

WAGNER INVESTMENTS PTY LTD (ABN 66 011 055 271) - CONDITIONS OF PURCHASE

1. CONDITIONS OF PURCHASE

1.1 These Conditions of Purchase and the Purchase Order represent the entire agreement between the parties for the purchase of Goods and/or Services specified on the face of the Purchase Order and the parties, by the Supplier accepting a Purchase Order, are bound by these Conditions of Purchase.

1.2 These Conditions of Purchase apply to the exclusion of all prior agreements, discussions, proposals, tenders, communications or representations (contractual or otherwise), whether or not endorsed or delivered with or referred to in any order or other documents delivered by the Supplier to Wagners.

1.3 In the event of any inconsistency between these Conditions of Purchase and any specific conditions stated on a Purchase Order, the terms and conditions of these Conditions of Purchase will prevail.

2. WARRANTIES

2.1 The Supplier warrants that the Goods and/or Services supplied will:

- (a) be free from all liens, charges and encumbrances of any kind, including any security interest registered in accordance with the *Personal Property Securities Act 2009* (Cth);
- (b) be of acceptable quality and fit for the express or implied purpose for which they are supplied;
- (c) be free from defects in design, material and workmanship;
- (d) comply with all relevant specifications and quality requirements notified by Wagners, and all statutory or regulatory requirements;
- (e) where supplied by reference to a sample, correspond to that sample;
- (f) where used by any person, not infringe the Intellectual Property rights of any third party; and
- (g) be carried out and completed by suitably qualified and experienced personnel; and
- (h) be carried out with due care and skill and in accordance with good industry practice.

2.2 The Supplier will comply with all applicable laws, statutes and regulations governing the provision of Goods and/or Services including all workplace, health and safety requirements. The Supplier will further

comply with Wagners' health and safety rules, regulations and all reasonable safety-related instructions given by Wagners.

2.3 The warranty period for the Goods and/or Services will be specified in a Purchase Order. However, if there is no warranty period specified on the Purchase Order the warranty period will be 12 months from Delivery by the Supplier and acceptance by Wagners of the Goods and/or Services.

3. DELIVERY

3.1 The Supplier:

- (a) must Deliver the Goods and/or Services to the Delivery Place on the Delivery Date;
- (b) is (unless the Parties agree otherwise in writing) responsible for unloading the Goods and/or Services at the Delivery Place;
- (c) must ensure that Delivery is performed so that:
 - (i) the property of Wagners and other parties is not damaged;
 - (ii) it is undertaken in accordance with all laws and good industry practice; and
 - (iii) it is performed in accordance with all work, health and safety requirements and all procedures notified by Wagners.

3.2 Delivery occurs:

- (a) if the Supplier is responsible for unloading (as identified in the Purchase Order), when unloading is complete in accordance with Wagners' reasonable instructions at the Delivery Place; or
- (b) if Wagners is responsible for unloading, when the Supplier arrives at the Delivery Place on the Delivery Date.

3.3 If, on Delivery, Wagners or any third party on behalf of Wagners:

- (a) signs a delivery docket or other document required by the Supplier; or
- (b) inspects the Goods and/or Services,

Wagners will not be taken to have accepted the Goods and/or Services and any delivery docket or inspection will only be taken to be an acknowledgement of Delivery and have no other meaning.

In delivering any Goods to, or performing any Services at the Site, the Supplier and its Personnel acknowledge that:

- (a) they will attend any inductions that Wagners requires prior to entry to Site or before using any plant or equipment at the Site;
- (b) they will use best endeavours not to interfere with or disrupt the usual business operations of any occupant of the Site or any surrounding areas of the Site; and
- (c) entry to the Site is at the Supplier's own risk and Wagners is not liable for any loss or damage suffered by the Supplier or its Personnel while on Site.

4. ACCEPTANCE AND TESTING

4.1 Wagners has the right to inspect, examine and test all or part of the Goods and/or Services at any stage of engineering, manufacturing, installation or supply. Such inspection, examination or testing does not relieve the Supplier of its liability for any of its obligations under these Conditions of Purchase, nor will it affect Wagners right to subsequently reject the Goods and/or Services.

