

Purchase Order – Standard Terms & Conditions



1. Introduction

1.1 General

1.1.1 These Conditions are the terms and conditions upon which the Principal:

1.1.1.1 Contracts for the purchase of Goods; and

1.1.1.2 Contracts of the supply of Goods and Services.

1.2 No Other Conditions

Where these conditions apply to the supply of goods or services, no contrary or other terms and conditions proposed by the Supplier/Client, whether in its quote, cartnotes, other documents or otherwise, will apply to the supply of the goods or services unless expressly accepted in writing by the Principal.

1.3 Interpretation

In these Conditions, unless a contrary intention is apparent:

1.3.1 **The Purchase Order** means: the document issued by the Principal to the Supplier, referring to these terms and conditions for the supply of goods or services.

1.3.2 **These Conditions** means: these conditions for the supply of goods and services.

1.3.3 **Contract** means: the contract between the Principal and the Supplier constituted by the Purchase Order and these Conditions.

1.3.4 **The Principal** means: Power System Design Pty Ltd or PSD Energy ABN 68 117 966 926

1.3.5 **The Principal's requirements** means: those requirements of the Principal to be met by the supplier of the goods and or services, as advised by the Principal to the supplier prior to the date of the purchase order.

1.3.6 **The Goods** means: the goods referred to on the purchase order.

1.3.7 **Contract Material** means: those documents and materials created or required to be created under the Contract and to be handed over to the Client.

1.3.8 **Delivered Duty Paid (DDP)** means:

1.3.8.1 In the case of goods to be imported by the supplier for the purpose of supply to the Principal under the contract, that term as defined by the International Chamber of Commerce Incoterms (1990 Release); and

1.3.8.2 In the case of goods not so imported, means delivery to the delivery point in all respects at the suppliers cost.

1.3.9 **Intellectual Property Rights** means:

1.3.9.1 Patents, trademarks, service marks, rights in designs, trade names, copyrights and topography rights, in each case whether registered or not and any similar or like right including rights to trade secrets, know how, proprietary or confidential information;

1.3.9.2 Applications for registration of any of them;

1.3.9.3 Rights under licences and consents in relation to any of them; and

1.3.9.4 All forms of protection of a similar nature or having equivalent or similar effect to any of them which may subsist anywhere in the world.

1.3.10 **Liability** means: all liabilities, damages, remedies, losses, penalties, fines, costs, expenses (including legal fees and expenses on a full indemnity basis), demands, claims and proceedings of any nature.

1.3.11 **Personnel** means: any employee, agent or subcontractor.

1.3.12 **The Price** means: the price that the Principal agrees to pay for the goods or services (includes all taxes, duties, charges, levies and fees payable (except GST)).

1.3.13 **The Services** means: those services agreed to be supplied to the Principal by the supplier and referred to on the front of the purchase order, and any other services expressly or impliedly agreed to be supplied to the Principal by the supplier.

1.3.14 **The Supplier** means: the supplier referred to on the front of the purchase order.

1.3.15 References to natural persons include corporations and vice versa; and

1.3.16 The plural includes the singular and vice versa.

2. Conditions for Supply of Goods to the Principal

2.1 Sale Delivery and Installation

Unless otherwise agreed, the Supplier must:

2.1.1 Sell goods to the Principal free of encumbrances.

2.1.2 Deliver the goods to the Principal on a DDP basis within such time as is agreed, or if no time is agreed, within a reasonable time from the date of the purchase order.

2.1.3 Unload the goods and where the Principal carries out the unloading, it is carried out on behalf of the supplier and is at the supplier's risk.

2.1.4 Install the goods, in all respects as directed by the Principal.

2.1.5 Ensure that all powered plant and equipment is accompanied by a risk assessment.

2.2 Testing, Acceptance and Rejection

2.2.1 The Principal may test the Goods as it sees fit:

2.2.1.2 Before delivery to the Principal, whether at the supplier's premises or elsewhere; and

2.2.1.3 After the goods have been delivered and installed in accordance with the contract.

2.2.2 The Principal must accept the goods immediately that it is satisfied that the goods comply with the contract, are fully functional and meet the Principal's requirements; otherwise the Principal may reject the goods by written notice to the Supplier. If it rejects the goods, title to and risk in the goods will revert to the supplier and the supplier must immediately remove the goods from the Principal's premises.

2.3 Price, Title and Risk

2.3.1 Payment Terms:

If the Principal accepts the goods the Principal will pay the price on a DDP basis for the goods within thirty (30) days from the end of the month that the invoice is received.

2.3.2 Title and Risk:

Title to and risk in the goods will pass to the Principal on acceptance.

