

# AUSSPAN'S PURCHASE ORDER STANDARD CONDITIONS

## 1. DEFINITIONS:

"Completion" means the stage at which the Goods or the Services, or both, (as the context requires) are supplied by the Supplier in accordance with the Purchase Order and to the Purchaser's reasonable satisfaction.

"Defect" means any part or aspect of the Goods and/or the Services which is not in compliance with the requirements of this Purchase Order or is otherwise unfit for the intended purpose and includes failure to deliver the Goods or Services at the time and to the Delivery Address stated in the Purchase Order.

"Delivery Address" means the delivery address stated in the Purchase Order.

"Goods" means goods described in, or reasonably inferred from, the Particulars.

"GST" has the meaning given in the GST Act.

"GST Act" means A New Tax System (Goods and Services) Act 1999 (Cth).

"Intellectual Property Right" means any patent, registered design, trademark or name, copyright or other protected right.

"Particulars" means the purchase order particulars attached to these Standard Conditions.

"Price" means the price payable by the Purchaser to the Seller under this Purchase Order as set out in the section "Total \$..." in the Particulars, as adjusted (if at all) under this Purchase Order.

"Purchase Order" means the contractual relationship between the parties constituted by the Standard Conditions and the Particulars.

"Purchaser" means AusSpan Pty Ltd (A.B.N. 18 166 274 675) of 10 Faulkner Drive, Latrobe, in the State of Tasmania.

"Services" means the services described in, or reasonably inferred from, the Particulars.

"Standard Conditions" means these standard conditions of contract.

"Supplier" means the party described as such in the Particulars.

"Tax Invoice" must comply with the requirements of the GST Act and must show details of the Purchase Order No., Project No. where shown, date and place (e.g. the Delivery Address) of delivery of the Goods or provision of the Services and the calculation of any applicable GST, Customs Duty, Excise or other Government Tax, charge or levy applicable to the Goods and/or Services.

## 2. SUPPLY:

The Supplier must supply the Goods and/or the Services, and the Purchaser must pay the

Supplier the Price, in accordance with this Purchase Order.

## 3. QUALITY, QUANTITY, DELIVERY, WARRANTIES:

(a) The Goods and/or the Services must conform precisely in quality, quantity, specification and description with this Purchase Order and any plans or specification or other description provided or nominated by the Purchaser prior to issuing this Purchase Order.

(b) Without limiting any obligations of the Supplier under statute (including pursuant to the Competition and Consumer Act 2010 (Cth)), the Supplier warrants that the Goods shall be new, of the best quality and workmanship, free from faulty design and Defects, fit for the intended purpose and conform with the requirements of this Purchase Order, any applicable international standard or Australian Standards and all applicable laws, statutory requirements (including any requirements of any local authorities, regulating or supply boards) and Codes.

(c) The Supplier warrants that the Goods shall be free from all liens charges and encumbrances of any kind at the time property in the Goods passes to the Seller under this Purchase Order, and the Supplier must supply the Goods to the Purchaser together with all manuals in relation to the Goods and all documents required to transfer ownership in the Goods and the benefit of any warranties in relation to the Goods (if any).

(d) The Supplier must ensure that any manufacturer's warranty, service guarantee or guarantee of performance from any sub-supplier is provided directly to, and for the benefit of, the Purchaser. In the event of any inconsistency between any implied warranty or express warranty under this Purchase Order, the most favourable to the Purchaser shall prevail.

(e) The Supplier warrants that it will render the Services in accordance with this Purchase Order, with due skill and care, in accordance with industry best practice and in compliance with all applicable laws, statutory requirements, Standards and Codes. If the Supplier fails to provide the Services in accordance with this clause 3, the Purchaser may have the Services performed by a third party and the costs incurred shall be a debt due from the Supplier to the Purchaser.

(f) If any Defect in the Goods arises within the longer of:

(i) 12 months from the date when the Goods are first put into service; or

(ii) 24 months from the "Delivery Date" set out in the Particulars,

the Purchaser may (at its discretion):

(iii) require the Supplier, at its own expense, do all things necessary to remedy the Defect;

(iv) convert the Goods into a condition acceptable to the Purchaser to overcome the Defect; or

(v) accept the Goods notwithstanding the Defect,

and the Supplier must reimburse the Purchaser for any costs incurred in connection with remedying or converting the Defect or, if the Purchaser accepts the Goods notwithstanding the Defect, the Purchaser may set off its assessment of the diminution in value of the Goods from the Price. In each case, the amount owing under this clause shall be a debt due from the Supplier to the Purchaser.

