



# PURCHASE ORDER TERMS AND CONDITIONS

## Interpretation

1. In these conditions:
  - I. "UON" means UON Pty Ltd ABN 44 099 963 354 of 29 Beringarra Avenue, Malaga, Western Australia 6090, which is the Buyer of the goods;
  - II. "Supplier" means the Supplier of the Goods specified on the Purchase Order;
  - III. "Goods" means the items described on the Purchase Order;
  - IV. "Purchase Order" means the order for the Goods constituted by this document;
  - V. "Defects Liability Period" means (as applicable) the period identified as such in the Purchase Order or, where such period is not identified in the Purchase Order, the period of 1 year following receipt of the Goods by UON.

## General

### 2 (a) Contract

The contract consists of the following documents:

- i. The Purchase Order;
- ii. These general conditions;
- iii. Any other document which is attached to, or incorporated by reference in, the Purchase Order or these general conditions.

### 2 (b) Precedence of Contract Documents

If there is any conflict or inconsistency between the documents constituting the Contract, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in Clause 2 (a).

### 2 (c) Entire Agreements

- i. The contract contains the entire agreement between UON and the Supplier with respect to its subject matter and supersedes all prior communications and negotiations between UON and the Supplier in this regard, unless those communications expressly form part of the Contract.
- ii. To the extent the Supplier's terms and conditions are supplied to UON, including with the Goods or As printed on consignment notes or Other documents (including Quotations), those terms and Conditions will be of no legal effect and will not constitute part of the Contract even if any of UON's Personnel signs those terms and Conditions or annexes the terms and Conditions to the Contract.

### 2 (d) Amendment to be in writing

No amendment or variation of the Contract is valid or binding on a Party unless made in writing and signed by the Supplier and UON.

## Alterations

3. No changes to this Purchase Order are to be made by the Supplier without the written agreement of UON.

## Price, Invoicing & Payments

- 4 (a) The Purchase Order is placed on a firm price basis in accordance with the price(s) listed on the Purchase Order and is not subject to increases in price without UON's prior approval in writing and includes delivery to the destination stated in Purchase Order and the off-loading of the Goods by the Supplier at the point of destination.

### 4 (b) Invoicing & Payments

- i. The Supplier must claim payment for the supply of the goods or services by submitting invoices to UON. Each such invoice must:
  - (a) Be a tax invoice
  - (b) Be correctly dated
  - (c) Refer to a valid UON Purchase Order
  - (d) List the particular goods or services supplied in accordance with the UON purchase order supplied
  - (e) Be supported by relevant records to calculate and verify the amount set out in the invoices
- ii. When erection work and services on an external site away from the Supplier's workshops or premises form part of the Purchase Order, the following provisions shall apply:
  - (a) All invoices shall be accompanied by a schedule certified by Purchaser of the Works completed.
  - (b) Progress payments shall not be made unless so stated in the Purchase Order or contract.
- iii. Errors or exceptions in Invoicing  
If the Supplier discovers or is advised of any errors or exceptions relating to its invoicing for the Supply, the Supplier and UON will jointly review the nature of the errors or exceptions, and the Supplier must, if appropriate, take prompt corrective action and adjust the relevant invoice or refund overpayments.
- iv. If the Supplier submits an invoice earlier than the time for submission of that invoice set out in these Conditions, the Supplier agrees that the invoice shall not be taken to have been submitted until that time.
- v. UON shall not be liable to pay for the Goods until the Goods have been supplied in accordance with, and as specified in the Contract.
- vi. UON may deduct from moneys due to the Supplier any debt or other monies which are due from the Supplier to UON, whether under the Contract or otherwise.

- vii. UON standard terms are the latter of 60 days from the end of month in which the goods or services were accepted.

### viii. Disputed Invoices

If UON disputes any amount shown on an Invoice, it must notify the Supplier within 45 days of receipt of the Invoice and payment may be withheld pending resolution of the disputed invoice. If payment is made by UON of a disputed Invoice it is not to be considered as an acceptance of the amount in dispute or of UON's liability to make that payment.

## Warranties

### 5. The Supplier warrants:

- i. All Items covered by this Order will conform to the specifications, drawings, samples and other description furnished or adopted by UON and will be fit and sufficient for the purpose intended;
- ii. the Goods supplied shall be of merchantable quality and be free from defect in material and workmanship;
- iii. All Goods and Services provided under this Purchase order are to be supplied in accordance with recognised industry standards or relevant Australian Standards.
- iv. The Goods carry any applicable manufacturer's warranty which passes on to UON or customer of UON without liability to UON. The Supplier must assign to UON at the request of UON the benefit of any warranty or guarantee that the Supplier has received from any Supplier (whether under contract or by implication or operation of law).

