

Standard Conditions of Purchase – Supply of Goods

1. DEFINITIONS

The following definitions shall apply for the purpose of administering the Purchase Order:

“**Purchaser**” shall mean SAUNDERS INTERNATIONAL PTY LTD (ABN 14 050 287 431) a company incorporated in the State of New South Wales, Australia or any of its subsidiaries that issue the Purchase Order or agreement in which these terms are incorporated.

“**Vendor**” shall mean the person or firm on which the Purchase Order is placed.

“**Sub-vendor**” shall mean the person or firm with whom the Vendor contracts for the purpose of supplying or manufacturing Goods relevant to the Purchase Order.

“**Goods**” shall mean all plant, equipment, materials and other items of all kinds to be supplied by the Vendor under the Purchase Order.

“**Purchase Order**” shall mean the order and all documents incorporated therein including these Standard Conditions of Purchase or any agreement in which these terms are incorporated.

“**Purchase Order Price**” shall mean the price of the Goods payable by the Purchaser to the Vendor under the terms of the Purchase Order.

2. THE PURCHASE

- 2.1. The Purchase Order constitutes the entire agreement between the Purchaser and the Vendor and supersedes all previous oral or written communications between the parties.
- 2.2. The Vendor shall be deemed to have satisfied itself as to all the conditions and circumstances affecting the Purchase Order Price and to have fixed its prices according to its own view of such conditions and circumstances. No additional allowance except where expressly provided herein will be made to the Purchase Order Price on account of the Vendor's failure to have satisfied itself as to all conditions and circumstances affecting the Purchase Order Price. The Vendor warrants that it shall meet all the requirements of the Purchase Order. The Vendor shall supply the goods as specified, described or implied by the documents forming part of the Purchase Order and any matter or item not specifically included in the documents, but which is necessary for the satisfactory fulfilment of the Purchase Order, shall be deemed to be included in the goods and compensated for within the Purchase Order Price.
- 2.3. If any of these Standard Conditions of Purchase are inconsistent with any terms and conditions set out on the face of the Purchase Order the latter shall prevail to the extent of the inconsistency.
- 2.4. Within seven (7) days from receipt of the Purchase Order the Vendor shall formalise its acceptance by signing and dating the front page in the space provided and returning a copy of that page to the Purchaser. In absence of receipt of acknowledgement, acceptance shall be deemed if the Vendors actions imply acceptance including but not limited to the commencement of work related to the supply of the Goods.

3. NATURE AND CONSTRUCTION OF PURCHASE ORDER

- 3.1. The Purchase Order Price is a fixed and firm lump sum price. The Vendor shall supply the Goods in accordance with the requirements of the Purchase Order and shall guarantee that the Goods will be suitable for their intended purpose without adjustment to the Purchase Order Price.
- 3.2. The Purchase Order shall be governed by and construed with reference to the laws in force in the State of New South Wales, Australia. The parties agree that any action or proceeding arising in connection with the Purchase Order shall be held in Sydney, New South Wales and be subject to the jurisdiction of the Courts of New South Wales, or other Court competent to hear appeals therefrom.
- 3.3. Communications between the Purchaser and the Vendor, and documents to be provided under the Purchase Order, shall be in the English language.
- 3.4. The Purchase Order Price shall be in the currency or currencies detailed in the Purchase Order.
- 3.5. Unless otherwise stated in the Purchase Order, the specific requirements of the Purchase Order and any special conditions shall take precedence over these Standard Conditions of Purchase.

4. ASSIGNMENT

- 4.1. Other than Sub-vendors named in the Purchase Order the Vendor shall not, without the prior written consent of the Purchaser, assign or sub-let the Purchase Order or any part thereof, nor shall it make any contract with any person for the execution of any portion of the work except for the supply of raw materials or minor details. Consent by the Purchaser to the letting of any sub-contract by the Vendor shall be subject to Item 22.0, and not relieve the Vendor from full and entire responsibility for execution of the Purchase Order.

