

STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS



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 provide goods ('the Goods') to the Client herein after referred to as 'the Works' and as more particularly described in Saunders Tender ('the Tender'), from the person, firm or company ('the Client') named in the Tender, subject to the following terms and conditions:

1. Contract

- 1.1 The Client has requested that Saunders supply the Goods and Saunders agrees to supply the Goods in accordance with the Tender.
- 1.2 If the Client fails to acknowledge the Tender in accordance with clause 1.1 of these Conditions within 10 days from receipt and proceeds with the Goods, then these Conditions, the Tender and all documents which are either attached to the Tender or incorporated therein by reference by Saunders shall be deemed the entire agreement between the parties ("the Contract").
- 1.3 Unless otherwise acknowledged, the supply of Goods to the Client will be deemed acceptance of the Contract.
- 1.4 For the purpose of this Contract, practical completion is the date of final delivery for the Goods ("Practical Completion").

2. General

- 2.1 Saunders shall supply the Goods in accordance with the specifications, drawings, samples or other description (if any) furnished by the Client.
- 2.2 If any provision of this Contract is unenforceable, such unenforceability shall not affect any other provision or any other part of the Contract.
- 2.3 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 and these conditions prevail over all conditions of the Client's order or other documents.
- 2.4 If additional terms and/or conditions are incorporated into the Client's order, those terms and/or conditions do not form part of the Contract unless expressly agreed, in writing, by Saunders' authorised representative.
- 2.5 The Contract shall be governed by the law of the state in which the Works are being performed and the parties, unless agreed otherwise, submit all disputes arising between them to the Courts of that state and any Court competent to hear appeals from the Courts of that state.
- 2.6 Saunders may subcontract, assign or transfer any of its rights or obligations under this Contract without the prior consent of the Client.

3. Price, Payment and GST

- 3.1 The Contract Price is the total price submitted by Saunders ("the Contract Price"), is in Australian Dollars and includes freight to the Client's nominated place of Delivery ("Point of Delivery"). The Contract Price is exclusive of GST and all such taxes and charges whatsoever and howsoever incurred are payable by the Client (unless otherwise stated).
- 3.2 The Contract Price can be varied under this Contract, including but not limited to the terms of clause 7.
- 3.4 The Contract Price is based on the information supplied with the request for tender. Any relevant information held by the Client not presented to Saunders at date of the Tender has not been considered in the Contract Price.
- 3.5 This offer is valid for a period of 30 days from the date of the Tender. Prices are current at the date of the Tender for all products ordered and manufactured within this validity period. Products manufactured outside this period will be subject to escalation as a result of changes in input material costs during the supply period.
- 3.6 Prior to final delivery of the Goods, Saunders will require a Final Statement of Payment or Form of Release signed by the Client. Items purchased or manufactured pending final detailing and delivery will be charged at 90% of the Contract price with the final 10% claimed upon delivery.
- 3.7 Unless otherwise agreed, payment terms are 30 days from the date of the invoice, without right of set off.
- 3.8 All invoices are made in accordance with the requirements of the *Building and Construction Industry Security of Payments Act 1999 NSW*.
- 3.9 If payment is not completed in accordance with the terms of the Contract, the Client shall in addition be liable to pay:
 - (a) interest on all overdue amounts at a rate of 7.5% per annum, calculated daily until payment is made in full; and
 - (b) all expenses associated with recovering or attempting to recover an overdue amount.

- 3.10 Saunders reserves the right to cease the Works for non-payment of an invoice. Any stand down or de-mobilisation costs incurred as a result of non-payment of an invoice will be treated as a variation to the Contract pursuant to clause 7.

4. Rise and Fall

- 4.1 Where the Contract or supply exceeds a period of three (3) months (from issue of order or execution of the Contract until payment of the Contract Price by the Client) and where changes in prime material costs during this period can be substantiated and exceed 5%, the change in material costs shall be claimed as a variation at a rate of cost plus 10%.
- 4.2 Notwithstanding any provisions of the Contract, any increase in the costs of supplying the Goods or Works during the life of the Contract, as a direct or in-direct result of the introduction or increase in an Local State, or Federal Government charges or taxes imposed after the date of the Contract will be fully due and payable by the Client.

