

1. MEANINGS AND BASIS OF PURCHASE ORDER

- (1) Unless the context otherwise indicates:
- (a) "Acceptance" of the Goods occurs when the goods have been inspected and tested to the satisfaction of the Purchaser after delivery and unpacking or following installation or incorporation of the goods into plant or premises and for services means the time that the services have been completed to the satisfaction of the Purchaser and "Accepted" has a corresponding meaning;
 - (b) "Code of Conduct" means the Ventia Code of Conduct, a copy of which is available from the Purchaser upon request;
 - (c) "Delivery Address" is the address stated against 'Deliver To' on the front sheet of the Purchase Order;
 - (d) "Delivery Date" is the relevant date(s) or period stated under 'Delivery Date' on the front sheet of the Purchase Order;
 - (e) "Goods" means the goods and/or services (as the context requires) or any part of them identified under the 'Description' section on the front sheet of the Purchase Order;
 - (f) "Invoice Address" is the address stated against 'Bill To' on the front sheet of the Purchase Order;
 - (g) "Law" includes any national, federal (including Commonwealth), state, territory or local government legislation, statutes, ordinances and other laws including regulations, by-laws and other subordinate legislation or law, common law, equity, awards, and approvals, licences or other permissions or consents of government or quasi-government authority and any standards establishing conditions of quality or merchandising in relation to the Goods;
 - (h) "Purchase Order" means purchase order issued by the Purchaser to the Supplier, incorporating by reference these Standard Terms;
 - (i) "Purchaser" means the entity that issued the Purchase Order, as identified on the front sheet of the Purchase Order;
 - (j) "Standard Terms" means these Purchase Order - Standard Terms"; and
 - (k) "Supplier" means the party to whom the Purchase Order is addressed, as identified on the front sheet of the Purchase Order.
- (2) The addresses of the parties are stated on the front sheet of the Purchase Order.
- (3) Subject to clauses 1(4) and 1(5), the Purchase Order:
- (a) including these Standard Terms will be deemed to be accepted by the Supplier for the supply of the Goods and its other obligations under the Purchase Order from the Supplier's commencement of work relevant to the supply of the Goods after receipt of the Purchase Order; and
 - (b) contains the entire agreement between the parties and no regard will be had to any prior dealings. Any terms that may have been attached or embodied in the Supplier's tender or offer or other correspondence are deemed to have been withdrawn in favour of the terms stated in the Purchase Order (including these Standard Terms).
- (4) The Goods described in the Purchase Order may be governed by a contract already in place and agreed between the Supplier and the Purchaser ("Governing Contract"). If so:
- (a) the terms and conditions in the Governing Contract will apply to the supply or the performance of the Goods;
 - (b) other than as stated in paragraph (c), none of the terms and conditions that may appear in the Purchase Order (including these Standard Terms) will apply to the supply or the performance of the Goods;
 - (c) clauses 1(4), 1(5) of these Standard Terms and, unless inconsistent with the Governing Contract, the Delivery Address and Delivery Date stated in the Purchase Order will apply to the supply, delivery or performance of the Goods; and
 - (d) the Purchase Order is for administrative purposes only.
- (5) If there is:
- (a) a contract already in place and agreed between the Supplier and the Purchaser, but there is any uncertainty as to whether that contract actually governs the supply of the Goods (and is therefore a Governing Contract), then that contract will be deemed the Governing Contract; or
 - (b) more than one contract already in place and agreed between the Supplier and the Purchaser that could be a Governing Contract, the following order of precedence will apply to determine which of the contracts is the Governing Contract:
 - (i) a project specific contract on the same project relevant to the Goods;
 - (ii) if there is more than one project specific contract on the same project relevant to the Goods, the contract most relevant to the supply or the performance of the Goods the subject of the Purchase Order;
 - (iii) a non-project specific contract for the supply of the same or similar goods to the Goods or the performance of the same or similar services to the Goods; or
 - (iv) if there is more than one non-project specific contract, the contract most relevant to the supply or performance of the Goods the subject of the Purchase Order.