5. VARIATIONS TO THE PURCHASE ORDER

- 5.1. The Purchaser shall have full power during the execution of the Purchase Order, by notice in writing, to instruct the Vendor to alter, amend, omit, add to or otherwise vary any of the Goods or to defer or accelerate the time(s) for delivery without prejudice to the Purchase Order. The Vendor shall carry out such variations and be bound by the same conditions and have the same obligations as though the variations had been incorporated in the Purchase Order.
- 5.2. The difference in cost if any occasioned by variations directed by the Purchaser shall be added to or deducted from the Purchase Order Price as the case may require. Any variation to the Purchase Order Price shall be approved by the Purchaser, as evidenced by the Purchaser's prior acceptance in writing of the Vendor's price quotation for the variation. The Vendor shall not proceed with any variation without an instruction from the Purchaser.

6. PRICE AND PAYMENT

- 6.1. Payment
 - (i) The Purchase Order Price shall be fixed and firm and shall include all charges for packing, crating, loading and delivery together with all taxes, duties and fees relevant to the due performance of the Purchase Order.
 - (ii) All invoices shall be rendered following final inspection as noted at Item 8.1 of these Conditions of Purchase. There shall be no payments prior to final inspection nor, at the Purchaser's discretion, prior to the Vendor's return of the signed and dated copy of the Purchase Order as required by Item 2.4 of these Standard Conditions of Purchase.
 - (iii) Provided the Vendor complies with the terms and conditions of the Purchase Order and supplies the Goods in accordance with the Purchase Order, the Purchaser shall pay the Vendor by the end of the month following the month of receipt of a correctly submitted invoice. The invoice shall detail all items so as to correlate with the Purchase Order, including the Purchase Order number.
 - (iv) Unless otherwise agreed, payment shall be effected by way of electronic funds transfer to the Vendor's nominated bank account.
- 6.2. The Purchaser shall be entitled to set off against any sums that would otherwise be due to the Vendor, or from any security provided pursuant to clause 6.3, amounts in respect of any claims it has for damages for breach of contract or indemnity by the Vendor, including liquidated damages, if applicable.
- 6.3. Where stated in the Purchase Order, the Vendor shall, within twenty-one (21) days of the award of the Purchase Order, issue the Purchaser security in the form of an unconditional Bank Guarantee for the amount set out in the Purchase Order Price. The security will be available for return within 14 days of request from the vendor, following the satisfactory completion of the warranty period stipulated at Item 7.1 herein. Bank Guarantees shall be issued in favour of the Purchaser in a form and by a Bank acceptable to the Purchaser and shall not include an expiry date.
- 6.4. The Purchase Order Price is exclusive of Goods and Services Tax (GST), Value Added Tax (VAT) and the like (“GST”). The Purchase Order Price shall only be increased by an amount equal to the GST liability properly incurred by the Vendor. If through the imposition of GST, or a subsequent change to GST, there is a reduction in costs in providing the Goods due to the abolition or reduction of existing taxes and/or charges, then the Purchase Order Price shall be reduced accordingly. The Vendor shall provide the Purchaser with reasonable evidence to demonstrate that it has complied with this requirement. The Vendor warrants that for the purpose of this Purchase Order it will be registered under the GST law and will provide a Tax Invoice that will comply with the legislative requirements and identify separately the amount of GST payable.

7. WARRANTY, & DEFECTS RECTIFICATION PERIOD

- 7.1. The Vendor warrants that the Goods shall be free from defects in design, material and workmanship, that they shall conform in all respects to the terms of the Purchase Order and that they shall be of the best quality, if no quality is specified.
- 7.2. If a defect in design, material, workmanship, conformity or quality is discovered within one (1) year of putting the Goods into service, or within eighteen (18) months of the date of delivery of the Goods (whichever is the earlier), the Vendor shall, following notice from the Purchaser, promptly correct such defect at its sole expense and without undue delay. The provision of this Item shall apply notwithstanding that