(g) All delivery vehicles & personnel are to:

i) Take reasonable care of their own health and safety.

ii) Take reasonable care that their conduct does not adversely affect others, the environment or quality of work.

iii) Comply with any reasonable Purchaser instruction, so far as they are reasonably able.

iv) Cooperate with any reasonable Purchaser policy, procedure, rules, signage, especially in relation to health and safety, the environment, and quality; and

v) Cease, or refuse to carry out such work if a reasonable concern exists by carrying out the work, the work would expose anyone to a serious health or safety risk emanating from an immediate or imminent exposure to a hazard.

(h) The Supplier must deliver the Goods in accordance with the delivery instructions specified in the Particulars (including delivery of the Goods to the Delivery Address) and must supply all Goods and Services by the Delivery Date specified in the Particulars.

## 4. PRICE AND PAYMENT:

(a) The Price is not subject to change without the prior written approval of the Purchaser.

(b) The Price is inclusive of all costs incurred by the Supplier in the supply of the Goods or the Services in accordance with this Purchase Order, including but not limited to all charges for customs duty (unless specifically exempt), packing, handling, insurance and freight and delivery.

(c) Subject to clause 4(d), the Supplier shall, within 14 days after the end of the month in which Completion occurs, provide the Purchaser with a claim for payment in the form of a valid Tax Invoice on account of the relevant Goods or Services ("Payment Claim").

(d) The Supplier's entitlement to submit a Payment Claim under clause 4(c) is conditional upon:

(i) the Payment Claim being in the form of a valid Tax Invoice; and

(ii) the Supplier complying with clause 4(c).

(e) Subject to clauses 4(d), the Purchaser shall pay such amount of the Price as is due under this Purchase Order:

(i) within 30 days after the end of the month in which Completion occurs, provided that the Purchaser receives a valid Payment Claim no later than 21 days after the end of the month in which Completion occurs; or

(ii) if the Purchaser does not receive a valid Payment Claim within 21 days after the end of the month in which Completion occurs, then the Purchaser shall pay such amount that is due under this Purchase Order within 30 days after the end of the month in which the valid Payment Claim is received.

Payment shall be on account only and does not constitute an acknowledgement that the Goods or the Services are free from Defects or otherwise in accordance with the Purchase Order.

## 5. INSPECTION:

(a) The Purchaser or its designated agent shall have the right to inspect all work related to the manufacture and/or supply of the Goods or performance of the Services at the Supplier's and any sub-supplier's premises. Any such inspection shall not affect the obligations of the Supplier with respect to the Goods or Services.

(b) Acceptance of part or all of the Goods by the Purchaser is subject to inspection and testing after delivery and unpacking (or at the Purchaser's discretion, before delivery) and if the Goods are to be installed or incorporated into plant or premises subject to inspection and testing following such installation or incorporation. Signature by or on behalf of the Purchaser shall not be or be construed as acceptance by the Purchaser of the Goods or an acknowledgement that the Supplier has complied with its obligations under this Purchase Order.

## 6. PROPERTY:

Subject always to the Purchaser's right of rejection of the Goods, property in and title to the Goods shall pass to the Purchaser upon delivery but risk of loss or damage shall not pass to the Purchaser until acceptance of the Goods. Where the Goods are destroyed or damaged prior to delivery and acceptance, without limiting the Purchaser's remedies otherwise at law, the Purchaser shall be entitled to cancel this Purchase Order and where any payment for the Goods has been made the Purchaser shall be entitled to recover in full the monies paid by it.

## 7. PATENT, TRADE MARK, COPYRIGHT, LICENSES, ETC.:

(a) The Supplier warrants that, in relation to the Goods and Services, design, materials,

documents and methods of working shall not infringe any Intellectual Property Right. The Supplier shall indemnify the Purchaser against the infringement of any Intellectual Property Right.

(b) With regard to all Intellectual Property Rights in the Goods or the Services, the Supplier:

(i) (in instances where the Intellectual Property Rights are owned by the Supplier) grants to the Purchaser; or

(ii) (in instances where the Intellectual Property Rights are not owned by the Supplier) shall ensure the Purchaser is provided with, (whichever is applicable) an irrevocable, royalty free, non-exclusive, transferable, perpetual licence to exercise all rights of the owner of the Intellectual Property Rights associated with the Goods or the Services, for any business purpose of the Purchaser, including any subsequent repairs, maintenance or servicing, the supply of replacement parts, additions or alterations or entering into any agreement with any third party which is associated with or utilises the Goods or the Services.

(c) This licence arises immediately upon creation of the Goods or provision of the Services (as applicable) and survives the termination of the Purchase Order on any basis.

#### 8. TECHNICAL DATA:

(a) The Supplier shall supply with the Goods all engineering, technical and other data required for the satisfactory safe use, maintenance, repair, installation, storage or operation of the Goods.

