

STANDARD TERMS AND CONDITIONS OF PURCHASE



The entities of Saunders International Ltd (ACN 050 287 431) & Saunders Asset Services Pty Limited (ACN 610 760 426) stated in Saunders International Ltd & Saunders Asset Services Purchase Order ('Saunders') hereby agrees to purchase goods ('Goods') and/or services to be carried out and performed by the Supplier ('Services') herein after referred to as ('the Works') and as more particularly described in Saunders Purchase Order ('Purchase Order'), from the person, firm or company ('the Supplier') named in the Purchase Order, subject to the following terms and conditions:

1. Contract

1.1 These Standard Terms and Conditions of Purchase ('Conditions') become valid and binding on the parties, when a Purchase Order from Saunders containing details of the Supplier and the Works to be provided is accepted by the Supplier, in response to an offer made by the Supplier.

1.2 If the Supplier fails to acknowledge the Purchase Order in accordance with clause 1.1 of these Conditions within 10 days from receipt and proceeds with the Works, then these Conditions, the Purchase Order and all documents which are either attached to the Purchase Order or incorporated therein by reference by Saunders shall be deemed the entire agreement between the parties ('Contract').

2. Price, Payment and GST

2.1 The price shown on the Purchase Order is in Australian Dollars (unless otherwise stated) and is the agreed price for the whole of the Works offered, inclusive of testing, packing, documenting, and freight to Saunders's nominated place of Delivery ('Point of Delivery'). The price is inclusive of GST and all other taxes and charges whatsoever and howsoever incurred (unless otherwise stated).

2.2 The price cannot be varied unless agreed by the parties in writing.

2.3 To the extent that the rates of variations are specified, they shall be used by the Supplier to calculate the cost of the variation, but otherwise the cost of the variation shall be estimated by the Supplier at the lowest reasonable cost.

2.4 The Supplier shall invoice Saunders at the end of each of the month for the Works duly completed. Invoices received earlier than the end of the month, will be deemed as received at the end of the month. Saunders will (subject to the Works having been satisfactorily received, or completed and accepted by Saunders) pay the amount properly invoiced by the Supplier (except to the extent that the invoice is in dispute). The amount payable by Saunders will be paid 45 days from the month end in which the Supplier's tax invoice is received by Saunders.

2.5 Saunders may deduct from such amount due and payable by Saunders pursuant to this Contract, any amounts payable by the Supplier to Saunders on any account whatsoever.

3. Packaging

The Supplier, at its cost, shall properly and carefully pack and protect Goods in accordance with best practices having regard to methods of carriage, handling and to climatic conditions to the Point of Delivery. The Supplier will provide all lifting and handling of Goods in transit.

4. Delivery

4.1 Time is of the essence as to the Supplier's performance under this Contract, and the delivery time to the Point of Delivery and/or date for completion of the Services, must be achieved unless an extension of time has been agreed to in writing by Saunders.

4.2 Saunders may, from time to time, direct a change to the time and/or date for completion of the Services, or the Point of Delivery and any direction must consider due allowance for the Work to be performed by the Supplier by the date for supply. Unless expressly stated in writing, such a direction will not constitute a variation.

4.3 The Supplier agrees and acknowledges that Saunders may claim general law damages from the Supplier for late delivery.

5. Sub-Contract

5.1 The Supplier may not subcontract, assign or transfer any of its rights or obligations under this Contract without the prior consent of Saunders, which consent may be conditional or withheld by Saunders in its absolute discretion.

5.2 The Supplier must manage the performance of its subcontractor(s) to ensure that the quality and timeliness of its performance meets the requirements of this Contract.

5.3 The Supplier must ensure that its subcontractor(s) effect and maintain all relevant insurances on no less stringent terms than clause 11 of these Conditions.

5.4 The Supplier must ensure that its subcontractor(s) obtains and assigns to Saunders all the usual customary trade warranties or has the ability to assign the benefit of such warranties to Saunders upon completion of the Works.

5.5 If a subcontractor defaults in or repudiates a subcontract with the Supplier, the Supplier must immediately give notice to Saunders upon becoming aware of such default or repudiation. The Supplier must, if so directed by Saunders, terminate the subcontract and remedy any defects and complete the balance of the work the subject of the terminated subcontract.