5. Delivery

- 5.1 The provision of suitable weather access at the Point of Delivery is the responsibility of the Client.
- 5.2 The Contract Price is based on work being carried out continuously and by the most efficient means identified by Saunders at the date of the Tender. Changes to the Tender, including delivery dates will be considered variations to the Contract and will be assessed under the provisions of clause 7.
- 5.3 Deliveries scheduled for Mondays (or the first working day after a public holiday), which require loading the previous week will incur additional charges for layover of trucks during that weekend or public holiday.
- 5.4 Unless agreed otherwise in writing, deliveries on weekends and public holidays will attract an overtime surcharge and additional unloading time will incur additional costs per hour.
- 5.5 The Contract Price is calculated on the delivery rates of specific transport companies. If the Client requires the use of an alternate transport company, the alternate delivery rate will be treated as a variation under clause 7.
- 5.6 The Client agrees and acknowledges that Saunders will not be liable for any general law damages, or otherwise resulting from late delivery.

6. Delays

- 6.1 For the purposes of this Contract, Force Majeure is defined as an act of God, act or omission of government, war, blockade, embargo, hostilities, fire, earthquake, flood, explosion, accident at sea, inclement weather conditions, industrial disputes (except where restricted to employees of Saunders), sabotage or commotion, act or omission of the Client, variation, latent site conditions, lack of access, direction or delay by local or statutory authority, or by any cause (whether similar or not to any of the above events) beyond the reasonable contract of Saunders.
- 6.2 If performance by Saunders of any obligation under the Contract is prevented, restricted or delayed by Force Majeure then Saunders shall be excused from and shall not be liable for failure in performance to the extent of that prevention, restriction or delay and the time for performance shall be extended accordingly, subject to the terms of clause 6.3.
- 6.3 If supply is delayed for more than four (4) months by Force Majeure and the parties have not agreed upon a revised basis for continuing the supply at the end of the delay, then either party may after that period and while the cause of non-performance still exists terminate the Contract by not less than 30 days' notice in writing to the other party.
- 6.4 The Client shall reimburse Saunders for all reasonable costs including but not limited to, overheads incurred by Saunders for any delays except for delays caused by Saunders itself.
- 6.5 If in any event Saunders is liable for damages as a result of delayed delivery, Saunders' liability will be limited to 0.1% of the Contract Price per day to a maximum of 5% of the Contract Price in the aggregate. The Client agrees that such damages are a genuine and reasonable pre-estimate of loss for delay arising out of the Contract and that the damages are provided as full and final remedy for the delay.

7. Variations

- 7.1 All variations shall be agreed and approved in writing prior to the delivery of the Goods and Saunders will not be required to comply with any variation unless an agreement on cost has been reached between the parties. Saunders reserves the right to cease performance of the Contract, including the delivery of Goods until an agreement has been reached.