- the Purchaser may previously have inspected, approved or paid for such Goods.
- 7.3 The expiry of the period stated in this clause shall not relieve the Vendor of any liability that may accrue from not complying with its obligations under the Purchase Order, including warranties stated in Item 7.1.
- 8. INSPECTION, TESTING AND EXPEDITING**
- 8.1. Notwithstanding that the Purchase Order may include for inspection and testing of the Goods, the Purchaser shall, with reasonable notice, have the right to inspect, expedite and request a test any part of the Goods at any time. The Goods shall not be deemed accepted until a final inspection is carried out after arrival at the delivery point. The Vendor shall carry out at its expense those tests that, in the opinion of the Purchaser, are necessary to determine that all parts of the Goods comply with the Purchase Order. All test certificates shall be retained and supplied to the Purchaser for its records. If the Goods fail any tests then the Vendor shall with all speed and at its own expense make good the defects to the satisfaction of the Purchaser.
- 8.2. The Goods furnished under the Purchase Order shall be subject to expediting by the Purchaser. The Purchaser shall be allowed reasonable access to the Vendor's and Sub-vendors' premises for expediting purposes.
- 8.3. The Vendor shall, if requested by the Purchaser, supply schedules and progress reports for the Purchaser's use in expediting. These schedules shall be in sufficient detail to permit day to day monitoring of progress in the work. The Vendor shall, within three (3) days of a request from the Purchaser, furnish an updated program.
- 8.4. The Vendor shall, if required by the Purchaser, provide an unpriced copy of orders (including all attachments) placed on Sub-vendors. Each order on a Sub-vendor shall include, the Purchaser's order number as well as the Vendor's order number, delivery dates, and a full technical description of the goods and/or service including inspection, testing and warranty requirements
- 9. DELIVERY**
- 9.1. Unless stipulated to the contrary in the Purchase Order, Goods shall be delivered DDP (INCOTERMS 2020) to the nominated delivery point. The Vendor shall be responsible for all operations necessary to ensure that the Goods arrive in good order and condition. The Vendor shall be held solely responsible for any damage, loss or depreciation to such Goods resulting from inadequate protection or packaging.
- 9.2. The Vendor shall give the Purchaser reasonable notice, of no less than fourteen (14) days, of the time at which the Vendor intends to dispatch Goods.
- 9.3. The Vendor shall forward at time of dispatch two (2) copies of a notice of dispatch to the Purchaser. The notice of dispatch shall state the Purchase Order number, the Vendor's name, the method and date of dispatch and a complete list of all packages showing detailed particulars of the package dimensions, weights and contents identification.
- 10. PACKAGING**
- 10.1. The Vendor shall package all Goods in such a manner as to ensure protection against damage and deterioration during shipment and storage including local transportation, air and ocean freight and storage.
- 10.2. The Vendor shall have prepared for each consignment a numbered packaging specification which incorporates the documentation included in the complete list of all packages required pursuant to Item 9.3 of these Conditions of Purchase. Each package, including any delivered by a Sub-vendor shall be consigned to the Purchaser. A copy of the relevant invoice, packing list and any applicable material certificates shall also be packed with the Goods.
- 11. FREE ISSUE BY THE PURCHASER**
- 11.1. If the Purchase Order provides for the free issue of materials by the Purchaser, the following provisions shall apply.
- All material issued by the Purchaser to the Vendor or Sub-vendors shall remain the property of the Purchaser and shall not be used other than for the purpose of the Purchase Order.
 - The risk for loss of or damage to the issued materials shall remain with the Vendor until Goods incorporating the issued materials have been delivered pursuant to the Purchase Order.
 - The Vendor, Sub-vendor or any other person shall not create or cause to be created any lien on free issued materials.
 - The Vendor shall take proper and reasonable care of free issued materials and shall immediately notify the Purchaser of any loss, destruction or damage to the same.
 - The Vendor shall comply with any instruction from the Purchaser in relation to preservation, forwarding or disposal of damaged material.
 - The Vendor shall not, without the prior written consent of the Purchaser, transfer possession of any free issue material to a third party and shall not enable or permit the transfer of the same to the premises of a third party.