## Inspection and Return

6. All Goods are received subject to inspection within a reasonable time after delivery or before delivery at UON's discretion irrespective of date of payment. Signed delivery dockets do not mean acceptance by UON of Goods delivered but only the number of packages or cartons delivered. UON must promptly notify the Supplier of any defects appearing, and hold Goods so found to be defective. Goods found to be defective will be returned to the Supplier's premises at the Supplier's expense and risk and any expense incurred by UON in such return is payable forthwith by the Supplier and may be set off by UON against any moneys otherwise due by UON to the Supplier.

## Time for performance

7. Time is of the essence in respect of all obligation of supplier under the contract;

All the agreed deadlines set out in the order shall bind the supplier in an imperative way; no modification can be made to the deadlines stipulated in the order without the prior written approval of UON.

The Supplier must immediately report to UON any actual or likely delay in delivery of the goods and its cause. The supplier must at its own expense take all reasonable steps to mitigate delays.

In case of delays in deliveries, the penalties for delay are calculated:

- (a) 2% of the amount of the order for each started week of delay. This amount is limited to a maximum cumulated of 20% of the amount of the order
- (b) in case of a delay in excess of 4 weeks, UON is entitled to declare the order null and void without any cost being charged for the order

## Defects Liability

### 8(a) Warranty

The Supplier warrants each Goods against any defect, which arises during the Defects Liability Period.

The acceptance of any goods or service with defect by UON will not bind UON to accept any other goods or service with a defect and does not affect any of UON's other rights under this Purchase order or at law.

### 8 (b) Commencement of Defects Liability Period

In respect of each Goods, the Defects Liability Period will commence on and from the date that Goods is accepted by UON's Representative in writing.

### 8 (c) Rectification of defects

Upon receipt of a notice from UON's Representative of any defect in any Goods during the Defects Liability Period due to defective design, materials, workmanship, un-merchantable quality or fitness for intended purpose, the affected items or parts must be redesigned, repaired or replaced as appropriate by the Supplier at no cost to UON prior to the expiration of the time specified in the notice. If the Supplier fails to make the necessary redesign, repair or replacement within the period specified, UON may perform or cause to be performed such redesign, repair or replacement at the Suppliers risk and cost and any costs and expenses incurred by UON will be recoverable from the Supplier as a debt due and payable.

Where the supplier has made good any defect under this clause, those goods or services will be subject to the same defects correction period as the original Goods or service, from the date the supplier made good the defect.

## Intellectual Property

## Royalties

9. Goods are for the use of or re-sale by UON or its associated companies and may be incorporated in any products (whether owned or used or possessed by UON). The Supplier must not make any claim for royalties or other additional compensation from UON by reason of or connected with such use, re-sale or manufacture.



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## Patent Rights

- 10 (a) The Supplier agrees to defend, protect and completely indemnify UON, its successors, assigns, customers and the users of UON's products from and against any claim arising by reason of the use of the Goods, including all claims for actual or alleged infringement of any letter patent, trademarks, copyright, design, confidential information or similar protection whether granted by the Commonwealth of Australia or any foreign state or the common law.
- 10 (b) If the Supplier makes any representation or statement directly or indirectly to UON that the Goods ordered are protected by one or more patents and any such patent is found to be invalid, UON may forthwith cancel this Purchase Order or any contract arising from this Purchase Order and recover any money paid to the Supplier under this agreement as a liquidated debt.
- 11 (a) **Supplier Intellectual Property Rights**

UON acknowledges that the Supplier retains ownership of the Intellectual Property Rights of the Supplier used or created under the Contract and/or in the provision of the Services. To enable UON to enjoy the benefit of the Services for the purpose of or in connection with the business the Supplier grants to UON a non-exclusive, transferable, royalty free, irrevocable and perpetual license to use such Intellectual Property Rights for that purpose.