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- 7.2 All variations shall be provided and assessed as a lump sum and variation costs shall be deemed to be accepted if no correspondence is received to the contrary prior to delivery of the Goods.
- 7.3 If the parties fail to reach an agreement on the value of a variation of the Contract, the Contract shall be performed at the Contract price plus 22.5%.
- 8. Storage**
- 8.1 Saunders reserves the right to charge reasonable costs for storage if delivery instructions are not provided by the Client within 14 days of a request from Saunders.
- 9. Warranty**
- 9.1 Saunders warrants that:
- the Goods will be of merchantable quality and be free from substantial defect in workmanship;
 - any Goods manufactured or fabricated by Saunders will be performed to the standard agreed by the parties and as set out in clause 1.3 and 10.
- 9.2 Saunders does not warrant Goods manufactured, fabricated, or interfered with by a third party.
- 10. Warranty Period and Rectification of Defective Works**
- 10.1 Unless otherwise agreed in writing, the defects liability period will commence from Practical Completion of the Contract or acceptance of the Goods, including under clause 1.3, whichever is earlier and will continue for a period of 12 months ('the Defects Liability Period').
- 10.2 Any additional warranty provided by a manufacture of Goods which Saunders has supplied will be passed onto the Client on agreement with the manufacturer.
- 10.3 If the Client identifies a defect with the Goods, the Client must notify Saunders, in writing, of the defect within fourteen (14) days of discovery of the defect and must take all reasonable actions to prevent further damage to the Goods.
- 10.4 If a defect arises during the Defects Liability Period, Saunders must have the opportunity to rectify or replace the defect prior to the Client engaging a third party to rectify or replace the defect.
- 10.5 If the Client provides Saunders with notice of a defect during the Defects Liability Period, Saunders will make good or replace the defective Goods excluding:
- any interfacing between the Client's equipment, site, plant or design (unless expressly agreed between the parties);
 - ordinary wear and tear; and
 - any damage which has been caused or contributed by the Client's negligence or acts or omissions.
- 10.6 Saunders will be responsible for the costs of actual rectification replacement works only, and any associated costs (including removal or transportation costs) will be the responsibility of the Client.
- 10.7 If Saunders uses a subcontractor, supplier or other third party to perform any work under the Contract ("the Other Party"), any work, labour and services carried out by the Other Person shall only be warranted by Saunders to the degree that the Other Party indemnified Saunders.
- 11. Returned Goods**
- 11.1 Saunders is under no duty to accept returned Goods from the Client.
- 12. Intellectual Property**
- 12.1 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 ("Intellectual Property").
- 12.2 The Goods, specifications, drawings, technical instructions or any other documentation whatsoever issued to the Client by Saunders during the Contract, the Tender, at the time of establishing this Contract or in any way in connection with the Contract will remain the property of Saunders.
- 12.3 Saunders hereby grants to the Client a perpetual, irrevocable, non-exclusive, royalty free, transferable licence to use all Intellectual Property which is used or developed by Saunders in connection with the Goods under the Contract.
- 12.4 The Client acknowledges that Saunders will not be liable or responsible for any infringement of any Intellectual Property of the Client that the Client has in any components, material or additional documents and Saunders will not be liable for any claim whatsoever due to Saunders' use of the Client's Intellectual Property.
- 12.5** The Client indemnifies Saunders against any claim alleging an infringement of all intellectual property rights, moral rights and ownership rights in any information provided by the Client to Saunders.
- 13. Confidentiality**
- 13.1 The Client acknowledges and agrees that any information submitted by Saunders in the Tender which includes pricing, technical specifications and other information is commercial in confidence and submitted solely for evaluation by the Client.
- 13.2 The Client may not, and must ensure that its subcontractors do not, divulge to third parties for use any information relating to the Works or Goods (including Intellectual Property), until such information is within the public domain or express written consent has been given by Saunders.
- 13.3 If such information is disclosed to a third party with Saunders' prior consent, the Client must ensure that as a condition precedent to the passing of such information that the third party accepts and acknowledges to be bound by the confidential obligations contained in this Contract.
- 13.4 The Client 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 13 by the Client whatsoever.
- 14. Information and Documents**
- 14.1 The Client will provide all information including answers to any questions that Saunders may ask, to enable Saunders to supply the Goods.
- 14.2 The Client shall be responsible for and confirms the completeness and accuracy all information provided to Saunders. Saunders will not check or review any information provided by the Client.
- 14.3 Saunders will be entitled to claim an extension of time and any costs incurred as a result of any delay in provision of information by the Client or others to Saunders or as a result of any information being inaccurate.
- 15. Liability**
- 15.1 Notwithstanding any other provision of this Contract and to the full extent permitted at law, the total liability of Saunders to the Client arising out of any costs, loss, liability or damage, suffered or incurred whether in contract or tort (including negligence), in equity, in restitution, by way of warranty or indemnity or under statute shall be limited to no more than one hundred (100%) of the Contact Price unless otherwise specifically agreed, in writing at the time of the Contract.
- 16. Consequential Loss**
- 16.1 Notwithstanding any other provision of this Contract and to the full extent permitted at law, Saunders shall not be liable for any indirect, special, contingent or consequential losses or damages which includes but is not limited to, loss of actual or anticipated profits, loss of opportunity, loss of goodwill or loss of revenue.
- 17. Indemnity**
- 17.1 The Client 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 Client or its directors, officers, employees, agents or contractors or by any breach of this Contract by the Client (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.
- 18. Proportionate Liability**
- 18.1 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)*;