- (g) The Vendor shall use free issue material in a skilful and proper manner and comply with all instructions given by the Purchaser in relation to it.
- 12. LIQUIDATED DAMAGES**
- 12.1. Where stated in the Purchase Order, if the Vendor fails to deliver the whole of the Goods by the agreed date for delivery, the Vendor shall pay the Purchaser by way of pre agreed liquidated damages the amount stated in the Purchase Order per day for every day that the delivery is late up to the maximum amount stated in the Purchase Order. The parties agree that such liquidated damages are a genuine pre estimate of damages and are not a penalty.
- 13. EXTENSION OF TIME**
- 13.1. Subject to item 13.3, the Vendor shall not be liable for delays in delivery or failure to manufacture or deliver due to unforeseeable causes, which are beyond its reasonable control, provided that it can demonstrate that it complies with the notice requirements of item 13.2.
- 13.2. Within seven (3) days of the Vendor becoming aware that the delivery of the Goods is likely to be delayed due to an event or cause beyond its reasonable control, then the Vendor shall notify the Purchaser in writing of a claim for an extension of time for delivery. If the Purchaser determines that the claim for an extension of time is justified in accordance with this Item 13.0, then the Purchaser will notify the Vendor in writing granting a reasonable extension. The Vendor shall take all reasonable steps to prevent and minimise delay.
- 13.3. The Vendor will only be entitled to an extension of time where the delay arises from any act or omission of the Purchaser or its representatives or a variation ordered by the Purchaser. The mere shortage of labour or materials shall not constitute grounds for an extension of time.
- 13.4. Notwithstanding that the Vendor is not entitled to an extension of time the Purchaser may at any time and from time to time prior to delivery, or final delivery if there is more than one delivery, extend the time for delivery for any reason.
- 14. LAW, PATENTS, COPYRIGHT AND PROPERTY RIGHTS**
- 14.1. The Vendor shall indemnify and save harmless the Purchaser against all costs and claims due to infringement of any patent, registered design, copyright, trademark or trade name or other intellectual property right in relation to the Goods ordered and used for their intended use. The Vendor warrants that all Goods sold hereunder have been produced, sold, delivered and furnished in strict compliance with all applicable laws and regulations to which the Goods are subject. The Vendor shall execute and deliver such documents as may be required to effect or to evidence compliance.
- 15. INDEMNITY**
- 15.1. The Vendor shall indemnify the Purchaser against every liability it may incur to any other person whatsoever and against all claims, demands, proceedings, damages, costs and expenses made against or incurred by the Purchaser by reason of any act or omission of the Vendor, its employees, Sub-vendors or agents or otherwise, including any claims, demands, costs, charges or expenses arising from the death of or injury to any persons employed by the Vendor or a Sub-vendor.
- 16. INSURANCE AND RISK**
- 16.1. Notwithstanding any other provision of the Purchase Order risk in the goods shall pass to the Purchaser only upon delivery and satisfactory final inspection in accordance with the Purchase Order.
- 16.2. Prior to delivery and final inspection, the Vendor shall jointly insure in the names of the Vendor and the Purchaser the goods against loss or damage from any cause for full replacement value.
- 16.3. The Vendor shall insure and shall maintain insurance against all liability in connection with the death of or injury to any persons employed by the Vendor and ensure that any Sub-vendor maintains the same insurance.
- 16.4. The Vendor shall maintain Public and Products Liability covering bodily injury, death and property damage in an amount of not less than AUD 20,000,000.00 for any one occurrence and unlimited in the aggregate. The policy shall extend to indemnify the Purchaser for its interest under an indemnity to principal provision.
- 16.5. Where the Goods require design and engineering, the vendor shall maintain a Professional Indemnity Insurance policy for an amount not less than AUD 5,000,000 per event and AUD 10,000,000 in the aggregate from the commencement of the Purchase Order and for a period of seven (7) years from the last delivery of the Goods.
- 16.6. The Vendor shall provide evidence of an appropriate valid insurance policy when requested by the Purchaser.
- 17. TITLE AND OWNERSHIP OF THE GOODS**
- 17.1. The Goods to be supplied pursuant to the Purchase Order shall become the property of the Purchaser upon delivery of the Goods and satisfactory final inspection at the delivery point. In the event that

