

# Transarle Pty Ltd – Purchase Order General Terms & Conditions

## 1 INTERPRETATIONS AND GENERAL MATTERS

### 1.1 Definitions and Interpretations

#### Day – means calendar day.

**FIS** – means, in relation to delivery of the Goods, 'free into store' and includes the responsibility (and associated costs) for packing, loading, transportation and insurance (for the full replacement value of the Goods) to the nominated delivery point for the Goods.

**Goods** – means all Goods, equipment, materials, articles, or any other property or parts to be provided to the Purchaser by the Supplier under the Purchase Order and includes without limitation all services including design, manufacture, inspection, testing, expediting, quality assurance and control, painting, packing and delivery as specified or required hereunder.

**GST** – means the tax introduced by A New Tax System (Goods and Services Tax) Act 1999 (Cth) (the GST Act) and its associated legislation and regulations.

**Purchaser** – means the person ordering the Goods, as identified in the Purchase Order Form.

**Purchase Order** – means the purchase order issued by the Purchaser to the Supplier as evidenced by the documents listed in the Purchase Order Form.

**Purchase Order Form** – means the section of the Purchase Order to be completed by the Purchaser, which identifies the Purchaser and the Supplier and includes but is not limited to a brief description of the Goods and a list of the documents comprising the Purchase Order.

**Supplier** – means the person providing the Goods, as identified in the Purchase Order Form.

**Taxable Supply** – for the purposes of clause 8 means a taxable supply under the GST Act.

**Warranty Period** – means the period commencing on the date of final supply of the Goods and lasting for period of twelve (12) months, unless otherwise stated in the Purchase Order.

1.1.1 Words importing the singular are deemed to include the plural and vice versa. **Headings and subheadings** are inserted for convenience only and shall not be used to interpret the text. **Words** denoting a natural person shall include a corporation and vice versa.

#### 1.2 Supplier to Inform Itself

The Supplier shall be deemed to have carefully examined all documents furnished by the Purchaser and fully satisfied itself regarding all the conditions, risks, contingencies and other circumstances which might affect the supply of the Goods.

#### 1.3 Order of Precedence

Unless otherwise stated, the order of precedence of any of the following documents listed in the Purchase Order Form shall be as follows:

- i) The Purchase Order Form
- ii) Special Terms and Conditions
- iii) General Terms and Conditions
- iv) Specification(s)
- v) Drawing(s).

#### 1.4 Ambiguities

If the Supplier discovers any ambiguity in the Purchase Order it shall immediately notify the Purchaser in writing. The Purchaser shall then determine the correct interpretation of the Purchase Order. The determination of the Purchaser shall be final and binding on the Supplier and have no effect on the Purchase Order price.

#### 1.5 Use of Documentation

The documents shall not be copied or used for any other purpose than the supply of the Goods, without the prior written approval of the Purchaser.

#### 1.6 Confidentiality

Any information provided by the Purchaser to the Supplier that is noted as confidential shall not be disclosed to any third party without the prior written approval of the Purchaser. This obligation shall be a continuing obligation and shall survive the completion or termination of the Purchase Order.

#### 1.7 Waiver

No failure or delay on the part of the Purchaser in exercising any of its rights under the Purchase Order shall be construed as constituting a waiver of any such rights.

#### 1.8 Subcontracting and Assignment

The Supplier shall not subcontract or assign all or any part of the Purchase Order without the prior written approval of the Purchaser. Approval of the Purchaser to any subcontract shall in no way relieve the Supplier of any of its obligations under the Purchase Order.

#### 1.9 Communications

Any notice or other communications required under the Purchase Order shall be delivered in writing and shall be in a form which can be read, copied and recorded conveniently. Verbal instructions or directions from the Purchaser shall be confirmed in writing to the Supplier within a reasonable time. The notice shall take effect from the time when it is delivered to or received at the nominated address of the parties.

#### 1.10 Licences and Laws

The Supplier shall comply with all applicable laws, by-laws, ordinances, regulations, proclamations, orders and rules and with the lawful requirements of Public or other Authorities in any way related to the supply of the Goods.

#### 1.11 Entire Agreement

The Purchase Order constitutes the entire agreement between the Purchaser and the Supplier. The parties shall not be bound by or liable for any statement, representation, promise or understanding not set forth herein. Nothing contained in proposals, correspondence, discussions or negotiations prior to the date of the Purchase Order has any effect on the Purchase Order unless specifically incorporated herein.

## 2 INSURANCE

Without limiting the Supplier's liability under the Order, the Supplier must obtain and maintain, from solvent and reputable insurers, the following insurance policies:

- (a) Public and products liability insurance in the amount of A\$20 million for any one loss or occurrence (from the date of the Order until the time when the Supplier has complied with all of its obligations under the Order);
- (b) Where Services are being provided, professional liability insurance in the amount of A\$5 million for any one loss or occurrence (from the date of the Order and for a period of 6 years after the Supplier has complied with all of its obligations under the Order); and
- (c) Where Goods are to be delivered to the Company's premises, third party motor vehicle insurance in the amount of A\$10 million for any one loss or occurrence (from the date of the Order until the time when the Supplier has complied with all of its obligations under the Order).