2.4 Warranties

The Supplier warrants that:

2.4.1 The goods will:

2.4.1.1 Unless otherwise agreed with the Principal prior to the date of the purchase order, be new on delivery to the Principal.

2.4.1.2 Conform with any description applied to the goods in any sample of them provided by the supplier prior to the date of the purchase order.

2.4.1.3 Meet the Principal's requirements, and be fit for the purpose of those requirements.

2.4.1.4 Be free from any defects in materials, workmanship or installation.

2.4.1.5 Conform to any legally applicable standards, relevant legislation, appropriate Australian Standards and good electricity industry practice.

2.4.1.6 Be of merchantable quality; and

2.4.1.7 Have been manufactured or constructed in accordance with a Quality Assurance Programme approved by the Principal before issuing the purchase order.

2.4.2 Services supplied in connection with the goods will be provided with all due care and skill; and

2.4.3 The goods and any services provided in connection with the goods, do not and will not infringe the intellectual property rights of any person.

2.5 Defects

Unless otherwise agreed in writing by the Principal, the supplier must remedy any defect arising in the goods of a period of twelve (12) months from the date on which the goods are accepted, with out charge to the Principal. The supplier may repair or replace goods in order to comply with this requirement.

3. Conditions for the Supply of Services to the Principal

3.1 The supplier must supply the services in all respects in accordance with the Principal's requirements and subject to its directions from time to time.

3.2 All services supplied must be in compliance with all relevant legislation, appropriate Australian Standards and good electricity industry practice.

3.3 If the Principal is satisfied the supplier has provided the services in accordance with the contract, the Principal will pay the price for the services within thirty (30) days from the date the supplier's invoice is received.

3.4 On payment of the supplier's invoice by the Principal, all intellectual property rights in any contract material created under the contract shall vest in the Principal. In the event that the intellectual property right is not capable of being vested in the Principal because the supplier does not own that intellectual property right, the supplier shall ensure that the Principal is irrevocably licenced to use the intellectual property right.

3.5 The supplier warrants that the services will be supplied with all due care and skill and in such a manner as meets the Principal's requirements and will not infringe the intellectual property rights of any person.

3.6 If the supplier breaches the warranty referred to in clause 2.4, the Principal may at its option and without prejudice to any of its rights arising from that breach:

3.6.1 Require the supplier to remedy the breach, including by re-supply of the services; or

3.6.2 Terminate the contract immediately by notice in writing.

3.7 The supplier must complete provision of the services by the date agreed with the Principal as the date for completion of the services. If no date has been agreed, then the supplier must complete provision of the services within a reasonable time of the date of the purchase order.

4. General

4.1 Price Variation

The price will not be subject to variation unless it is stated to be so on the front of the purchase order, or on any quote in pursuance of which the purchase order is placed, and a variation formula is set out on the front of the purchase order or on the quote. If the price is subject to variation, and the supplier claims an amount due by reason of an event contemplated by the variation formula, then the onus is on the supplier to satisfy the Principal that its entitlement to rely on the variation formula has arisen. In particular, the supplier must:

- 4.1.1 Claim the amount of the variation as soon as practicable; and
- 4.1.2 Provide all and any information required by the Principal to vary the supplier's entitlement to the payment of any additional amount by reason of the variation.

4.2 Inclusions

The price includes all taxes, duties, charges, levies and like expenses payable (except GST). The supplier must bear all customs and import duties (including anti dumping duties) levied.

4.3 Customs Tariff Concessions

The Principal will make applications for customs or import duty concessions that may be applicable. If it makes a successful application, and the price includes an amount for customs or import duty at a higher rate, then the Principal may deduct the difference from the amount payable to the supplier under contract.

4.4 Currency Variation: Australian Currency

If the price is payable in Australian currency, but is subject to variation by reason of any change in the relative value of the Australian dollar and the currency of any other nation ("the foreign currency"), then when seeking payment of the price, the supplier must provide the Principal with evidence satisfactory to the Principal of:

- 4.4.1 The portion of the price that is subject to variation, including all applicable customs documentation; and
- 4.4.2 Any relevant payment by the supplier in the foreign currency.

4.5 Foreign Currency

If the price is payable in the currency of any nation other than Australia ("the foreign currency"), then:

- 4.5.1 The Principal will pay the price in the foreign currency into the supplier's nominated bank account; and
- 4.5.2 The Supplier must provide such evidence relating to its obligation to pay for the goods or the services in the foreign currency as the Principal may require.

4.6 No Sub-contracting

The supplier may not sub-contract the performance of any matter or thing required by the contract without the prior written consent of the Principal.