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- (f) The *Wrongs Act 1958* (VIC); and
(g) The *Civil Liability Act 2002* (WA)
- 18.2.** To the maximum extent permitted by Law:
- (a) the Parties agree that the Proportionate Liability Acts will have application to the Contract, the performance of the Works under the Contract, or any of the obligations of the parties under the Contract or at law; and
- (b) despite the provisions of the Proportionate Liability Acts, the Client acknowledges that the Client 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 Client, its officers, employees, agents and subcontractors, in performance of this Contract or on the part of any Client's subcontractor, consultant or supplier engaged by the Client in performance of the relevant subcontract or consultancy or supply arrangement.
- 19. Saunders' Performance**
- 19.1** Any performance figures or performance parameters within the Contract or otherwise given by Saunders are estimates only. Saunders is under no liability for Goods not attaining such figures unless those figures are specifically guaranteed in writing by Saunders. Any written guarantees are subject to the recognised tolerances and parameters applicable to the figures.
- 19.2** Saunders is not responsible to the Client or any person claiming through the Client for any loss or damage to the Goods in transit or installation or service, caused by any event of any kind or by any person.
- 20. Breach and Termination**
- 20.1** Either party may terminate the Contract by written notice to the other party in its absolute discretion, provided they give the other party 14 days' written notice.
- 20.2** In the event a party defaults on any of the terms of this Contract, for any reason (including insolvency and failing to remedy a breach), the other party may terminate the Contract in whole or in part by providing the defaulting party with 10 days' written notice
- 20.3** If Saunders terminates this Contract, the Client agrees and acknowledges that it will not prosecute any claim in law or in equity against Saunders.
- 20.4** The Client agrees that in the event of termination by either party, the Client will pay to Saunders:
- (a) all outstanding Saunders invoices;
- (b) for all Goods provided to the Client until the date of cancellation;
- (c) all costs associated with advanced orders including cancellation fees;
- (d) all reasonable costs associated with termination including demobilisation fees; and
- (e) small amounts to cover profit and overheads.
- 20.5** Termination of the Contract pursuant to this clause shall be without prejudice to the rights of Saunders and the Client indemnifies Saunders against any loss incurred by Saunders as a result of the termination.
- 21. Title and Risk**
- 21.1** Title and ownership of the Goods supplied will pass to the Client from Saunders on payment of the Contract Price in full notwithstanding the delivery, receipt, collection or passing of risk to the Client.
- 21.2** Risk in the Goods passes to the Client upon delivery of the Goods in accordance with the Contract. However, if the Client provides any components to Saunders for inclusion in the Goods the risk of those components remains with the Client at all times. Saunders will use all reasonable care to provide suitable storage of the Client's components but will not be liable for any loss or damage.
- 21.3** The Client acknowledges that Saunders has fulfilled all of its obligations under the Contract once the Goods are delivered by Saunders or collected by the Client, whichever is earlier.
- 21.4** Until title of the Goods passes to Saunders, Saunders reserves the right, until payment of the Contract price in full, to:
- (a) enter the Client's premises, or the premises of any associated entity or agent of the Client where the Goods are located, without liability for trespass or any resulting damages and retake possession of the Goods; and
- (b) keep or resell the Goods repossessed under this clause.
- 22. Built-Ability**

In preparation of the Tender, Saunders have only made preliminary assessments of the 'build ability' of the design. Finer details, including but not limited to reinforcement layout and strand and embedment locations, will be assessed during initial fabrication and setup. Delays to the production process as a result of design and detailing issues beyond Saunders' control may be considered variations under clause 7.

23. Insurances

23.1 Saunders shall effect and 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 howsoever caused. Saunders' Public Liability Insurance is limited to \$10 Million for any one occurrence.