- (6) Any terms and conditions seeking to limit the liability of the Supplier which may be contained in sales literature, tenders, quotations, information, notices, delivery dockets, acceptance letters, tax invoices or any other documents are excluded.

2. GOODS

- (1) The Goods to be supplied or performed by the Supplier are described in the Purchase Order.
- (2) Time is of the essence in relation to the Supplier's performance of the Purchase Order.
- (3) The Supplier warrants that the Goods will:
 - (a) conform precisely in quality, quantity, specification and description with the Purchase Order and any drawings, plans, specifications technical documents or other description included with and/or identified in the Purchase Order or otherwise provided by the Purchaser, including any samples of Goods inspected by the Purchaser;
 - (b) comply with all applicable Law and relevant standards and, at the Supplier's cost, the Supplier must obtain all necessary licences, permits or authorities required in connection the performance of the Purchase Order;
 - (c) be new (unless stated otherwise), of good merchantable quality, free of defects and fit for the purpose for which goods of the same kind are commonly supplied and any other purpose made known to the Supplier;
 - (d) and free from all liens, charges and encumbrances of any kind and must be the property of the Supplier;
 - (e) all warranties implied at Law apply to the Goods, in addition to any express warranty, manufacturer's warranty, service guarantee or guarantee of performance. In the event of any inconsistency between any implied warranty or express warranty or guarantee, the most favourable to the Purchaser prevails;
 - (f) in respect of the manufacture, supply and use of the Goods, not infringe any patent, trade mark, design, copyright, confidentiality agreement or any third party's intellectual property rights in Australia or elsewhere; and
 - (g) be supplied to the Purchaser strictly in accordance with the Purchase Order except to the extent that the Purchaser may agree or direct otherwise in writing prior to the supply or performance of the Goods.

- (4) The Supplier must allow the Purchaser and other persons authorised by the Purchaser access at all reasonable times to:
 - (a) any place where the Goods are being manufactured, stored or performed; and/or
 - (b) any quality assurance records or technical documentation relevant to the Goods.
- (5) The Supplier indemnifies the Purchaser against any action, suit, claim, demand, cost, loss, expense or damage arising out of or in any way connected with the infringement of any patent, trade mark, design, copyright, confidentiality agreement or any third party's intellectual property rights relevant to or in any way connected with the Goods including the use of the Goods.
- (6) Without limiting clause 2(5), if the Supplier represents that the Goods are protected by one or more patents and any such patent is found to be invalid, the Purchaser may cancel the Purchase Order and recover any money paid to the Supplier.
- (7) The Supplier is responsible for the care and insurance of the Goods and any plant, equipment and other things used to supply the Goods until their supply and Acceptance by the Purchaser. If loss or damage occurs to the Goods or any plant, equipment and other items used to supply the Goods while the Supplier is responsible for their care, unless otherwise directed by the Purchaser, the Supplier must promptly make good the loss or damage.
- (8) The Supplier must effect and maintain the following types of insurance until Acceptance of the Goods:
 - (a) works/goods insurance covering physical loss or damage to the Goods and work under the Purchase Order until Acceptance; and
 - (b) workers' compensation insurance as required by Law (if the Supplier is performing work); and
 - (c) marine cargo insurance covering loss or damage to Goods in transit (if applicable); and
 - (d) any other insurance required by the Purchaser for supply of the Goods.
- (9) Prior to commencing work under the Purchase Order or at such other times as the Purchaser may request, the Supplier must provide evidence to the Purchaser as to the existence, currency and terms of the insurance policies it has taken out pursuant to this clause 2.

3. DELIVERY AND ACCEPTANCE

- (1) Unless agreed otherwise in writing by the Purchaser, the Supplier must supply and deliver or perform the Goods to achieve Acceptance by the relevant Delivery Date.
