

PURCHASE ORDER (FOR THE SUPPLY OF GOODS AND/OR SERVICES)

HYDRO TASMANIA - GENERAL TERMS AND CONDITIONS

1. SUPPLY

The Supplier must supply the Goods and/or perform the Services by the Due Date, and the Purchaser will pay the Supplier the Price, in accordance with the Contract.

2. PRICE

2.1 The Price is set out in the Purchase Order. The Supplier acknowledges and agrees that the Price covers the cost of complying with all of its obligations under the Contract (including but not limited to, in respect of the Goods, all applicable duties, levies and taxes, and all costs in relation to packing, handling, insurance, freight and delivery; and, in respect of the Services, the provision and maintenance of all materials and resources and the supply of all tools and equipment necessary to perform the Services).

2.2 The Price is not subject to change including, without limitation, to rise and fall, without the prior written agreement of the Purchaser and the Supplier.

2.3 If GST is payable in connection with the Goods or the Services to be supplied under the Contract, the Supplier may recover from the Purchaser an amount equal to the GST payable in respect of that supply.

3. CONFORM TO SPECIFICATIONS

3.1 The Goods and/or the Services must comply with such specifications, drawings, samples or other description (if any) furnished by the Purchaser to the Supplier prior to or in conjunction with issuing the Purchase Order. Any inspection conducted under clause 5.1 by a representative of the Purchaser will not affect this requirement unless expressed in writing by the Purchaser.

3.2 In supplying the Goods and/or performing the Services or undertaking any work under the Contract, the Supplier will observe and comply with all applicable laws and statutory requirements, codes, licenses, permits, international or Australian Standards and the Purchaser's policies and procedures of which the Supplier is notified (including all environmental and work health and safety requirements).

4. WARRANTIES

4.1 Without limiting any obligations of the Supplier under statute (including, without limitation, the *Competition and Consumer Act 2010* (Cth)), the Supplier warrants that the Goods are new, of the best quality and workmanship, free from faulty design and Defects, and that the Goods and the Services will be fit for the intended purpose and conform with the Contract requirements.

4.2 If any Defect in the Goods or Services arises within the shorter of:

- (a) 12 months from the date when the Goods are first put into service or completion of the Services; or
- (b) 24 months from the date of delivery of the Goods,

the Supplier must, at its own expense, do all things reasonably necessary to remedy the Defect and must reimburse the Purchaser for any direct costs actually and reasonably incurred in connection with the Defect, including, without limitation, the cost of the Purchaser remedying the Defect if the Supplier does not do so within a reasonable period following notice of the Defect from the Purchaser.

4.3 The Supplier warrants that it will render the Services with due skill and care and in accordance with industry best practice so that the Services are performed in accordance with the Contract. If the Supplier fails to provide the Services in accordance with this clause 4.3, the Purchaser may have the Services performed by a third party and the direct costs incurred by the Purchaser will be a debt due from the Supplier to the Purchaser.

4.4 The obligations of this clause survive the expiration or termination of the Contract on any basis.

5. INSPECTION

5.1 A representative of the Purchaser is entitled to inspect and witness tests of the Goods and/or the Services to ensure compliance with the Contract. The Supplier must render reasonable assistance (including allowing the Purchaser access during working hours to the Supplier's and any sub-supplier's premises on reasonable notice by the Purchaser) for this purpose. The Supplier must make this a condition of any subcontract.

5.2 All Goods and Services are subject to inspection by the Purchaser within a reasonable time after delivery or performance (as applicable) at the option of the Purchaser irrespective of date of payment.

5.3 A signed delivery docket will not be construed to mean acceptance by the Purchaser of the Goods and/or Services. The Purchaser will promptly notify the Supplier of any Defects appearing, and in respect of Goods so found to be defective, hold such Goods for the Supplier's instructions and at the Supplier's risk for a reasonable period not exceeding 60 days.

6. DELIVERY

6.1 The Supplier is responsible for the delivery of the Goods to, and/or performance of the Services at, the Purchaser's premises or such other location as is specified in the Contract by the Due Date.

6.2 Packages containing Goods must be clearly identifiable and include the Order Number.

6.3 The Supplier must ensure that Goods are suitably packed to avoid damage in transit and/or in storage.

6.4 Time for delivery of the Goods or performance of the Services must be confirmed in advance with the Purchaser.

7. INVOICE AND DOCUMENTATION

7.1 All shipments, shipping papers, invoices and correspondence must be identified with the Order Number.

7.2 The Supplier shall, upon completion of the Services or within 30 days of receipt of a Goods delivery docket signed by the Purchaser, forward an invoice in a form satisfactory to the Purchaser to "Accounts Payable" for payment of such of the Price as is due under the Contract. Where the performance of the Contract may exceed 30 days in duration, invoices may be submitted at the end of each calendar month in which the Contract is performed.

