

OEM GROUP PTY LTD (ACN 160 693 961) PURCHASE ORDER TERMS AND CONDITIONS

1. APPLICATION

- 1.1 All and any business undertaken by the Company is transacted subject to these Terms and Conditions each of which shall be deemed to be incorporated into and to be a condition of any agreement between the Company and the Supplier.
- 1.2 The Company only purchases Goods and Services subject to these Terms and Conditions.

2. GENERAL

- 2.1 **Assignment** - The rights and obligations of each party under this Purchase Order may only be assigned with the prior written permission of the other party.
- 2.2 **No Partnership or Agency** - Nothing in this Purchase Order is intended to create a partnership between the parties. The Supplier shall act as an independent contractor to the Company and not as an agent or representative of the Company in performing the Supplier's obligations under this Purchase Order. The Supplier acknowledges that neither the Supplier nor any of the Supplier's staff have any authority to bind the Company.
- 2.3 **Non-waiver** - A waiver of any provision of or right under this Purchase Order must be in writing signed by the party entitled to the benefit of that provision or right and is effective only to the extent set out in the written waiver.
- 2.4 **Notices** - Any notice, demand, consent or other communication given or made under this Purchase Order must be in writing, clearly readable, signed by the party giving or making it (or signed on behalf of that party by its authorised representative).
- 2.5 **Dispute Resolution**
 - (a) If an issue or dispute arises in connection with these Purchase Order Terms and Conditions the parties agree to use their reasonable endeavours to reach a reasonable and equitable resolution of the dispute through negotiations and/or mediation.
 - (b) If the dispute is not resolved within 30 days under clause 2.5(a) the dispute shall be determined by arbitration.
 - (c) The arbitration shall be conducted in accordance with the Commercial Arbitration Act 2012 (WA) ("Act").
 - (d) The arbitration shall be conducted by one arbitrator jointly selected by the parties. The parties agree that the proceedings are to be conducted as expeditiously as possible and shall instruct the arbitrator accordingly.
 - (e) Unless otherwise agreed by all parties to the dispute, the place of the arbitration shall be Perth, Western Australia.
 - (f) The arbitration proceedings shall be conducted in the English language.
 - (g) The award of the arbitral tribunal shall be final and binding. Judgment on the award of the arbitral tribunal may be entered and enforced by any court of competent jurisdiction.
 - (h) Despite the existence of a dispute, the Supplier must continue without delay to perform its obligations under these Purchase Order Terms and Conditions.
 - (i) Nothing in this clause prevents either party from applying to a court for urgent injunctive relief.
- 2.6 **Amendment** - The Purchase Order may be altered only in writing signed by the Company.
- 2.7 **Severability** - If any provision contained in the Purchase Order is void, illegal or unenforceable, that provision is severable from the Purchase Order and the remainder of the Purchase Order has full force and effect.
- 2.8 **Governing Law** - The Purchase Order is governed by the laws of the State of Western Australia and each party submits to the non-exclusive jurisdiction of the courts of that Western Australia.