6. Warranty

The Supplier warrants that:

(a) it will exercise skill, care and diligence to the standard acceptable to the trade, industry or profession of a similar nature;

(b) it will perform the Works in a timely and professional manner using appropriately trained and experienced personnel;

(c) the Works will be fit for the purpose;

(d) the Supplier must comply with any law relating to safety of its workers and any other people, and any work health and safety procedures or directions issued by Saunders AND the Supplier is responsible for the safety related to and during the Works. The Supplier must protect the Works, people and property until the Works are accepted by Saunders;

(e) it will perform the Works in accordance with the Contract; and

(f) in respect of any Goods supplied:

i. the Goods will be fit for the purpose;

ii. it has ensured that Saunders and its client (if requested by Saunders) has been assigned all the usual and customary trade warranties and/or has the benefit of such warranties upon completion of the Works and that copies of such warranties will be supplied to Saunders with invoices for payment;

iii. the Goods are free of all liens and encumbrances and the Supplier has good and marketable title to the Goods;

iv. if any part of the Goods is found by Saunders to be defective and/or not in compliance with the Contract within the duration of the Contract including any warranty period shall be rectified, remedied or replaced to the satisfaction of Saunders at the cost of the Supplier.

7. Warranty Period and Rectification of Defective Works

7.1 Unless otherwise agreed in writing by Saunders, the Supplier warrants all Goods and workmanship against any defect for a period of 18 Months from the receipt of the Goods, 12 months from the completion of the Services or 12 months from the date in which the Goods were first put into service, whichever the later ('Warranty Period').

7.2 The Supplier must immediately repair or replace the Works which are damaged, defective or found not to be in accordance with the Contract during the Warranty Period.

7.3 The Supplier shall be responsible for all incurred costs associated with the repair or replacement of the Works, including transportation costs.

8. Confidentiality

8.1 The Supplier may not, and must ensure that its subcontractors do not, divulge to third parties for use any information relating to the Works (including Intellectual Property), until such information is within the public domain or express written consent has been given by Saunders.

8.2 The Supplier shall indemnify Saunders and keep Saunders indemnified from and against all liabilities, losses, damages, actions, suits, proceedings, claims, costs (including legal costs) and expenses arising from any breach of this clause 8 by the Supplier whatsoever.

9. Intellectual Property

9.1 The specifications, drawings, technical instructions or any other documentation whatsoever issued to the Supplier by Saunders during tendering and at the time of establishing this Contract will remain the property of Saunders.

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9.2 The Supplier hereby grants to Saunders a perpetual, irrevocable, non-exclusive, royalty free, transferable licence to use all Intellectual Property which is used or developed by the Supplier in connection with the Works under the Contract. For the purpose of this Contract, "Intellectual Property" means any intellectual property whether protected by statute, at common law or in equity, including any patent, invention, copyright, or design right (whether or not registrable), in any design, specification, process, technique, software, know-how, trade secret, technical information, financial information, business method and confidential information.

9.3 The Supplier warrants that:

- the Works and licence granted by it to Saunders do not infringe any intellectual property rights of any third party; and
- the Works are not subject to any intellectual property rights of any third party that in any way restrict rights of Saunders or its client's to use or sell the same.

10. Indemnity

The Supplier will indemnify Saunders and keep Saunders indemnified from and against all liabilities, losses, damages, actions, suits, proceedings, claims, costs and expenses in respect of:

- injury to (including illness or disability), or death, of any persons; and
- loss or destruction of or damage to or loss of use of any property, caused or contributed to by the act or omission of the Supplier or its directors, officers, employees, agents or contractors or by any breach of this Contract by the Supplier (including any breach of a warranty), except to the extent that it has been caused or contributed to by the wilful default or unlawful or negligent act or omission of Saunders.

11. Insurances

The Supplier shall effect and maintain insurances, at its cost, until completion of the Works or any extension thereof maintain the following insurances:

(a) Public and Products Liability Insurance

Insurance covering claims and liabilities in respect of injury to or death of any person or any loss, damage or destruction to any property (including that of Saunders or its personnel, agents or contractors) howsoever caused. The Supplier's Public Liability insurance must not be limited to less than \$10,000,000 for any one occurrence and shall be unlimited in respect of the number of occurrences. The Supplier's Product Liability insurance must not be limited to less than \$10,000,000 for any one occurrence and in the aggregate for any one policy year.

(b) Workers' Compensation/Employer's Liability Insurance

Worker's compensation and employer's liability insurance (including common law liability and a principal's indemnity extension for act benefits and common law (where available), which in respect of any one accident to any one employee shall not be limited in amount (where unlimited cover is available), or else for an amount of at least \$20 million) to cover employees of the Supplier involved with the provision of the Works, which complies with the laws for the time being in force in the State where the Works are performed.

(c) Supplier's Plant and Equipment

If the performance of the Works requires the Supplier to use or provide for use plant and equipment, the Supplier must maintain or require the owners of the plant and equipment to maintain insurance covering all loss of and damage to plant and equipment, for its replacement value. The insurance must, unless prohibited by law, waive all express and implied rights of subrogation against Saunders and note Saunders as a named insured.