7.3 The Purchaser will pay such amount of the Price as is due under this Contract within 30 days of receipt of a properly prepared tax invoice. Payment is on account only and does not constitute an acknowledgment that the Goods or the Services are free from Defects or otherwise in accordance with the Contract.

8. RISK, TITLE AND PROPERTY IN GOODS

8.1 Title to and property in Goods immediately passes to the Purchaser upon payment for the Goods (whether that occurs prior to or after delivery), and the Goods must be appropriately marked and identified as the property of the Purchaser. Title in the Goods will pass to the Purchaser free of any encumbrances, liens, debts of the Supplier, charges or other security interest.

8.2 Risk in Goods remains with the Supplier until delivery to the Purchaser or its nominated agent in accordance with the Contract.

9. CONFIDENTIALITY

9.1 Except as required by law, each party must keep confidential all confidential information which is designated in writing by the other party to be confidential or which the recipient should reasonably have known to be confidential, including (without limitation) any information relating to the contents, operation or performance of the Contract.

9.2 The obligations of this clause survive the expiration or termination of the Contract on any basis.

10. TERMINATION

10.1 The Contract may be terminated:

- (a) at any time by written mutual agreement;
- (b) for the convenience of either party upon the giving of 14 days' notice in writing;
- (c) upon a substantial breach of the Contract by either party which is not remediated within a reasonable time (and in any case within 14 days) of notice in writing by the non-breaching party of the substantial breach; or
- (d) immediately by either party in the event the other party becomes insolvent or financially unable to proceed with the Contract.

10.2 Upon termination of the Contract:

- (a) the Purchaser must pay the Supplier for any Services provided or Goods supplied by the Supplier in accordance with the Contract, up to the date of termination;
- (b) the Supplier must promptly return to the Purchaser the Purchaser's property provided to the Supplier in supplying the Goods or performing the Services; and
- (c) the Supplier must promptly repay any amounts paid in advance by the Purchaser to the Supplier, and for which the supply of Goods or Services has not been received, and any amounts not repaid will be recoverable by the Purchaser as a debt.

10.3 Upon termination of the Contract under clause 10.1(b), the terminating party will pay to the other party any direct costs actually and reasonably incurred by that party as a result of the termination (as reasonably substantiated to the terminating party).

10.4 If a party breaches (including repudiates) the Contract, nothing in this clause 10 will prejudice the right of the other party to recover damages or exercise any other right or remedy.

10.5 The obligations of this clause survive the expiration or termination of the Contract on any basis.

11. INSURANCE

11.1 The Supplier must effect and have in place the following insurances:

- (a) insurance of Goods in transit, for the full insurable value of the Goods;