- progress payments are provided for in the Purchase Order, title in such parts of the Goods shall pass to the Purchaser when corresponding invoices are submitted by the Vendor. The Vendor shall ensure that any parts of the Goods (including materials) where title has passed, shall be clearly marked as the property of the Purchaser. The Vendor shall remain responsible for any loss, damage or theft of the Goods (including any parts where title has passed to the Purchaser) until delivery, and will ensure that the Goods are properly insured for such risks and that the Purchaser's interests are noted.
- 17.2. The Vendor warrants that the Goods, materials and items furnished by the Vendor in the performance of its obligations under the Purchase Order shall be free and clear of all liens, restrictions, reservations, security interests and encumbrances.
- 17.3. Personal Properties Security Act
- 17.3.1. In this clause 17.3 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 (Personal Property Securities Act 2009 (Cth)).
- 17.3.2. The Vendor acknowledges that the Purchaser has a purchase money security interest in the Goods including, but not limited to, where the Purchaser has paid the Vendor (in whole or in part) for the Goods prior to delivery.
- 17.3.3. The Vendor acknowledges that if the Purchaser has rights and interest in proceeds derived from the Goods such rights and interests constitute a security interest in such proceeds
- 17.3.4. The Purchaser 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 the Purchaser determines in its absolute discretion). The Vendor must provide the Purchaser with any information it requires for the purposes of giving effect to such registration.
- 17.3.5. For the purposes of section 157(3) of the PPSA, the Vendor irrevocably and unconditionally receive any notice from the Purchaser in connection with the registration of a financing statement or a financing change statement in respect of the Goods.
- 17.3.6. 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.
- 17.3.7. The Vendor must take any steps (including provide information) the Purchaser reasonably requires to perfect or otherwise ensure the enforceability and priority of any security interest.
- 17.3.8. Neither the Vendor nor the Purchaser will disclose information of the kind described in PPSA section 275(1), unless section 275(7) of the PPSA applies.
- 17.3.9. Until the Purchaser' security interest (whether perfected or not) is satisfied, the Vendor agrees security interest of higher priority to be created in the Goods. If the Vendor breaches this subclause, the Vendor shall indemnify the Purchaser for any cost, expense, loss or damage suffered
- 18. CONFIDENTIALITY**
- 18.1. All drawings, design calculations, specifications and intellectual property or other information of any kind supplied by the Purchaser and contained in the Purchase Order or supplied by the Purchaser in connection with the Purchase Order are confidential to the Purchaser. The Vendor shall not use any confidential documents for any purpose other than for the purpose of fulfilling its obligations under the Purchase Order. The obligations of this Clause shall survive the completion of the Purchase Order and a Confidentiality Agreement shall be established at the option of the Purchaser.
- 18.2. The Vendor shall not copy or reproduce any information except, and only, to the extent reasonably necessary for the execution of the Purchase Order.
- 18.3. The Vendor shall ensure that any Sub-vendor, employee, agent, contractor or consultant, or any other person to whom it supplies the information permitted by this Clause, will be bound by the same obligations of confidentiality and will be responsible for and indemnify the Purchaser for any breaches of confidentiality by such parties.
- 19. DEFAULT**
- 19.1. If the Vendor fails or neglects to act in accordance with its obligations under the Purchase Order and such failure to act is affecting the due performance of the Purchase Order, the Purchaser may give notice to the Vendor requiring it to make good such failure or neglect.
- 19.2. 19.2. If the Vendor does not, within a reasonable time, make good such failure or neglect, or if it assigns the Purchase Order, or subcontracts the whole of the Purchase Order without the Purchaser's consent, or becomes bankrupt or insolvent, or has a receiving order made against it, or compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors, or commences to be wound-up or goes into liquidation, the Purchaser may, after giving seven (7) days written notice to the Vendor, terminate the Purchase Order.