4.2 At any time after delivery of the Goods and/or Services, Wagners may carry out any reasonable acceptance tests on the Goods and/or Services (in whole or part). Upon satisfactory completion of the acceptance tests, the Goods and/or Services will be deemed to be accepted. If any of the Goods and/or Services fail any acceptance test, the Supplier must, at its cost, immediately remedy any defect, fault or problem and may be required to assist Wagners with testing (and re-testing) as and when requested.

5. DEFECTS

5.1 If Wagners discovers that the Goods and/or Services do not comply with any warranty given under clause 2, or are otherwise defective or unacceptable to Wagners, Wagners may (at its option):

- (a) have the defect(s) rectified and the cost to Wagners of doing so will be a debt due from the Supplier to Wagners;
- (b) request the Supplier to rectify any defect(s) at the Supplier's expense;
- (c) request the Supplier to replace the Goods and/or Services at the Supplier's expense; or

(d) reject the Goods and/or Services, in which case the Supplier must arrange to collect the Goods and/or Services immediately at the Supplier's expense.

5.2 If the Goods and/or Services are required to be repaired or replaced by the Supplier then the warranty period on the Goods and/or Services is extended for a time equal to the time taken by the Supplier to repair or replace the Goods and/or Services.

6. TITLE AND RISK

Unencumbered title and risk to the Goods and/or Services passes to Wagners upon the earlier to occur of payment for the Goods and/or Services or Delivery of the Goods and/or Services.

7. LIABILITY AND INDEMNITY

7.1 The Supplier indemnifies Wagners, its officers, employees and agents from and against all actions, claims, demands, damages, losses, costs, injury and expenses which may be brought or made against or suffered or incurred by Wagners in respect of, by reason of or arising out of:

- (a) any negligence, act or omission or breach of these Conditions of Purchase or the Purchase Order by the Supplier, its officers, employees or agents; and
- (b) the presence of the Supplier's officers, employees or agents upon or about any Wagners site and the Supplier indemnifies Wagners from and against all liability for their injury or death whilst carrying out their duties for the Supplier and for all loss or damage to their personal effects.

7.2 Notwithstanding any provision of the Conditions of Purchase, no party will be liable to the other for any Consequential Loss arising out of or in connection with the Conditions of Purchase or the Purchase Order.

7.3 Nothing in these Conditions of Purchase excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited.

8. INSURANCE

The Supplier agrees to effect and maintain the following insurance policies:

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- (a) public and product liability insurance for an amount of at least \$20 million including cover for damage to property arising from the supply of the Goods and/or Services;
- (b) motor vehicle insurance which covers damage to property (including third party property damage) in relation to motor vehicles operated by the Supplier while on Site, in respect of any one occurrence, not less than \$5 million, and a compulsory third party insurance policy in relation to vehicles owned or operated by the Supplier as required by Law;
- (c) workers compensation insurance as required by law; and
- (d) if required under the Purchase Order, professional indemnity insurance for an amount of at least \$2 million with respect to any applicable design or services performed by the Supplier.
- 9. INTELLECTUAL PROPERTY RIGHTS**
- 9.1** Unless stated in the Purchase Order, all Intellectual Property produced in the performance of these Conditions of Purchase (including the Purchase Order) will vest in Wagners upon creation.
- 9.2** The Supplier indemnifies Wagners and its related entities against all third party actions, claims, demands, costs (including legal costs), damages and expenses arising from or incurred by reason of any infringement or alleged infringement of Intellectual Property by Wagners arising from the use or sale or intended use or sale of the Goods and/or Services.
- 10. TERMS OF PAYMENT**
- (a) Payment will be made by Wagners to the Supplier within 30 days from the end of the calendar month in which a valid tax invoice is received by Wagners.
- (b) Unless otherwise stated in the Purchase Order, the prices are exclusive of GST. A party must pay GST on a taxable supply made to it under these Conditions of Purchase. The party making the taxable supply must provide a valid tax invoice to the other party at or before the time that the other party is required to pay the GST.
- 11. DEFAULT AND TERMINATION**
- 11.1** Wagners may cancel and refuse to pay for a Purchase Order in full or in part if any term of these Conditions of Purchase is not complied with by the Supplier.
- 11.2** Either party may immediately terminate these Conditions of Purchase and the Purchase Order if the other party suffers an Insolvency Event.
- 12. SUB-CONTRACTING AND ASSIGNMENT**
- The Supplier must not assign its rights or obligations under these Conditions of Purchase or the Purchase Order without the prior written consent of Wagners (which will not be unreasonably withheld).
- 13. APPLICABLE LAW**
- These Conditions of Purchase and the Purchase Order shall be governed by, subject to and construed in accordance with the laws of Queensland. The parties submit to the exclusive jurisdiction of the courts of Queensland and courts competent to hear appeals from those courts.
- 14. DISPUTE RESOLUTION**
- 14.1** The parties must refer any dispute for resolution to a senior representative nominated by Wagners and a senior representative nominated by the Supplier, who will endeavour to resolve the dispute within 14 days.
- 14.2** If the senior executives of the parties cannot resolve a dispute within 14 days of its referral to them, then the parties may agree to proceed by external dispute resolution mechanisms. If the parties do not reach a resolution within 14 days of their meeting to endeavour to resolve the dispute, either party is at liberty to commence proceedings with respect to the dispute. However, if they do agree then the parties must complete the agreed dispute resolution mechanism and may only commence proceedings if that is unsuccessful.
- 14.3** Despite the provisions of this clause, either party may commence court proceedings at any time where a party seeks urgent interlocutory relief.
- 15. GENERAL**
- 15.1** The failure or omission of a party at any time to enforce the strict compliance with any of these Conditions of Purchase is not a waiver of the rights of a party. Any waivers granted by a party must be in writing.
- 15.2** Any amendments to these Conditions of Purchase which are not in writing and agreed to by the parties are not binding on the parties.
- 15.3** An indemnity given under these Conditions of Purchase is a continuing obligation, separate and independent from the other obligations of a party under these Conditions of Purchase.
- 15.4** The covenants, conditions, provisions and warranties contained in these Conditions of Purchase do not merge or terminate upon completion of the supply of the Goods and/or Services and remain in full force and effect to the extent they have not been fulfilled and satisfied or are capable of having effect.
- 16. DEFINITIONS AND INTERPRETATION**
- 16.1 Definitions**
- (a) "Consequential Loss" means loss of opportunity, loss of revenue, loss of profit, loss of contracts with third parties, loss of production, increase in operating cost, loss of goodwill, loss arising from business interruption or any other loss which is also consequential or indirect loss.
- (b) "Delivery" means leaving the Goods in the possession of the Wagners in accordance with clause 3.2 or the Supplier has completed performance of the Services to satisfaction of Wagners.
- (c) "Delivery Date" means the date and time stated on the Purchase Order.
- (d) "Delivery Place" means the location stated on the Purchase Order, as may be amended by Wagners.
- (e) "Goods and/or Services" means all goods, products and services stated in any Purchase Order.
- (f) "Insolvency Event" means:
- (i) the party is insolvent or is financially unable to proceed with its obligations under the Terms of Purchase or the Purchase Order;
- (ii) execution is levied against the party by a creditor;
- (iii) the party is a corporation and
- A. notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
- B. it enters a deed of company arrangement with creditors;
- C. a controller, administrator, or liquidator is appointed;
- D. an application is made to a court for its winding up and not stayed within 14 days;
- E. a winding up order is made in respect of the corporation; or
- F. it resolves by special resolution that it be wound up voluntarily.
- (g) "Intellectual Property" means all copyright, patents, registered and unregistered trademarks, registered and unregistered designs, trade secrets and know-how and other similar proprietary rights and all other intellectual property rights conferred under statute or common law, international law, treaty or law.
- (h) "Personnel" means officers, partners, employees, agents, consultants, contractors, suppliers or servants of the Supplier.
- (i) "Purchase Order" means the purchase order to which these Conditions of Purchase apply.
- (j) "Site" means any premises to which the Supplier delivers the goods as instructed by Wagners in accordance with the Purchase Order.
- (k) "Wagners" means Wagner Investments Pty Ltd ABN 66 011 055 271.
- (l) "Supplier" means the Supplier stated on the Purchase Order.