3. DEFINITIONS

- 3.1 **Company** means OEM GROUP PTY LTD (ACN 160 693 961)
- 3.2 **Confidential Information** means any information, whether or not marked as confidential, received, held or developed by the Company and which is not publicly available and relates in any manner to the operations of the Company or their suppliers or clients including but not limited to each of the following:
 - (a) The Company's Intellectual Property, including future and possible Intellectual Property;
 - (b) Personnel, policies, business plans, marketing strategies, products, services, product and service development, finances, funding, pricing policies, or other transactions or affairs of the Company;
 - (c) Customer lists and databases, supplier information, partners, alliances of the Company;
 - (d) Trade secrets, know-how, secret or confidential operations, processes, approaches or techniques developed by the Company in the course of its business and operations; and
 - (e) Any other information that is or may be commercially valuable to the Company or its suppliers or customers.Information is not Confidential Information in any of the following circumstances:
 - (a) At the time of disclosure, the information was in the public domain;
 - (b) It can be established by reasonable proof that the information was in the possession or knowledge of the Supplier without it being derived from any information obtained from the Company; and
 - (c) The information is information that is agreed between the Company and the Supplier in writing as being information that is not to be treated as Confidential Information.
- 3.3 **Defective means Goods and/or Services** (or any aspect of them) which are not in accordance with the Purchase Order or which are damaged, deficient, faulty, inadequate or incomplete.
- 3.4 **Delivery Address** means the place for delivery specified on the Purchase Order. Delivery Date means the delivery date specified on the Purchase Order.
- 3.5 **Equipment** means the equipment, tools, appliances and other property supplied by the Supplier for the purpose of supplying the Goods and/or performing the Services, and includes any Hired Equipment (if applicable);
- 3.6 **Goods** means the goods, if any, described on the Purchase Order.
- 3.7 **GST** has the meaning given to that term under the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- 3.8 **Hired Equipment** has the meaning set out in clause 12 of the Agreement;
- 3.9 **Intellectual Property** means each of the following owned or used by or on behalf of the Company or developed in connection with the business or operations of the Company before, during or after the engagement:
 - (a) Know-how;
 - (b) Trade marks, whether registered or unregistered;
 - (c) Domain names;
 - (d) Business names;
 - (e) Confidential Information;
 - (f) Copyright, moral rights, inventions, patents, patent applications, designs; and
 - (g) Any other intellectual property.
- 3.10 **Purchase Order** means the purchase order for Goods and/or Services issued by the Company to the Supplier from time to time containing, amongst other things, a description of the Goods and/or Services.
- 3.11 **Price** means the price set out in the Purchase Order which is exclusive of GST but is inclusive of all other costs and charges.
- 3.12 **Services** means the services, if any, described on the Purchase Order.
- 3.13 **Supplier** means the party identified as such in the Purchase Order.
- 3.14 **Supplier Reference Document** means a delivery document, dispatch note, time sheet, claim form or such other document which evidences the delivery of Goods or performance of Services.
- 3.15 **Warranty Period** means the warranty period specified in the Purchase Order or the standard warranty that applies to the Goods and/or Services supplied by the Supplier or in default thereof the period of 24 months from the date delivery of the Goods or completion of the provision of the Services.

4. SUPPLY OF GOODS AND/OR SERVICES

- 4.1 In consideration of payment of the Price by the Company, the Supplier must supply to the Company the Goods and/or perform the Services in accordance with the Purchase Order (which includes these Purchase Order Terms and Conditions).
- 4.2 To the extent the Supplier's terms and conditions are supplied with the Goods or Services (including as printed on consignment notes or other documents), those terms and conditions will be of no legal effect and will not constitute part of this Purchase Order (even if any representative of the Company signs those terms and conditions or annexes the terms and conditions to this Purchase Order).
- 4.3 Where this Purchase Order relates to Goods and/or Services the subject of a contract between the Supplier and the Company or if there are special conditions in the Purchase Order, the terms of that contract or those special conditions apply to the extent of any inconsistency with these Purchase Order Terms and Conditions.
- 4.4 These Purchase Order Terms and Conditions shall be subject to and shall not have precedence over the provisions in any statement of work or framework agreement between the Company and the Supplier, or any special conditions in a Purchase Order.
- 4.5 If the Supplier is supplying:
 - (a) Goods only - the provisions in these Purchase Order Terms and Conditions relating to the supply of Services shall not apply; and
 - (b) Services only - the provisions in these Purchase Order Terms and Conditions relating to the supply of Goods shall not apply.
- 4.6 The Supplier must, in supplying the Goods and/or performing the Services:
 - (a) not interfere with the Company's activities or the activities of any other person;
 - (b) be aware of and comply with and ensure that the Supplier's employees, agents and Suppliers are aware of and comply with:
 - (i) all applicable Laws; and
 - (ii) all lawful directions and orders given by the Company's representative or any person authorised by Law to give directions to the Supplier.

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- (c) ensure that the Supplier's employees, agents and contractors, entering the Company's premises and any work place under the control of the Company, perform in a safe manner and are properly qualified for, and skilled in, the performance of their tasks and are of such character as not to prejudice:
 - (i) safe working practices;
 - (ii) safety and care of property; and
 - (iii) continuity of work.
- (d) provide all such information and assistance as the Company reasonably requires in connection with any statutory investigation in connection with the supply of the Goods or the performance of the Services; and
- (e) on request by the Company, provide to the Company and its employees, agents and consultants any information and assistance required to identify, evaluate, implement and report on any matter required by Law.

5. DELIVERY

- 5.1 The Supplier must deliver the Goods to the Delivery Address by the Delivery Date.
- 5.2 The Supplier must ensure that the Goods are suitably packed to avoid damage in transit or in storage.
- 5.3 Packages must be marked with the Purchase Order number, item number, destination, contents, quantity, date and method of dispatch and weight of each package.