(d) Goods in Transit Insurance

If the performance of the Works requires the Supplier to transport Goods to or from Saunders's premises, unless advised otherwise by Saunders, the Supplier will maintain insurance covering the loss of or damage to the Goods during transit, regardless of whether Saunders has paid for those Goods. Such insurance must note Saunders as a named insured under the policy.

(e) Motor Vehicle/Automobile Third Party Liability Insurance

Where the Supplier will bring motor vehicles, owned, operated or controlled by the Supplier, onto Saunders's premises, it must obtain comprehensive motor vehicle insurance with a third party liability limit

of no less than \$10,000,000 in respect of any one accident or series of accidents arising out of one event. This policy is to be endorsed to contain a comprehensive motor vehicle principal's indemnity extension.

(f) Professional Indemnity Insurance

Where the Supplier is required to carry out design work or provide advice or professional services to Saunders, the Supplier will effect and maintain at its cost, professional indemnity insurance for an amount of at least \$5,000,000.

12. Breach and Termination

12.1 Saunders may terminate the Contract by written notice to the Supplier:

- in its absolute discretion, giving the Supplier 14 days notice; or
- in the event the Supplier defaults on any of the terms of this Contract, for any reason (including insolvency), giving the Supplier 10 days notice.

12.2 In the event of termination due to default by the Supplier, Saunders can appoint another Supplier to complete the uncompleted portion of the Works at cost to the Supplier.

12.3 Termination of the Contract pursuant to this clause shall be without prejudice to the rights of Saunders.

13. Reporting

If required by Saunders, the Supplier must report progress of the supply to Saunders on a regular basis, and in any event not less than weekly during the course of the Contract.

14. Inspection

Saunders's nominated representative may inspect the Works from time to time during the progress of the Works, and on completion at the Point of Delivery, and will examine the documentation to ensure compliance to the specifications, drawings and technical instructions. Any technical or commercial questions or notices should be addressed to him and his written instructions in response to those questions or notices will become part of this Contract and should be accepted as lawful instructions for the execution of the Contract.

15. Access

Saunders's nominated representative shall be afforded free access during the progress of the Contract for the purpose of expediting or inspection of the Works.

16. Title and Risk

16.1 Property and Ownership of, any Goods supplied will pass to Saunders from the Supplier on the earlier of payment by Saunders for those Goods or receipt of the Goods at the Point of Delivery.

16.2 Risk in the Works passes to Saunders upon acceptance of the Goods at the Point of Delivery.

17. Dispute Resolution

17.1 If a difference or dispute between the parties arises in connection with the subject matter or interpretation of this Contract, including a Dispute concerning a claim in tort, under statute, or on any other basis in law or equity available under the law governing the contract ('Dispute'), either party may by hand or registered post give the other party written notice of dispute identifying and providing details of the Dispute and entitled Dispute Notice ('Dispute Notice').

17.2 Within seven (7) days of receipt of a Dispute Notice, representatives of the parties having authority to bind the parties shall confer to seek to resolve the Dispute or agree on a method of doing so and whether that method shall be binding. If a resolution or method of resolution has not been agreed within twenty one (21) days of the service of Dispute Notice, the General Manager of the parties shall confer for the same purpose as the parties' representatives. All aspects of such conference(s) shall be privileged.

17.3 Neither party may institute legal proceedings in respect of any Dispute unless a Dispute Notice in respect thereof has first been given and then only after a period of twenty eight (28) days from receipt of such Dispute Notice has elapsed.

18. General

18.1 Saunders's liability to the Supplier is limited to its liability to pay the Purchase Order price, as amended from time to time, in accordance with this Contract.