## 11 (b) Third party Intellectual Property Rights

The Supplier warrants that to the extent that it used or proposes to use the Intellectual Property Rights of any third party in the provision of the Supply, or to the extent UON will use or might propose to use the Intellectual Property Rights of any third party in the use and enjoyment of the Supply:

- (i) It has obtained, or will obtain at no further cost to UON, from the relevant third party all necessary licenses and consents to use, or assignments of, such Intellectual Property Right; and
- (ii) That it will not breach any of the licenses or assignments.

## 11 (c) Procurement of Intellectual Property Rights

If UON is prevented from (as the case requires) operating or using the Goods and/or any Associated Services or any part of the Goods and/or any Associated Services as a result of any Claim in relation to an infringement of Intellectual Property Rights, the Supplier must (at its cost) take all reasonable steps to procure for UON the right to (as the case requires) operate or use the Goods and/or any Associated Services or the Relevant part of the Good and/or any Associated Services for the purpose for which it was intended.

## Special dies, etc. to remain purchaser's property

- 12 (a) Special dies, tool, patterns and drawings (each a "tool") used in manufacture of the Goods, the cost of which is met by UON, remain UON's property whether during or after the termination of this agreement.
- 12 (b) The Supplier must keep the tools in good condition and when necessary store the tools without expense to UON.
- 12 (c) The Supplier agrees that it will not use any tool in the production, manufacture or design of any other articles, nor of larger quantities than those required on this Purchase Order, except with UON's prior written consent and at the termination of this contract each tool must be disposed of as UON directs.
- 12 (d) while the Supplier is in possession of UON's tools, it acknowledges that it is a bailee of them and owes UON the duties, responsibility and liabilities of a bailee.

## Confidentiality

- 13 Any Goods or work made or done according to UON's design or specifications or developed for UON at the direction of UON, or any original or copy designs or specifications supplied by UON are held by the Supplier on UON's behalf and at UON's disposal and must not be disclosed or furnished to any other person, firm or government without UON's prior written consent. The Supplier must take all reasonable precautions to protect such confidentiality.

## Packing costs and standards

- 14 (a) The Supplier and any of its agents or suppliers must not make any charge to UON for wrapping, packing, cartons or crafting unless authority for such charge is expressly incorporated in this Purchase Order.
- 14 (b) The Supplier must ensure that all Goods are suitably packed or otherwise prepared for shipment so as to secure the lowest transportation and insurance rates and in accordance with carriers' requirements.
- 14 (c) Supplier must pack and transport the Goods in accordance with any applicable regulations and industry codes.
- 14 (d) the supplier must suitably pack the Goods to avoid damage during loading, Transit, delivery, unloading or storage.

## Indemnity and Liabilities

- 15 To the extent permitted by Law, UON's liability to the supplier arising out of or in connection with this Purchase Order is limited to the Total price Paid or payable by UON under this Purchase Order.

The supplier shall indemnify UON and hold UON exempt from any and all liabilities, demands, cause of actions or claims, including the cost of defending the same, for bodily injury to any person or damage to property, financial loss or expense and economic loss whomsoever in any

way arising out of or in connection with the goods or services purchased hereunder or the operations of the supplier in carrying out the provisions and terms of this agreement. Except that the supplier shall not be liable for any such claim resulting from the sole negligence of UON.

Such Indemnification obligation shall survive termination or expiration of the contract.

The Supplier must notify UON immediately the Supplier becomes aware of a claim being threatened or made against UON in relation to any of the matters covered by the indemnity in this Clause

## Insurance

The Supplier is required, at its expense, to maintain adequate public liabilities insurance, including products liabilities, Worker compensations liabilities insurance, Construction liability insurance (if applicable), Motor vehicle/Automobile Third Party Liabilities insurances, Professional indemnity insurance and Marine insurance. The Supplier agrees to submit Certificates of Insurance evidencing its insurance coverage when requested by UON.

## Delivery

- 16 (a) A copy of each order form shall accompany the goods on delivery, visibly attached or physically handed over. Delivery documentation specifies the matching order number. The signing of the delivery document by UON's personnel is only a proof of receipt of the number of packages and not as proof of acceptance of the quantity and quality.
- 16 (b) The Supplier must not interfere with UON's Activities or the activities of any third party at the delivery address. And ensure its personnel, contractors and agent comply with all applicable laws, site standards, plans and procedures and all lawful directions and orders given by or on behalf of UON at the delivery address.
- 16 (C) Any delivery could be refused if it is not accompanied by a detailed Delivery order containing a reference to a valid UON purchase order
- 16 (d) Any costs resulting from delivery to the wrong address shall be charged to the supplier

## Cancellations

- 17 (a) UON may cancel all or any part of the Purchase Order at any time for any reason, in its sole discretion by issuing a written notice of cancellation to the supplier.
- 17 (b) The Supplier does not have and may not prosecute any claim whatsoever at law or in equity against UON if UON cancels the Purchase Order under the preceding sub-clause.
- 17 (c) The Supplier must, in addition to any other liability, pay the costs of removing the Goods from UON's premises, if UON cancels the Purchase Order under the paragraph 17a) of this clause.