6. TIME FOR PERFORMANCE

- 6.1 The Supplier must use its best endeavours to perform the Services or deliver the Goods by the date specified in the Purchase Order or as otherwise agreed by the Company and the Supplier.
- 6.2 If the Supplier cannot perform the Services or deliver the Goods by the date specified in the Purchase Order, the Supplier must request an extension of time from the Company in writing. The Company, in its absolute discretion, may extend the time for the Supplier to perform the Services or deliver the Goods on terms acceptable to the Company.

7. TITLE, RISK, INSURANCE AND LIABILITY

- 7.1 Title in the Goods passes to the Company upon payment of the Price.
- 7.2 Risk in the Goods passes to the Company when the Goods are delivered to the Delivery Address.
- 7.3 The Supplier must ensure that it has and maintains sufficient appropriate insurance from a reputable insurance company to fully satisfy its liabilities arising out of this Purchase Order, and must provide on request, certificates of currency or other evidence satisfactory to the Company of that insurance, with cover for a liability not less than the following amounts where specified below:
 - (a) General and public liability - \$20 million in respect of any one occurrence;
 - (b) Workers compensation - minimum of \$50 million or such other amount as is required by all relevant statutory requirements;
 - (c) Motor vehicle insurance (if applicable);
 - (d) Equipment insurance (if applicable) - the Supplier must insure all items of the Equipment (including the Hired Equipment) that the Supplier brings onto site or uses to supply the Goods and/or Services for an amount of not less than its full replacement value (unless otherwise insured to the satisfaction of the Company), unless the Company agrees otherwise in writing with the Supplier.
- 7.4 Neither the Company nor the Supplier is in any circumstances liable to each other for any consequential loss, pure economic loss or any other loss which is indirect, remote or unforeseeable under this Purchase Order or otherwise.
- 7.5 Clause 7.4 does not apply to the Supplier in the event of gross negligence, fraud or wilful misconduct by the Supplier.

8. PRICE

- 8.1 The Company must pay the Supplier the Price for the Goods and/or Services.
- 8.2 The Price is inclusive of all costs incurred by the Supplier in the supply of the Goods and/or performance of the Services including all charges for packing, insurance and delivery of the goods and the cost of any items used or supplied in the performance of the Services.
- 8.3 The Price is inclusive of all taxes and duties, except GST.

9. GST

- 9.1 If GST is imposed on any supply made by the Supplier under or in connection with this Purchase Order, the Supplier may recover from the Company, in addition to the Price, an amount equal to the GST payable in respect of that Supply.
- 9.2 The Supplier must first provide the Company with a valid tax invoice before the Company will pay the GST amount to the Supplier.

10. INVOICING

- 10.1 Upon delivery of the Goods and/or completion of the Services, the Supplier must provide to the Company a valid tax invoice, which must include the information set out in clause 10.2.
- 10.2 An invoice must include the following details:
 - (a) a reference to a Purchase Order and the relevant Contract (if any) including the line item numbers on the Purchase Order and the Contract number;
 - (b) a detailed description of the delivered Goods or performed Services, including the date of delivery and/or period of Services in respect of which the invoice relates and the relevant quantity;
 - (c) an individual reference number for the Company to quote with remittance of payment;
 - (d) the Price relating to the Goods and/or Services, broken down to reflect the same Price components on the Purchase Order;
 - (e) the amount of any applicable GST;
 - (f) the Supplier's bank details that have been verified by a member of the Company's senior management;
 - (g) Company operation and Site; and
 - (h) Company contact name.
- 10.3 If the Company requests, the Supplier must provide the Company with all relevant records to calculate and verify the amount set out in any document supplied in respect of the Goods and/or Services or any Invoice issued in respect of the Purchase Order ("Supplier Reference Document").
- 10.4 The Company is not obliged to approve a Supplier Reference Document or any invoice submitted in accordance with clause 10, and may withhold approval and/or money due to the Supplier under this Contract if the Goods or Services (or any part of them) are Defective.
- 10.5 Subject to clause 10.4, the Company will pay all invoices that comply with clause 10.2 within 30 days after the end of the calendar month in which the invoice is received by the Company unless the Purchase Order states otherwise or as advised otherwise by the Company, except where the Company disputes the invoice, in which case:
 - (a) the Company may withhold payment pending resolution of the dispute; and
 - (b) if the resolution of the dispute determines that the Company must pay an amount to the Supplier, the Company must pay that amount upon resolution of that dispute.
- 10.6 The Company may reduce any payment due to the Supplier under this Contract by any amount which the Supplier must pay the Company, including costs, charges, damages and expenses and any debts owed by the Supplier to the Company on any account whatsoever. This does not limit the Company's right to recover those amounts in other ways.