 - (2) A Delivery Date may be amended or extended by the Purchaser pursuant to clause 4.
 - (3) The Supplier must:
 - (a) liaise with the Purchaser prior to each Delivery Date to confirm the arrangements for each delivery or performance of the Goods;
 - (b) label the Goods as directed by the Purchaser;
 - (c) store the Goods until the date and time arranged with the Purchaser for each delivery of the Goods;
 - (d) at the Supplier's cost, supply and deliver the Goods packaged as reasonably required by the Purchaser; and
 - (e) deliver the Goods to the Delivery Address on the date and at the time stated in the Purchase Order or arranged with the Purchaser.
 - (4) The Purchaser may inspect all work related to the manufacture and/or supply of the Goods, and no such inspection will affect the obligations of the Supplier with respect to the Goods.
 - (5) Inspection and testing must be conducted to the satisfaction of the Purchaser, otherwise the Purchaser will be entitled to reject the Goods. The Goods must be performed to the satisfaction of the Purchaser.
 - (6) Subject to the Purchaser's right to reject the Goods, property in and title to the Goods passes to the Purchaser upon each delivery but risk in the Goods does not pass to the Purchaser until Acceptance. Signature by or on behalf of the Purchaser will not constitute Acceptance. Where the Goods are destroyed or damaged prior to delivery or Acceptance, the Principal may cancel the Purchase Order and recover any money paid to the Supplier.
 - (7) At the time of each delivery the Supplier must provide the Purchaser with a delivery docket in duplicate setting out the details of the Goods delivered for signature by the Purchaser and the Supplier must retain one copy so signed.
 - (8) The Supplier must not impede or interfere with any work in progress at the Delivery Address.
- ## 4. DELAY
- (1) The Supplier must give immediate notice to the Purchaser upon becoming aware of any event or circumstance likely to delay supply, delivery or performance of the Goods by the Delivery Date.
 - (2) The Purchaser:
 - (a) is entitled at any time in its absolute discretion to grant a reasonable, in the circumstances, extension of time to the Delivery Date; but
 - (b) is not obliged to grant an extension of time to the Delivery Date except to the extent that the Supplier is delayed in supplying and delivering the Goods by the Delivery Date which is caused by an act of prevention by the Purchaser.
 - (3) The Supplier must:
 - (a) take all practical steps to avoid or minimise any delay to the supply or delivery or Acceptance of the Goods by the Delivery Date; and
 - (b) where a delay does not cause the supply, delivery or Acceptance of the Goods by the Delivery Date to be extended, take whatever action is necessary to supply, deliver or achieve Acceptance of the Goods by the Delivery Date.

5. PRICE AND PAYMENT

- (1) The rates stated in the Purchase Order are deemed to include everything necessary (labour, plant, equipment, travel, waiting time, delivery, packaging of the Goods and any other requirements or instructions specified in the Purchase Order as well as customs duty and any excise or any other charge, levy, cost, expense or tax applicable to the Goods) for the Supplier to supply, deliver or perform the Goods to or at the Delivery Address and to fulfil all of its other obligations under the Purchase Order. Accordingly, the value of Goods supplied or performed and Accepted by the Purchaser will be:
 - (a) an amount calculated by multiplying the relevant quantity and rate for the Goods stated in the Purchase Order; less
 - (b) the reasonable costs incurred by the Purchaser in remedying any default by the Supplier of its obligations under the Purchase Order; less
 - (c) the amount of any costs, losses or damage suffered by the Purchaser if the Supplier does not fulfil its obligations under the Purchase Order or otherwise.
- (2) All prices stated in the Purchase Order are firm and not subject to rise and fall or escalation.
- (3) Unless stated or agreed otherwise by the Purchaser, payment for the Goods will only be made for those Goods supplied or performed and Accepted by the Purchaser and for which the Supplier has submitted an invoice to the Invoice Address setting out the value of those Goods as described in clause 5(1).
