes but is not limited to all statutes, regulations, international standards, Australian Standards and industry codes of practice.

**Personnel** means a party's servants, agents, independent contractors or sub-contractors.

**Purchase Order** means the agreement between the Parties consisting of the Purchase Order to which these Standard Terms and Conditions apply, and all documents referred to in the Purchase Order as applicable to the Purchase Order.

**Services** means the services specified in the Purchase Order (including any part of the specified services and the results of the specified services).

**Site** means the place at which the Goods or Services are supplied to by the **Supplier**.

**Taxes** means any and all present and future sales, use, personal, property, real property, value added, goods and services, GST, turnover, stamp, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges or any nature whatsoever or whensoever imposed (other than taxes on our net income) by any government, governmental or other relevant authority, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed or otherwise payable.