(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 be limited in amount (where unlimited cover is available), or else \$20 million to cover employees of Saunders 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) Motor Vehicle/Automobile Third Party Liability Insurance:

Where Saunders will bring motor vehicles, owned, operated or controlled by Saunders, onto the Client'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.

(d) Professional Indemnity Insurance

If Saunders is required to carry out design work or provide advice or professional services to the Client, Saunders will effect and maintain at its cost, professional indemnity insurance for an amount limited to one hundred (100%) of the Contract Price.

24. Dispute Resolution

24.1 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**").

24.2 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.

24.3 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.

24.4 Each party shall be responsible for their own legal costs in relation to any dispute arising under this Contract.

25. Personal Properties Security Act 2009 (Cth)

25.1 In this clause 26 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.

25.2 The Client acknowledges that Saunders has a purchase money security interest in the Goods including, but not limited to, where the Client has not paid Saunders (in whole or in part) for the Goods prior to delivery.

25.3 The Client acknowledges that if Saunders has rights and interests in proceeds derived from the Goods such rights and interests constitute a security interest in such proceeds.

25.4 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 Client must

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provide Saunders with any information it requires for the purposes of giving effect to such registration.

- 25.5** For the purposes of section 157(3) of the PPSA, the Client irrevocably and unconditionally waives its right to receive any notice from Saunders in connection with the registration of a financing statement or a financing change statement in respect of the Goods.
- 25.6** 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.
- 25.7** The Client must take any steps (including provide information) Saunders reasonably requires to perfect or otherwise ensure the enforceability and priority of any security interest.
- 25.8** Neither the Client nor Saunders will disclose information of the kind described in PPSA section 275(1), unless section 275(7) of the PPSA applies.
- 25.9** Until Saunders' security interest (whether perfected or not) is satisfied, the Client agrees not to cause or allow a security interest of higher priority to be created in the Goods. If the Client breaches this subclause, the Client shall indemnify Saunders for any cost, expense, loss or damage suffered.
- 26. Anti-bribery and Corruption**
- 26.1** Saunders is committed to operating in a manner consistent with the laws of the jurisdiction in which it operates, including laws relating to anti-bribery and anti-corruption.
- 26.2** The Client represents and warrants that it complies with Anti-Bribery and Anti-Corruption Legislation and that it has and maintains reasonable and effective anti-bribery and anti-corruption policies and procedures, such policies and procedures are to be made available to Saunders for inspection on demand.
- 26.3** The Client represents and warrants it has not and will not breach any Anti-Bribery and Anti-Corruption Legislation in connection with the Contract.
- 26.4** If the Client becomes aware of any breach or suspects a breach of Anti-Bribery and Anti-Corruption Legislation in connection with the Contract it must immediately notify Saunders in writing and provide reasonable details of such breach or suspected breach and provide reasonable access to information, books and records relevant to such breach.
- 26.5** If Saunders, acting reasonably, believes the Client has breached Anti-Bribery and Anti-Corruption Legislation in connection with the Contract, Saunders must give the Client written notice of such. If the Client, within 30 days of that written notice, fails to show that there is no reasonable basis to conclude a breach has occurred, Saunders may terminate the Contract without further notice to the Client.
- 27. Building Code**
- 27.1** Where applicable the Client must comply with the Building Code under the *Building and Construction Industry (Improving Productivity) Act 2016* (CTH) ("**the Code**"). Copies of the Code can be found here: <https://www.legislation.gov.au/Details/F2017C00668>.
- 27.2** The Client shall permit the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, full access to construction sites or places covered by the Code to:
- (a) inspect any work, material, machinery, appliance, article or facility;
 - (b) inspect and copy any record relevant to the Goods;
 - (c) interview any person;
 - (d) request a party to this Contract to produce a specified document within a specified period, being not less than 14 days in person, by fax or by post;
- as is necessary to allow validation of its progress in complying with the Code.
- 27.3** The Client shall not appoint a sub-contractor, consultant or supplier in relation to the Goods where the appointment would breach a sanction imposed in relation to the Code.
- 27.4** The Client shall ensure that all sub-contracts impose obligations on the subcontractors equivalent to the obligations under this clause.