## 3 INDEMNIFICATION

The Supplier shall indemnify and keep indemnified the Purchaser and its officers, employees and agents against all claims, demands, proceedings, liabilities, costs, charges and expenses arising as a result of any act, neglect or default of the Supplier, its employees or agents related to its obligations under the Purchase Order.

## 4 PERFORMANCE AND QUALITY

4.1 All Goods shall be suitable for the purchase for which they are required. The Supplier shall use new and undamaged materials, unless otherwise specified in the Purchase Order and the workmanship shall be of the highest quality and standard. The work shall be carried out in accordance with good engineering practice and comply with all applicable Australian Standards and/or other referenced codes, the requirements of the relevant Statutory Authorities and the Law.

4.2 The Supplier represents and warrants to the Purchaser that it has the necessary skills, resources and experience to successfully supply the Goods in accordance with the requirements of the Purchase Order.

4.3 The Goods must be tested in accordance with the requirements of the Specifications. Unless otherwise set out elsewhere in the Purchase Order, any tests and the costs thereof shall be the responsibility of the Supplier. The result of tests shall be promptly supplied to the Purchaser in writing.

4.4 The Purchaser shall have the right to inspect, expedite and monitor the Goods prior to delivery and the Supplier shall give the Purchaser access to the Supplier's premises for such purpose during its normal working hours. The Goods will not be accepted by the Purchaser until inspected and approved by the Purchaser. Any inspection by the Purchaser shall not relieve the Supplier from its obligations to comply with the requirements of the Purchase Order and shall in no way impair the Purchaser's right to require subsequent correction of non-conforming Goods.

4.5 The Supplier shall comply with the standards of quality specified in the Purchase Order. If no standards are specified the Supplier shall comply with the best quality standards applicable to the Goods concerned.

4.6 The Supplier warrants that the Goods shall:

- i) Be free from liens, charges, encumbrances, mortgages or other defect in title
- ii) Be free from defects in design, materials and workmanship
- iii) Conform to the conditions and specification of the Purchase Order.
- iv) Conform to all applicable laws and regulations to which the Goods are subject.
- v) Be new and made to the specified quality.

The warranties noted above are in addition to any statutory warranties applicable to the Goods.

4.7 During the Warranty Period, the Purchaser shall give written notice to the Supplier of any failure or defect in the Goods. The Supplier shall without delay and at no cost to the Purchaser, correct any defect or failure in the Goods covered by the warranty, by way of repair, replacement, modification or other means acceptable to the Purchaser.

4.8 If the Supplier fails to correct any defects and failures, of which it has been notified by the Purchaser, within the time specified in the notice (which shall not be unreasonable), the Purchaser shall have the right to rectify the Goods itself or have the rectification undertaken by a third party. All costs so incurred shall be a debt due and payable by the Supplier or deducted from moneys otherwise owing to the Supplier. Any Goods repaired under warranty may be subject to a further full Warranty Period, if required by the Purchaser, commencing on the date of completion of any such repair.

## 5 DELIVERY

5.1 Unless otherwise specified in the Purchase Order, the Goods shall be delivered FIS, adequately packaged and protected to ensure safe delivery, to the delivery point and by the delivery date(s) specified in the Purchase Order Form. The Goods shall be accompanied by a delivery docket which shall be signed by a duly authorised representative of the Purchaser at the point of delivery.

5.2 The Goods shall become the property of the Purchaser upon delivery of the Goods to the Purchaser as evidenced by the signature on the delivery docket by the duly authorised representative of the Purchaser. Notwithstanding that the Purchaser has taken delivery of the Goods, the Supplier shall remain responsible for any loss or damage to the Goods, which may have occurred prior to delivery, and for any non-compliance of the Goods with the requirements of the Purchase Order.

5.3 The Supplier shall take all reasonable steps to minimise and prevent any delay to the delivery of the Goods

5.4 If the Supplier fails to deliver the Goods by the specified delivery date(s) the Purchaser shall be entitled to terminate the Purchase Order for default, either in whole or in part, in accordance with the provisions of Clause 7.1 and/or deduct from moneys due to the Supplier as liquidated damages, representing a genuine pre-estimate of the Purchaser's damages and not as a penalty, the amount specified in the Purchase Order Form, for each week or part thereof by which delivery exceeds the specified delivery date.

## 6 VARIATIONS

6.1 The Purchaser may vary the work under the Purchase Order or any condition thereof and the Supplier shall carry out any such variation as directed by the Purchaser. The Supplier's price (addition or reduction) for any variation and any effect on the delivery date(s) of the Goods shall preferably be agreed between the Purchaser and Supplier prior to the Supplier carrying out any such variation. However, if agreement cannot be reached, the Purchaser shall determine the price for the variation and its effect on the delivery date(s) of the Goods.

6.2 The Supplier shall not vary the work under the Purchase Order or any condition thereof, except as directed and approved by the Purchaser in writing. No variation shall invalidate the Purchase Order.