11. QUALITY

- 11.1 The Goods and/or Services must match the description referred to in the Purchase Order.
- 11.2 If the Supplier gave the Company a sample of the Goods or a demonstration of the Services, the Goods and/or Services must be of the same nature and quality as the sample or demonstration given.
- 11.3 The Goods and/or Services must be fit for the purpose for which goods and/or services of the same kind are commonly supplied or bought and for any other purpose the Company specifies.
- 11.4 The Goods must be of merchantable quality and, unless otherwise specified in the Purchase Order, must be new.

12. EQUIPMENT & EQUIPMENT HIRE

- 12.1 This clause 12 only applies if, pursuant to the Purchase Order, statement of work or framework agreement, the Company requires the Supplier to lease items of equipment (each item a "Hired Equipment") or provide Equipment to the Company.
- 12.2 The Supplier will lease the Hired Equipment or provide the Equipment to the Company for the duration specified by the Company.
- 12.3 Unless otherwise directed by the Company, the Supplier must perform all maintenance of the Hired Equipment and the Equipment at its own cost and risk to ensure that the Hired Equipment and the Equipment is in good operating condition at all times.
- 12.4 The Supplier warrants that:
 - (a) it has the necessary rights, title and interest in all the Hired Equipment to enable it to lease them to the Company on the terms of these Purchase Order Terms and Conditions;
 - (b) it has insured the Hired Equipment and the Equipment for its full value and such insurance covers the Company and its personnel operating the Hired Equipment and the Equipment;
 - (c) the Hired Equipment and the Equipment is in good, proper and safe working order and complies with all relevant legislation; and
 - (d) the Hired Equipment and the Equipment has been properly maintained by the Supplier and has all necessary guards and safety equipment fitted.

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- 12.5 Any personnel provided by the Supplier to operate Hired Equipment and the Equipment must be suitably qualified and trained, and formally inducted to work at the site.
- 12.6 Unless the Hired Equipment or the Equipment is being operated by or at the direction of the Supplier or its personnel (including any commissioning of the Hired Equipment or the Equipment), the Company will be responsible for loss or damage which it causes to the Hired Equipment or the Equipment from the latter of its delivery to the site or its commissioning, until the Hired Equipment or the Equipment is returned to the Supplier at its relevant return point.
- 12.7 At the Company's request, the Supplier must conduct any commissioning of the Hired Equipment and the Equipment or supervise the Company's commissioning of the Hired Equipment and the Equipment, to the Company's satisfaction.

13. WARRANTY PERIOD

- 13.1 If, during the Warranty Period, any of the Goods or Services are found to be Defective, the Company may:
- return the Defective Goods to the Supplier;
 - reject the Defective Services;
 - require the repair or make good of the Defective Goods; or
 - require the re-performance or make good of the Defective Services.
- 13.2 The Supplier must:
- repair or replace the Defective Goods;
 - re-perform or make good the Defective Services; or
 - reimburse the Company for any expenses incurred in repairing, re-performing or making good (as the case may be) any Defective Goods or Services including all costs of transport to include delivery costs, freight costs, duty costs and any other related costs, at the Supplier's cost, if requested to do so by the Company.

14. CONFIDENTIALITY

- 14.1 The Supplier's obligations of confidentiality as set out in this clause 14 apply during the supply of Goods and/or Services and continue to apply at all times following the provision of the Good or Services.
- 14.2 The Supplier must hold all Confidential Information in strict confidence.
- 14.3 The Supplier must not at any time during the course of the engagement or subsequently, except as specifically authorised by the Company, disclose, share copy or make use of in any manner, any Confidential Information of the Company or any information which the Company has received from others, which it is obliged to treat as confidential.
- 14.4 The Supplier must not make a copy or summary of any Confidential Information unless required to do so in the course of the engagement. If the Supplier is required to make a copy of any Confidential Information during the course of the engagement, the record remains the property of the Company.
- 14.5 The Supplier must take all necessary and reasonable steps to prevent Confidential Information being disclosed to any unauthorised person. The Supplier must take all reasonable steps to ensure that its employees and subcontractors are aware of and abide by obligations which enable the Supplier to comply with the obligations of confidentiality set out in this clause.
- 14.6 The Supplier indemnifies the Company for any loss which arises from any breach of the Supplier's obligations under this clause.
- 14.7 The Supplier must do anything required by the Company to restrain a breach or any infringement of this clause.
- 14.8 Without limiting any other obligation under these Purchase Order Terms and Conditions, the Supplier must not make use of the Confidential Information to the commercial, financial or competitive detriment or disadvantage of the Company.
- 14.9 The Supplier must immediately notify the Company of any actual or suspected unauthorised use, copying or disclosure of Confidential Information.
- 14.10 The Supplier must provide any assistance reasonably required by the Company in proceedings by the Company against any person for unauthorised use, copying or disclosure of Confidential Information.
- 14.11 The Supplier must return the Confidential Information to the Company immediately on termination of the engagement or earlier if requested to do so by the Company.
- 14.12 The Supplier acknowledges that these obligations of confidentiality are reasonable and necessary to protect the business interests of the Company. The Supplier further acknowledges that the remedy of damages may be inadequate to protect the interests of the Company, and the Company is entitled to seek and obtain injunctive relief or any other relief in respect of these obligations.
- 14.13 The Supplier acknowledges that a breach of any of these obligations of confidentiality is a very serious matter.