4.7 Assignment

- 4.7.1 The supplier must not directly or indirectly transfer or assign the contract, or any part share or interest in it without the prior written approval of the Principal.
- 4.7.2 The Principal may at any time, without having to obtain the supplier's consent, assign any or all of its right, title and interest as the Principal under the contract to any other related body corporate or TLC without cost or penalty.

4.8 Confidentiality

The supplier must keep confidential all information from or concerning the Principal that it acquires as a result of any dealings with the Principal, including as a result of the contract. The supplier's obligations under this clause will survive the expiry or termination of the contract.

4.9 Occupational Health and Safety

- 4.9.1 The supplier shall have in place and maintain, a safe system of work for the provision of the goods and services and have and maintain all certificates, licences and approvals required by law, Australian Standards or Codes of Practice specified under the Work Health and Safety Act.
- 4.9.2 The supplier shall promptly report to the Principal, in writing, details of any accident that occurs to the supplier of the supplier's staff or the Principal's staff whilst the supplier is performing the services at one of the Principal's sites.

4.10 Environmental Obligations

The supplier must, in carrying out its obligations under the contract, comply with all applicable environmental laws and perform its obligations in an environmentally sensitive manner that does not degrade the quality of the environment.

4.11 Governing Law

The law of South Australia applies to the contract.

4.12 Breach

- 4.12.1 If the supplier breaches the contract, or if it advises the Principal that it is not or will not be able to perform all of its obligations under the contract, then subject to any other provisions of the contract, and without limiting any other right or remedy the Principal may have arising from such breach or advice, the Principal may:
- 4.12.1.1 Terminate the contract by writing to the supplier; or
- 4.12.1.2 Acquire the goods or services (or the nearest reasonably available substitute for the goods or services) from a third party.
- 4.12.2 Any additional cost to the Principal of acquiring replacement goods or services from a third party will be an amount due by the supplier to the Principal immediately on the Principal making demand for that amount.
- 4.12.3 Subject to this clause 4.12, the supplier must pay to the Principal the whole cost of any cost or expense, loss or damage suffered or incurred by the Principal as a result of the suppliers breach.

4.13 Indemnities and Insurance

- 4.13.1 The supplier indemnifies the Principal from and against all liabilities suffered or incurred by the Principal due to any loss of or damage to any real or personal property, or injury to or death of any person, or, to the extent permitted by law, under any occupational health and safety laws or environmental laws, r infringement of any intellectual property rights that arise out of or as a consequence of:
- 4.13.1.1 Any negligent act or omission or wilful misconduct of the supplier, its employees, agents or sub-contractors;
- 4.13.1.2 Any breach of the contract (including any breach of warranty); or
- 4.13.1.3 Any defect in the goods or the services.
- 4.13.2 Except in respect of injury to or death of any person (for which no limit applies), the aggregate liability of the supplier to the Principal under the indemnity clause 4.13.1 is limited to TEN MILLION DOLLARS (\$10 000 000.00) for each event.
- 4.13.3 The supplier must effect and maintain public liability and professional indemnity insurance against the

risks referred to in this clause 4.13 and provide evidence to the Principal of the currency of such insurance upon the request of the Principal.

4.14 Dispute Resolution

If a dispute arises between any two or more parties, and the parties are unable to resolve that dispute, then before any party takes legal action or arbitration proceedings in respect of the dispute (other than proceedings for urgent injunctive or like relief), officers of the parties in dispute must report the nature of the dispute to their respective Chief Executive Officers, and allow a period of fourteen (14) days for further negotiation before legal or arbitration proceedings are commenced.

4.15 Arbitration

Subject to clause 4.14, disputes that are not settled by the parties by negotiation must be referred to arbitration in accordance with the Commercial Arbitration Act 1986, provided that:

- 4.15.1 The arbitrator shall be a person nominated by the President of the Institute of Arbitrators (South Australia Chapter);
- 4.15.2 The Parties may be legally represented; and
- 4.15.3 The place of arbitration shall be Adelaide, South Australia.

4.16 Notices

- 4.16.1 Notices required or permitted to be given under the contract must be sent in writing by ordinary prepaid post to the address of the intended recipient set out on the front of the purchase order.
- 4.16.2 Notices given in accordance with this clause will be deemed given when in the ordinary course of post such notice should have been delivered.

4.17 Goods and Services Tax

- 4.17.1 The price (and any other amounts payable for services under the contract) is fixed and exclusive of any goods and services tax (or any other similar tax or impost) payable. The Principal must pay to the supplier goods and services tax in addition to the price in respect of the contract.
- 4.17.2 The supplier must be registered and must provide their Australian Business Number and tax invoices promptly in accordance with A New Tax System (Goods and Services Tax) Act 1999.