## 7 TERMINATION

7.1 In the event of a substantial breach by the Supplier of any of the terms and conditions of the Purchase Order, which in the opinion of the Purchaser may significantly delay the completion of the Purchase Order and which is not remedied within seven (7) days of the Purchaser notifying the Supplier in writing of any such breach, the Purchaser may terminate the Purchase Order in whole or part.

7.2 If, in the opinion of the Purchaser, the Supplier is unable to affectively perform its obligations under the Purchase Order due to insolvency, bankruptcy or related reasons, the Purchaser shall be entitled to terminate the Purchase Order.

7.3 Notwithstanding any other provision of the Purchase Order, the Purchaser may terminate the Purchase Order by giving fourteen (14) days written notice to the Supplier.

7.4 In the event of insolvency of the Supplier or its default under Clause 7.1, the Purchaser shall immediately suspend any further payment to the Supplier. Any additional monies required by the Purchaser to complete the Purchase Order in excess of what the Purchaser would have paid under the Purchase Order shall be a debt due and payable by the Supplier to the Purchaser.

7.5 In the event of termination by the Purchaser, under Clause 7.3 and provided the Supplier is not in default, the Purchaser shall pay the Supplier for the work carried out prior to termination and all reasonable costs associated with the cancellation of any order placed by the Supplier prior to termination.

## 8 PRICE AND PAYMENT

8.1 Unless otherwise stated in the Purchase Order, prices shall be fixed and not subject to any variation, including but not limited to variation in the cost of labour, materials, plant, transport or exchange rates.

8.2 The quote for the Goods to be supplied under the Purchase Order shall be inclusive of GST calculated in accordance with the GST Act unless otherwise specifically stated in writing. The Supplier must in relation to the consideration for any Supply;

- (a) maximise its own claims for input credits on all creditable acquisitions made by its enterprise in connection with the agreement; and
- (b) pass on to the Purchaser by way of a reduction in the net consideration for any such Taxable Supply the benefit of any cost saving it achieves relevant to this agreement in connection with the abolition or reduction of other indirect taxes associated with the introduction of the GST Act.

8.3 The Supplier must in any such case issue to the recipient at the time of claiming payment a valid tax invoice (in accordance with Section 29-70 of the Act) for the purpose of obtaining an input tax credit for any GST so paid.

8.4 If there is an Adjustment event in relation to a Taxable Supply which results in the amount of GST on a Taxable Supply being different from the amount recovered by the Supplier, the Supplier shall issue the relevant Adjustment Note and addition or deduction shall be paid or credited accordingly.

8.5 Before becoming entitled to receive payment (and unless otherwise specified in the Purchase Order) the Goods must be delivered together with any certificates or warranty documents in relation to the Goods. Subject to clause 8.8, the price indicated on the Purchase Order will be paid by the Purchaser no later than thirty (30) days from the end of the month in which the invoice is received.

8.6 The Supplier shall be responsible for the payment of all relevant Australian (Federal, state and Local Government) and overseas taxes, duties and charges payable with respect to the Goods. The Purchase Order price shall be deemed to be inclusive of all such taxes, duties and charges.

8.7 The Purchaser may deduct from moneys due to the Supplier any money due from the Supplier to the Purchaser under or in respect of this Purchase Order or otherwise.

8.8 In the event the Supplier refers any claims for payment to adjudication under the Building Construction Industry Security of Payment Act 2002 (Vic), the Building and Construction Industry Security of Payments Act 1999 (NSW) or the Building and Construction Industry Security of Payments Act 2004 (Qld) then the amount of any determination by an adjudicator appointed under the relevant Act in respect of that claim will be the maximum amount of the Supplier's entitlement in respect of the claim under this Purchase Order.

## 9 DISPUTES

9.1 Notwithstanding any dispute between the Purchaser and the Supplier, the Supplier shall ensure that the progress of the work under the Purchase Order is continued without any effect on the specified delivery date.

9.2 Disputes or differences arising between the Purchaser and the Supplier shall preferably be settled quickly and by negotiation at senior management level if required.

9.3 Failing such agreement, the parties agree that the dispute shall be resolved by mediation conducted in accordance with the Australian Commercial Disputes Centre ("ACDC") mediation procedures.

9.4 In the event that the dispute has not been settled within six (6) weeks (or such other period as may be agreed to in writing between the parties) after the appointment of the mediator, the dispute shall be referred by either party to arbitration in accordance with the provisions of the Commercial Arbitration Act in force in the State or Territory in which the Purchase Order is issued. In any arbitration both parties shall be entitled to be legally represented. Unless the parties agree upon an Arbitrator, the Arbitrator shall be appointed by the President, for the time being, of the Australian Institute of Arbitrators.

## 10 APPLICABLE LAW

Unless otherwise specified, the Purchase Order shall be governed and construed in accordance with the laws in place in the State or Territory in which the Purchase Order is issued. The Purchaser and the Supplier shall submit to the jurisdiction of the courts of the said State or Territory.