## Title and Risk

- 18 The Goods are at the Supplier's risk until delivered to the destination stated in this Purchase Order. Nothing in the conduct of UON or the transfer of property in the Goods (including delay that is or is not the fault of UON or of any person who represents UON) alters the incidence of risk under this clause.

Title to the Goods shall vest in UON upon delivery to and acceptance by UON.

## Receipt of Notice

- 19 A notice, approval, or consent is taken to be received:
- (a) If sent by a facsimile on a production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient notified for the purpose of this clause;
  - (b) If sent by email, if confirmation of receipt is received, from the time stated in the confirmation receipt; and
  - (c) If given or served by hand, at the time of delivery.

## Termination for Default

- 20 The supplier may be terminated by UON immediately by issuing a written notice of termination to the supplier if the supplier:

- (a) Fail to remedy any breach of its obligation under the contract within 7 days after receiving written notice from UON;
- (b) Ceases to hold any licence, qualification, approval, authority or consent required to supply the Goods or services;
- (c) Threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvent administration;
- (d) Being a company, goes into liquidation, whether voluntary or compulsory, or receiver and manager or administrator appointed, or an application is made for the supplier to be wound up;
- (e) Cease or threatens to cease to carry on Business;
- (f) Assigns or subcontracts the contract or any part of the suppliers' obligation under the contract without prior written consent of UON.

Such termination will not lead to further liability and obligations of UON



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## Miscellaneous

### 21 Exclusion and apportionment

The operation of the convention and, to the extent not prohibited by Law, Apportionment legislation is excluded. The supplier indemnifies UON against any claim, cost, expense or liability whatsoever arising out of or in connection with the contract which are caused or contributed to by the supplier's Personnel and for which the supplier would have been liable to UON, or which UON is not able to recover from the supplier because of any apportionment legislation.

### 22 Waiver

Neither a Waiver of any provision of the Purchase order nor consent to any departure therefrom shall be effective unless given in writing by UON.

No failure or delay in exercising any right or remedy under this agreement operates as waiver or estoppel of any rights, remedy or condition.

### 23 Severability

Any provision of the Contract, which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of the Contract nor does it affect the validity or enforceability of that provision in any other jurisdiction.

### 24 Relationship of the Parties

- (a) Nothing in this agreement shall constitute, or be deemed to neither constitute a partnership between the parties nor, except as expressly provided, shall it constitute, or be deemed to constitute, the supplier, the agent or employee of UON.
- (b) Subject to any express provisions to the contrary in this Agreement, the Supplier shall have no right or authority to and shall not do any act, enter into any contract, make any representation, give any warranty, incur or admit any liability, assume any obligation, whether express or implied, of any kind on behalf of UON or bind UON in any way save to the extent set out in the power of attorney of even date herewith or on the grounds that the proceedings have been brought in an inconvenient forum.

### 25 Force Majeure

Neither UON nor the supplier shall be liable to the other for default or delay in performing its obligation, if caused by an event beyond its reasonable control, provide that the affected party gives prompt written notice if any such inability to perform to the other party. If necessitated in UON's opinion by any such event, UON shall have the option, exercised by written notice to seller, to extend the shipping date until a reasonable time after removal the cause if such delay, or to cancel the purchase order.

### 26 Consequential Loss

Neither UON nor Supplier shall be liable to the other for any consequential loss including but not limited to loss of contract, business opportunity, profit or anticipated profit (or any loss of a similar nature) sustained by the other party.

### 27 Law and Jurisdiction

This agreement shall be governed by and construed in accordance with the law applying in Western Australia. In relation to any legal action or proceedings to enforce this Agreement or arising out of or in connection with this Agreement (proceedings) each of the parties irrevocably submits to the exclusive jurisdiction of the courts of Western Australia, the Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, and waives any objection to proceedings in such courts on the grounds of venue or on the grounds that the proceedings have been brought in an inconvenient forum.