15. INTELLECTUAL PROPERTY

- 15.1 The Supplier acknowledges and agrees that it is a condition of engagement that the Company is the owner of all Intellectual Property rights in all documents, materials or other things created or contributed to by the Supplier in the course of the engagement or that make use of Company resources.
- 15.2 If for any reason any creation or contribution of any documents, materials or other things results in any right, title or interest vesting in the Supplier, the Supplier must unconditionally and irrevocably assign all of the Supplier's right, title and interest to the Company (or any person nominated by the Company) and do all things necessary for this to occur.
- 15.3 The Supplier must, at the expense of the Company, do each of the following:
- Sign any necessary documents and do all things that the Company may require for perfecting the assignment of the Intellectual Property rights under clause 15.2.
 - Assist in all administrative and legal procedures before any relevant authority, court or other relevant body brought by, for or against the Company (or any person to whom the Company directs the Supplier make an assignment under clause 15.2 involving any Intellectual Property rights owned by or assigned to the Company pursuant to these provisions.
- 15.4 Any act to be done or document to be signed by the Supplier pursuant to clause 15.2 may be done or signed by a director or secretary of the Company, or another person authorised in writing by the Company, and the Supplier irrevocably appoints each director, secretary or other nominee to be the Supplier's attorney for that purpose.

16. RESTRAINT

- 16.1 The Supplier must not approach, communicate with or respond to enquiries from any person, company, business, firm or equivalent (howsoever described) (**Person**) that is a contractor or employee of the Company or has been a contractor or employee of the Company in the 12 months prior to the issue of the Purchase Order to obtain the services of that Person, without the prior written consent of the Company.
- 16.2 If the Supplier (or related body corporate of the Supplier):
- directly engages a Person within 12 months of the issue of the Purchase Order; or
 - directly or indirectly procures or otherwise causes a third person to directly engage, or attempt to engage, a Person,
- the Supplier must immediately notify the Company in writing of the circumstances described in this clause 16.2 and must pay the Company a fee of \$5,000 plus GST.

17. TERMINATION

- 17.1 The Company may terminate the Purchase Order with immediate effect by giving written notice of termination to the Supplier if:
- The Supplier breaches any of the provisions of this Purchase Order.
 - The Supplier has breached any of the provisions of this Purchase Order and the Company at its option has allowed the Supplier to remedy the breach within 14 days after receiving written notice specifying the breach and requiring it to be remedied and the Supplier has not remedied the breach to the satisfaction of the Company;
 - The Supplier ceases to carry on business;
 - Any step is taken to enter into any arrangement between the Supplier and its creditors;
 - The Supplier becomes unable to pay its debts as they become due and payable;
 - Any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator or other like person of the whole or any part of the Supplier's assets;
 - The Supplier is guilty of any act, neglect or default or conduct which in the reasonable opinion of the Company has had or is likely to have, the direct or indirect effect of causing material damage or discredit to the Company or the business engaged in by the Company; or
 - The Supplier or any of its officers or employees who provide any of the Services are convicted of any criminal offence other than a summary offence.
- 17.2 The Company may, at any time and in its absolute discretion, terminate a Purchase Order for any reason whatsoever determined by the Company (including at its convenience) and without being required to give any reason by giving the Supplier a written notice and in such circumstances the Supplier shall only be paid for the Goods and or Services actually supplied as at the date of termination or for the non-refundable reasonable third party costs incurred by the Supplier prior to the date of termination.

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