- (4) It is a precondition to the Supplier submitting an invoice (and no payment will be due unless) the Supplier has:
 - (a) performed its obligations in accordance with the Purchase Order (including these Standard Terms);
 - (b) paid its employees and subcontractors all amounts due and payable to them;
 - (c) provided to the Purchaser the data required by clause 7;
 - (d) issued a Tax Invoice for the Goods showing the date and place of supply or performance of the Goods and the calculation of any GST, customs duty, excise or other tax, charge or levy applicable to the Goods.; and
 - (e) complied with all applicable obligations at Law, in respect of the Goods.
- (5) The Purchaser may, at any time and as a condition precedent to payment, require the Supplier to provide evidence satisfactory to the Purchaser that its employees and subcontractors have been paid all amounts due and payable to them and that it has satisfied all obligations at Law with respect to the Goods.

- (6) Subject to clauses 6, 8 and 9 and unless stated otherwise, payment will be made, where the number of days stated under 'Payment Terms' on the front sheet of the Purchase Order is stated in terms of:
- "InvDate", the date for payment is the number of days stated after the date of the invoice; or
 - "EOM", the date for payment is the number of days stated after the end of the month in which the invoice is submitted,
- but if the invoice is not dated or is received by the Purchaser more than 7 days after it is dated, the date of the invoice will be deemed to be the date that the invoice is received by the Purchaser.
- (7) At the Purchaser's discretion, payment will be made by electronic funds transfer by cheque. Unless expressly stated otherwise, all amounts stated in the Purchase Order and all payments made pursuant to the Purchase Order will be in Australian dollars and are GST exclusive.
- 6. GOODS & SERVICES TAX (GST)**
- (1) In this clause 6:
- "GST" has the meaning given in the GST Act;
 - "GST Act" means the *A New Tax System (Goods and Services) Act 1999* (Cth);
 - "GST Amount", "GST exclusive Consideration", "Recipient", "RCTI", "Supply Party" and "Tax Invoice" have the meanings given in this clause 6; and
 - other terms used that are defined in the GST Act, have the same meanings in this clause 6.
- (2) Each party acknowledges and agrees that:
- at the time of entering into the Purchase Order, it is registered for GST;
 - it must promptly provide written evidence of its GST registration if so requested by the other party;
 - it must indemnify the other party against any loss that may arise from it not being registered for GST; and
 - it must promptly notify the other party in writing if it ceases to be registered for GST.
- (3) In respect of payments to be calculated under or in connection with the Purchase Order:
- when calculating the amount payable or other consideration to be provided for a supply, the amounts used in the calculation are to exclude any GST component; and
 - if the amount payable in respect of the Goods supplied and accepted by the Purchaser is increased or decreased by an amount calculated by reference to a cost, expense or loss suffered or incurred by a party, then the amount will be reduced by any input tax credit to which that party, or the representative member of any GST group of which that party is a member, is entitled in respect of that cost, expense or loss.
- (4) For each supply made by a party ("Supply Party") under or in connection with the Purchase Order on which GST is imposed:
- the consideration payable or to be provided for that supply under the Purchase Order but for the application of this clause 6(4) ("GST exclusive Consideration") will be increased by, and the recipient of the supply ("Recipient") must also pay to the Supply Party, an amount ("GST Amount") equal to the GST exclusive Consideration multiplied by the prevailing rate of GST; and
 - the GST Amount must be paid to the Supply Party by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive Consideration is payable or to be provided,
- subject to a valid tax invoice ("Tax Invoice") being provided in respect of the GST exclusive Consideration.
- (5) A Tax Invoice must be provided either by:
- subject to agreement between the parties, if the Purchaser is the Recipient of the supply, the Purchaser providing the Supplier with a recipient created tax invoice ("RCTI") on or before making payment in respect of the supply; or
 - if paragraph (a) does not apply, the Supply Party providing the Recipient with a Tax Invoice before the due date for payment of the supply.