(b) The Supplier must treat as confidential, all information, documents, designs or other information provided by the Purchaser to the Supplier under, or in connection with, this Purchase Order and not disclose the same without the prior written permission of the Purchaser unless compelled to do so by law or unless the information is otherwise in the public domain other than due to the acts of the Supplier. Upon expiration or termination of this Purchase Order, the Supplier must return to the Purchaser, all such information, documents, designs or other information.

#### 9. RIGHTS OF PURCHASER:

(a) All rights and remedies of the Purchaser contained in this Purchase Order are cumulative and in addition to and without prejudice to the rights and remedies of the Purchaser at law, in equity or by statute.

(b) The Supplier warrants that the Price shall not exceed the "not to exceed value" set out in the Particulars and the Purchaser shall have no obligation to pay the Supplier any amount in excess of this value unless otherwise agreed in writing.

(c) In the event of any breach by the Supplier of any term or condition of the Purchase Order and, whether such breach be of a material or of a minor nature, the Purchaser may at any time thereafter terminate the Purchase Order and reject and/or return the Goods or any part of them and recover from the Supplier its costs and damages including consequential damages if any sustained by the Purchaser.

(d) If the Supplier commits an act of bankruptcy or becomes bankrupt or assigns his estate for the benefit of his creditors or being a corporation is insolvent or goes into liquidation or has a receiver, official manager or provisional liquidator appointed of its affairs or enters into a deed of arrangement with its creditors, then this Purchase Order may at the option of the Purchaser be cancelled by the Purchaser free of claim of the Supplier.

(e) As a separate and independent right, the Purchaser may at any time in its sole discretion cancel the Purchase Order and shall pay to the Supplier its actual costs incurred in respect to the Goods and/or Services provided to the Purchaser up to the date of cancellation and upon such payment title to and property in any Goods and/or materials supplied as part of the Services (or part thereof) provided to the Purchaser up to the date of cancellation shall pass to the Purchaser.

#### 10. WAIVER:

Failure by the Purchaser to insist upon strict performance of any term or condition of Purchase Order shall not be deemed a waiver thereof or of any rights the Purchaser may have and shall not be deemed waiver of any subsequent breach of any such term or condition.

#### 11. INDEMNITY:

The Supplier must indemnify the Purchaser against any liability, loss, damage, claim, expense (including, without limitation, legal costs) or proceeding:

(a) in connection with any breach of the Purchase Order or any law, statutory requirements or otherwise by the Supplier;

(b) caused or contributed to by a negligent act or omission of the Supplier in connection with the provision of the Goods or the Services; or

(c) which may be taken or made against the Purchaser for personal injury to or the death of any person and loss or damage to any property arising out of or in relation to the Goods, the Services or the Purchase Order (including, without limitation, loss or damage to the property of the Purchaser and any third party).

This clause survives the expiry or termination of this Purchase Order.

#### 12. INSURANCE:

(a) The Supplier must effect and maintain commercial vehicle insurance, public liability insurance, professional indemnity insurance (where applicable), workers' compensation insurance and where the Supplier is a sole trader, personal accident insurance, for the duration of the Purchase Order and must ensure that the workers' compensation insurance is in accordance with all applicable laws and statutory requirements.

(b) The Supplier must provide certificates of currency of the Supplier's insurance policies (as set out in clause 13(a)) to the Purchaser upon request.

#### 13. GST:

If GST is imposed or payable on any supply made by a party under this Purchase Order, the recipient of the supply must pay to the supplier, in addition to the GST exclusive consideration for that supply, an additional amount equal to the GST exclusive consideration multiplied by the prevailing GST rate. The additional amount is payable at the same time and in the same manner as the consideration for the supply.

#### 14. INTERPRETATION:

(a) This Purchase Order is to be interpreted in accordance with the laws of the State of Tasmania.

(b) If any term or condition of this Purchase Order or any part thereof shall be void for any reason then such term or condition shall be struck out and the Purchase Order shall take effect as though such term or condition had never appeared therein.

(c) The Purchase Order constitutes the entire agreement between the parties and supersedes all previous negotiations and communications, with the effect that the Supplier's standard or usual terms and conditions of supply are expressly excluded. The Purchase Order may only be varied or modified by written agreement between the Supplier and the Purchaser. Where a formal Purchaser contract is executed by both the Purchaser and the Supplier (either before or after the date of this Purchase Order) in relation to the same subject matter as this Purchase Order, the terms and conditions of that contract will replace these Standard Conditions.

(d) The Purchaser may deduct from moneys otherwise due to the Supplier: any debt or other moneys due from the Supplier to the Purchaser; and any claim to money which the Purchaser may have against the Supplier whether for damages or otherwise, whether under the Purchase Order or otherwise at law.