- (b) public liability insurance for an amount in respect of any one claim or series of claims arising from the one original cause of not less than \$20,000,000;
- (c) motor vehicle third party liability insurance as required by law and motor vehicle third party property damage for an amount of not less than \$5,000,000 for any one occurrence;
- (d) insurance covering the Supplier's own property, equipment and materials owned, hired, leased or used by the Supplier for the purpose of this Contract; and
- (e) workers compensation insurance for the maximum amount permitted by law, covering the Supplier's liability under common law and statute for death or injury to any person employed by the Supplier.
- 11.2 The Supplier will, at the request of the Purchaser, provide written evidence of all insurances required to be taken out by the Supplier.
- 12. WORK HEALTH AND SAFETY**
- 12.1 To the extent that the Contract is for the performance of Services on the Purchaser's premises, whether in conjunction with the supply of Goods or otherwise, this clause will apply. The Supplier must:
- (a) ensure that its relevant personnel complete induction training to the reasonable satisfaction of the Purchaser prior to entry on the Purchaser's premises;
- (b) comply with, and ensure its employees and subcontractors comply with, the Purchaser's environmental policy, sustainability code and work health and safety policies (available online at <http://www.hydro.com.au> and <http://www.hydro.com.au/hse>); and
- (c) notify the Purchaser in the event of any accident, injury or property or environmental damage occurring during or in association with the performance of the Services and cooperate fully with any investigation by the Purchaser.
- 13. INTELLECTUAL PROPERTY**
- 13.1 The Supplier warrants that, in relation to the Goods and Services, the design, materials, documents and methods of working will not infringe any Intellectual Property Right. The Supplier will indemnify the Purchaser against any liability or loss incurred by the Purchaser in connection with the infringement of any Intellectual Property Right caused by the Supplier or the Supplier's employees or agents, except to the extent caused by the Purchaser or the Purchaser's employees or agents.
- 13.2 With regard to all Intellectual Property Rights in the Goods or the Services, the Supplier:
- (a) (in instances where the Intellectual Property Rights are owned by the Supplier) grants to the Purchaser; or
- (b) (in instances where the Intellectual Property Rights are not owned by the Supplier) will 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.
- 13.3 This licence arises immediately upon formation of the Contract and survives the termination of the Contract on any basis.
- 14. NOTICES**
- 14.1 A notice (and other documents) must be in writing, legible, in English and delivered in person, by facsimile, by email or by post.
- 14.2 A notice (and other documents) is deemed to have been given and received:
- (a) if addressed or delivered to the relevant address set out in the Purchase Order or last communicated in writing to the person giving the notice; and
- (b) on the earliest date of:
- (i) actual receipt if delivered in person;
- (ii) confirmation of correct transmission of fax;
- (iii) the notice being recorded as having been first received at the electronic mail destination; or
- (iv) 6 business days after posting.
- 15. GOVERNING LAW**
- 15.1 This Contract is governed by and construed with reference to the laws of the State of Tasmania.
- 16. ENTIRE AGREEMENT AND AMENDMENT**
- 16.1 The Contract constitutes the entire agreement between the parties and supersedes all previous negotiations and communications. The Contract may only be varied or modified by written agreement between the Supplier and the Purchaser.
- 17. WAIVER**
- 17.1 Failure by either party to enforce a term of the Contract will not be construed as in any way affecting the enforceability of that term in any other instance, or the enforceability of the Contract as a whole.
- 18. SEVERABILITY**
- 18.1 If any provision of the Contract is illegal, void, invalid or unenforceable for any reason, all other provisions which are self-sustaining and capable of separate enforcement shall, to the maximum extent permitted by law, be and continue to be valid and enforceable.
- 19. VARIATIONS**
- 19.1 The Purchaser may request the Supplier to carry out any variation to the Goods and/or Services and, provided that the parties agree on the scope of the variation proposed, the Supplier must comply with any such request ("Variation").
- 19.2 The parties must use their best endeavours to agree on the value of a Variation at the time of the request, but in the event that the parties are unable to agree within 3 days of the issue of the request, then the value of the Variation will be determined by the Supplier acting reasonably and by reference to the Price.
- 20. DISPUTES**
- 20.1 If a dispute arises between the Purchaser and the Supplier in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contract, either party may give a notice in writing ("Notice of Dispute") to the other party specifying the nature of the dispute, the particulars of the party's reasons for being dissatisfied and the position that the party believes is correct.
- 20.2 The parties must meet within 14 days of the date of the Notice of Dispute and undertake genuine and good faith negotiations with a view to resolving the dispute. Unless the parties agree otherwise, the meeting will take place in Hobart, Tasmania.
- 20.3 If the parties are unable to resolve the dispute in accordance with clause 20.2 within 14 days of first meeting under clause 20.2, the dispute may be referred, by written notice of either party, to mediation, which is to be conducted in accordance with the Institute of Arbitrators and Mediators Australia Mediation Rules.
- 21. DEFINITIONS**
- Contract** means the contract comprising the Purchase Order, these Purchase Order General Terms and Conditions and any other document referred to in, or attached to, the Purchase Order.
- Defect** means any part or aspect of the Goods and/or the Services which is not in compliance with the requirements of the Contract or is otherwise unfit for the intended purpose and includes any Defect which is attributable to design, workmanship or operating characteristics.
- Due Date** means the date for the delivery of the Goods and/or the Services as specified in the Purchase Order.
- Goods** means each and every article or thing described in the Purchase Order (or to be reasonably inferred from the Contract) as to be purchased by the Purchaser, or any part thereof, as adjusted under the Contract and includes all materials or physical objects produced during the supply of the Services.
- GST** has the meaning given to that term under *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- Intellectual Property Right** means any patent, registered design, trademark or name, copyright or other protected right.
- Order Number** means the unique number created and used to identify a Purchase Order.
- Price** means the "Total Order" price, as described in the Purchase Order.
- Purchase Order** means the document headed as such and describing the Goods and/or the Services to be supplied which may be issued separately to these Purchase Order General Terms and Conditions.
- Purchaser** means Hydro Electric Corporation (ABN 48 072 377 158) of 4 Elizabeth Street, Hobart, Tasmania and includes as appropriate the Purchaser's subsidiaries, affiliates, heirs, executors, administrators, successors and permitted assigns.
- Services** means the services described in, or reasonably to be inferred from, the Purchase Order, as adjusted under the Contract and includes the performance of all incidental or other services, both delivery or installation of the Goods and the provision of all materials and equipment, necessary to allow or assist the performance of the Services.
- Supplier** means the person named as the supplier of the Goods or the Services in the Purchase Order and includes as appropriate the Supplier's subsidiaries, affiliates, heirs, executors, administrators, successors and permitted assigns.