- (6) If clause 6(5)(a) applies:
- the Supplier must not issue a Tax Invoice in respect of any supply it makes to the Purchaser; and
 - the Purchaser must notify the Supplier if it ceases to comply with any of the requirements of any taxation ruling issued by an authority relating to the creation of RCTIs.
- (7) If and to the extent an adjustment event arises in respect of a supply made under or in connection with the Purchase Order, then:
- if the Supply Party's corrected GST Amount is less than the previously attributed GST Amount, the Supply Party must refund the difference to the Recipient;
 - if the Supply Party's corrected GST Amount is greater than the previously attributed GST Amount, the Recipient must pay the difference to the Supply Party; and
 - the Supply Party must issue an adjustment note to the Recipient (unless clause 6(5)(a) applies, in which case the Purchaser will issue an adjustment note to the Supplier).
- 7. TECHNICAL DATA**
- (1) The Supplier must supply the Goods with all engineering, technical and other data required for the satisfactory use, maintenance, repair, installation or operation of the Goods.
- (2) Goods made or completed according to the Purchaser's design or specification or developed for the Purchaser at the Purchaser's direction and any designs or specifications supplied by the Purchaser, including all copies may be held by the Supplier on the Purchaser's behalf and must not be disclosed or furnished to any third party without the prior written consent of the Purchaser.
- 8. DEFAULT**
- Without limiting the Purchaser's rights under this clause 8, if the Supplier fails to:
- supply or perform Goods to meet the requirements of the Purchase Order;
 - promptly and properly make good, re-supply, rectify or re-perform any defective Goods or make good any damage or loss for which the Supplier is responsible;
 - remove rubbish or other items belonging to the Supplier from the Delivery Address; and/or
 - comply with any other obligation it has under the Purchase Order (including, without limitation, failing to deliver the Goods on or by each Delivery Date),
- then:
- the Purchaser may, at its discretion and without obligation, remedy or mitigate that failure on behalf of the Supplier and the cost of doing so will be a debt due from the Supplier to the Purchaser and may be recovered by the Purchaser in accordance with clause 5(1)(b); and
 - any cost, loss and damage that the Purchaser has incurred or is likely to incur as a result of the Supplier's default will be a debt due from the Supplier to the Purchaser and may be recovered by the Purchaser in accordance with clause 5(1)(c).
- 9. TERMINATION**
- (1) In the event that:
- the Supplier fails to comply with its obligations under the Purchase Order (including, without limitation, failure to comply with its obligations in a timely manner);
 - in the Purchaser's opinion, the Supplier is or is likely to become (in any jurisdiction) insolvent, bankrupt, wound up, unable to pay its debts when due or subject to any administration, receivership, external management, creditor action or court proceedings relating to its financial condition; or
 - if the Supplier is a person, the Supplier dies,
- then the Purchaser, may at its sole discretion, terminate the Purchase Order.
- (2) Upon termination under clause 9(1):
- the Purchaser will be liable only for those amounts which become payable for Goods supplied or performed and Accepted by the Purchaser as at the date of termination; and
 - any cost, loss, and damage that the Purchaser has incurred or is likely to incur as a result of the termination will be a debt due from the Supplier to the Purchaser and may be recovered by the Purchaser in accordance with clause 5(1)(c).
- 10. LIABILITY**
- Notwithstanding any other provision of the Purchase Order (including these Standard Terms) the Purchaser's liability to the Supplier howsoever arising in connection with the Purchase Order or the supply or performance of the Goods:
- excludes any indirect or consequential loss (including without limitation any loss of revenue, profit, business or reputation); and
 - will not exceed, in the aggregate, the value of the Goods to be supplied or performed under the Purchase Order.