- 19.3. The Purchaser shall after such termination assess the amount due to, or payable by, the Vendor as at the date of termination, taking into consideration such extra cost, loss or expense the Purchaser may incur as a result of the default of the Vendor and will advise the Vendor of the assessment. The Vendor may submit an invoice for any amount it is due in accordance with the assessment and payment will be effected in accordance with Item 6.1. Without limiting the rights of the Purchaser under Item 6.2, the Purchaser may raise an invoice for any amount due from the Vendor following the assessment. The Vendor will pay the Purchaser the invoice within 7 days from the date of receipt.
- 20. TERMINATION**
- 20.1. In addition to any other rights that it may have with respect to cancellation or termination the Purchaser may, at its discretion and for its own convenience, terminate the Purchase Order as to all or any part of the work for which the Vendor's performance has not been completed by giving notice of termination to the Vendor. Upon receipt of the termination notice the Vendor shall complete only such work as is necessary to preserve and protect Goods completed or in the process of completion. If, in the opinion of the Purchaser, the Vendor is not in default at the time the termination notice is given, the Purchaser shall make an equitable termination payment to the Vendor. The termination payment shall not exceed that fraction of the total Purchase Order Price which is attributable to the work performed up to the point of termination and in no event shall the Purchaser be liable for any special, indirect, incidental or consequential damages of any nature. The Purchaser shall be at liberty to complete all or any part of the work that is the subject of the termination by itself or any third party.
- 21. DISPUTES**
- 21.1. All disputes arising in connection with the Purchase Order which cannot be settled by proper and continuous discussion between the parties shall be referred to the Chief Executives of the parties for negotiation in good faith. If resolution cannot be achieved within a reasonable time or to the mutual satisfaction of the parties, either party may submit the matter for resolution to any court that has jurisdiction in accordance with items 3.2.
- 21.2. Reference of the dispute to a court, shall not relieve the Vendor of its obligation to proceed with work and complete its obligations under the Purchase Order.
- 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:
- (a) The Civil Liability Act 2002 (NSW);
 - (b) The Proportionate Liability Act 2005 (NT) and the Building Act 1996 (NT);
 - (c) The Civil Liability Act 2003 (Qld);
 - (d) The Law Reform (Contributory Negligence and Apportionment of Liability (Proportionate Liability)) Amendment Act 2005 (SA);
 - (e) The Civil Liability Act 2002 amended by the Civil Liability Amendment (Proportionate Liability) Act 2005 (tas) and the Building Act 2000 (Tas);
 - (f) The Wrongs Act 1958 (Vic); and
 - (g) The Civil Liability Act 2002 (WA)
- 22.2. To the maximum extent permitted by Law:
- (a) The Parties agree that the Proportionate Liability Acts will not have any application to the Purchase Order, the performance of the work under the Purchase Order, or any of the obligations of the Vendor under the Purchase Order or at law;
 - (b) Despite the provisions of the Proportionate Liability Acts, the Vendor acknowledges that the Vendor is solely responsible for and indemnifies the Purchaser in respect of any loss, damage, cost, claim, expense or proceeding that the Purchaser suffers or incurs, arising out of or in connection with any wrongful or negligent act or omission on the part of the Vendor, its officers, employees, agents and subcontractors, in performance of this Agreement or on the part of any Vendor's subcontractor, consultant or supplier engaged by the Vendor in performance of the relevant subcontract or consultancy or supply arrangement; and
 - (c) The Parties agree that their rights, obligations and liabilities will be those which would exist if the Proportionate Liability Acts did not apply.
- 22.3. The Vendor must ensure that all policies of insurance covering third party liability that it is required by the Purchase Order to effect or maintain, cover the Vendor for potential liability to the Purchaser assumed by reason of the exclusion of the Proportionate Liability Legislation.