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- 18.2** If any provision of this Contract is unenforceable, such unenforceability shall not affect any other provision or any other part of the Contract.
- 18.3** Any waiver by Saunders of strict compliance with any provision of this Contract shall not be effective unless in writing and signed by an authorised officer of Saunders.
- 18.4** The Contract shall be governed by the law of New South Wales, Australia and the parties, unless agreed otherwise, submit all disputes arising between them to the Courts of New South Wales and any Court competent to hear appeals from the New South Wales Courts.
- 19. Personal Properties Security Act**
- 19.1** In this clause 19 words and expressions which are not defined in these Conditions but which have a defined meaning in the PPSA have the same meaning as in the PPSA.
- 19.2** The Supplier acknowledges that Saunders has a purchase money security interest in the Goods including, but not limited to, where Saunders has paid the Supplier (in whole or in part) for the Goods prior to delivery.
- 19.3** The Supplier acknowledges that if Saunders has rights and interest in proceeds derived from the Goods such rights and interests constitute a security interest in such proceeds.
- 19.4** Saunders may register any security interest on the PPSA register in any manner it chooses (including by registering one or more financing statements in relation to its interest in the Goods, with such expiry dates as Saunders determines in its absolute discretion). The Supplier must provide Saunders with any information it requires for the purposes of giving effect to such registration.
- 19.5** For the purposes of section 157(3) of the PPSA, the Supplier irrevocably and unco receive any notice from Saunders in connection with the registration of a financing statement or a financing change statement in respect of the Goods.
- 19.6** If section 95 or chapter 4 of the PPSA would otherwise apply to the enforcement of any security interests then those provisions are excluded, to the extent possible.
- 19.7** The Supplier must take any steps (including provide information) Saunders reasonably requires to perfect or otherwise ensure the enforceability and priority of any security interest.
- 19.8** Neither the Supplier nor Saunders will disclose information of the kind described in PPSA section 275(1), unless section 275(7) of the PPSA applies.
- 19.9** Until Saunders' security interest (whether perfected or not) is satisfied, the Supplier agrees security interest of higher priority to be created in the Goods. If the Supplier breaches this subclause, the Supplier shall indemnify Saunders for any cost, expense, loss or damage suffered.
- 20. Security – this clause shall only apply where the Purchase Order states that a Performance Security is applicable.**
- 20.1** Prior to the first payment, the Supplier must provide SAUNDERS with a security for the Contract Period equal to 10% of the Contract Price ("Security")
Prior to the final payment and before completion of the Works, the Supplier must provide Saunders with a security for the Warranty Period equal to 5% of the Contract Price ("Security")
- 20.2** The Supplier must provide the Security in the form of an unconditional, irrevocable, enforceable bankers undertaking in a form accepted by Saunders, in its absolute discretion. The undertaking must:
- have an expiry date not later than 24 months from the date of delivery to the Delivery Place;
 - be payable on demand; and
 - be given by a bank acceptable to Saunders in its absolute discretion.
- 20.3** Saunders will not be obliged to make further payment in accordance with these Conditions until the Supplier has complied with this clause.
- 20.4** Saunders may have recourse to the Security if the Supplier fails to rectify or make good any defect in the Goods or Services within a reasonable time of being requested to do so by Saunders or if Saunders has any claim against the Supplier.
- 20.5** The Supplier agrees it will not take any steps to injunct or restrain:
- Saunders from using any sums received from the conversion of the Security or otherwise exercising its rights in relation to the Security; or
 - the issuer of the Security exercising its rights or performing its obligations under the Security.
- (c) Saunders shall return the Security at the expiration of the Warranty Period.
- 21. Liquidated Damages**
- 21.1** The Supplier will pay to Saunders the sum equivalent to 0.15% of the Contract price for each and every day during which the delivery of the Goods or is delayed after the Completion Date or any extension thereof up to a maximum of 5% of the Contract Price aggregate.
- 21.2** The parties agree that the value of liquidated damages payable by the Supplier is a genuine and reasonable estimate of the loss to Saunders for the Supplier's delay in delivering the Goods or completing the Services.
- 22. Proportionate Liability**
- 22.1** For the purposes of this clause, a reference to Proportionate Liability Acts means each of the following or, if repealed, the succeeding legislation:
- The Civil Liability Act 2002* (NSW);
 - The Proportionate Liability Act 2005* (NT) and the *Building Act 1996* (NT);
 - The Civil Liability Act 2003* (Qld);
 - The Law Reform (Contributory Negligence and Apportionment of Liability (Proportionate Liability)) Amendment Act 2005* (SA);
 - The Civil Liability Act 2002* amended by the *Civil Liability Amendment (Proportionate Liability) Act 2005* (tas) and the *Building Act 2000* (Tas);
 - The Wrongs Act 1958* (Vic); and
 - The Civil Liability Act 2002* (WA)
- 22.2.** To the maximum extent permitted by Law:
- The Parties agree that the Proportionate Liability Acts will not have any application to the Contract, the performance of the work under the Contract, or any of the obligations of the Supplier under the Contract or at law;
 - Despite the provisions of the Proportionate Liability Acts, the Supplier acknowledges that the Supplier is solely responsible for and indemnifies Saunders in respect of any loss, damage, cost, claim, expense or proceeding that Saunders suffers or incurs, arising out of or in connection with any wrongful or negligent act or omission on the part of the Supplier, its officers, employees, agents and subcontractors, in performance of this Contract or on the part of any Supplier's subcontractor, consultant or supplier engaged by the Supplier in performance of the relevant subcontract or consultancy or supply arrangement; and
 - The Parties agree that their rights, obligations and liabilities will be those which would exist if the Proportionate Liability Acts did not apply.