- 11. CODE OF CONDUCT**
- (1) The Supplier:
- acknowledges that it has read and understood the Code of Conduct and that the Purchaser has built a reputation based on acting with integrity and fairness at all times, and that a culture of openness exists where any behaviours that breach the Code of Conduct are to be brought to light;
 - warrants that it shall comply with the Code of Conduct and that it will report any concerns about potential breaches of the Code of Conduct to the Purchaser so that the matter may be properly and confidentially investigated;
 - warrants that it and its subcontractors and their respective directors, executive officers, employees, representatives and agents must not give or receive either directly or indirectly, any commission, fee, gift, rebate, entertainment or benefit of any kind to or from any director, executive officer, employee, representative or agent of the Purchaser, without the prior written approval of the Purchaser;
 - undertakes that it will not make payments or provide financial or other advantage for unlawful purposes, including purposes violating anti-corruption laws, such as making or causing to be made direct or indirect payments to any person or to a public official in order to assist a party or any related body corporate or anyone acting on their behalf in obtaining or retaining business with, or directing business to, any person, or securing any improper advantage; and
 - warrants that it and any of its subcontractors and their respective directors, executive officers, employees, representatives and agents are persons or organisations of good character and repute and, except as has been otherwise previously disclosed to the Purchaser in writing, have not been found guilty or entered a plea of guilty in respect of any criminal offence and have not otherwise been the subject of any official investigation or enquiry into criminal conduct. The Supplier must advise the Purchaser in writing upon any change of circumstances relevant to matters addressed in this clause 11 including without limitation, any finding or plea of guilty in respect of any criminal offence or any official investigation or enquiry into criminal conduct involving the Supplier, any subcontractors and their respective directors, executive officers, employees, representatives and agents.
- (2) The Supplier indemnifies the Purchaser, its directors, executive officers, employees, representatives and agents against all claims, losses, actions, damages, costs (including legal costs) and expenses that the Purchaser may incur either directly or indirectly, due to any breach of a provision of this clause 11. The Purchaser may recover from the Supplier as a debt due and owing to the Purchaser, any such costs, losses, expenses or damages.
- (3) The Supplier represents, warrants and covenants that it:
- maintains accurate and complete books and records and internal controls sufficient and of such quality, consistent with accounting principles and practices contained in International Financial Reporting Standards so as to permit an audit of its books and records by an internationally recognised firm of public or chartered accountants or their equivalent, and will not maintain any off the book accounts or record any non-existent expenditure nor enter liabilities with incorrect identification of their object or use false documents; and
 - will provide all reasonable assistance to permit the Purchaser's accountant or internationally recognised firm of public or chartered accountants or other advisors ("Auditor") to conduct an audit of its books and records (including without limitation providing copies of documentation when requested) during normal business hours at the Supplier's principal place of business for the purpose of confirming compliance with the requirements of these Standard Terms.
- 12. GENERAL**
- (1) The Supplier must not novate or assign (in whole or in part) the Purchase Order or any payment or any other right, benefit or interest of the Supplier there under without the prior written consent of the Purchaser.
- (2) The Supplier is and must remain an independent contractor and is responsible for its employees and subcontractors.
- (3) The Supplier must:
- provide sufficient and suitable resources to supply or perform the Goods in a proper and workmanlike manner with due diligence and expedition and in accordance with the Purchase Order;
 - ensure that only persons who are careful, skilled, experienced and qualified in their respective trades and callings are employed in connection with the supply or performance of the Goods and hold all certificates and licences required by Law in order for them to supply or perform the Goods; and
 - comply with any direction that the Purchaser may give in connection with the supply, delivery or performance of the Goods.
- (4) In the event that the terms in clauses 1 to 12 conflict with any other terms stated in the Purchase Order including any special conditions then such other terms or special conditions will take precedence to the extent of the conflict.
- (5) The Purchase Order including these Standard Terms are governed by and must be construed according to the laws of the State or Territory in Australia in which the Delivery Address is located. If any part of the Purchase Order (including these Standard Terms) is found to be void then that part will be deleted and the balance of the Purchase Order will continue without the deleted part.