

General Conditions for the Purchase of Goods and Services via Purchase Order

1. Definitions

Agreement means the Purchase Order and the General Conditions.

Bankruptcy Act means the *Bankruptcy Act 1966* (Cth).

Claim means any claim, action, proceeding or demand, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Corporations Act means the *Corporations Act 2001* (Cth).

Delivery Address means the location stated on the Purchase Order.

Head Contract means the head contract identified in the Purchase Order.

General Conditions means this document.

Goods means the goods, if any, described in the Purchase Order.

Insolvency Event means any of the following events occurring in relation to a party:

- a. a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the Corporations Act), trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the party;
- b. the party or the party's property or undertaking becomes subject to a personal insolvency arrangement under part X of the Bankruptcy Act or a debt agreement under part IX of the Bankruptcy Act;
- c. the party is unable to pay its debts when they fall due or is unable to pay its debts within the meaning of the Corporations Act, or is presumed to be insolvent under the Corporations Act; or
- d. an application or order is made for the liquidation of the party or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the party, otherwise than for the purpose of an amalgamation or reconstruction.

Price means the price of all Goods and Services as detailed in the Purchase Order.

Purchaser means DGH Engineering Services Pty Ltd (ABN 18 115 056 221).

Purchase Order means the written and numbered order issued by the Purchaser to the Supplier for the supply of goods or services or both.

Proportionate Liability Legislation means if the governing law is:

- a. the law of Western Australia, then Part 1F of the *Civil Liability Act 2002(WA)*;
- b. the law of New South Wales, then Chapter 2, Part 2 of the *Civil Liability Act 2002(NSW)*;
- c. the law of Queensland, then Chapter 2, Part 2 of the *Civil Liability Act 2003 (Qld)*;
- d. the law of Tasmania, then Part 9a of the *Civil Liability Act 2002(Tas)*;
- e. the law of the Northern Territory, then the *Proportionate Liability Act 2005 (NT)*;
- f. the law of Victoria, then Part IVAA of the *Wrongs Act 1958 (Vic)*; or

- g. the law of South Australia, then Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 (SA)*.

Services means the services, if any, described in the Purchase Order.

Supplier means the person to whom the Purchase Order is issued.

Taxes includes any tax, levy, duty, charge, impost, fee, deduction or withholding however it is described, that is assessed, levied, collected or imposed by law or by a government agency, together with any related interest penalty, fine or other charge, or other amount imposed in respect of any of the above.

2. Supply of the Goods and Services

- 2.1. The Supplier must supply the Goods and Services to the Purchaser in accordance with the Agreement.
- 2.2. This Agreement does not prevent the Purchaser or Supplier from entering into agreements with third parties for the supply of equivalent or similar goods or services.

3. Quantity

- 3.1. The quantity of Goods and Services supplied must not be less than the amount specified in the Purchase Order unless directed in writing by the Purchaser.
- 3.2. The quantity of Goods and Services supplied must not exceed the amount specified in a Purchase Order.
- 3.3. Where excess Goods or Services are supplied, the Purchaser may:
 - a. return excess Goods to the Supplier at the Supplier's cost; and
 - b. refuse to pay for the excess Services.

4. Price and Payment

The Purchaser agrees to pay the Supplier the Price for the Goods and Services.

- 4.1. Unless the Purchase Order provides otherwise, the Price is inclusive of all costs incurred by the Supplier in respect of:
 - a. supplying the Goods and performing the Services (including packaging, packing, insurance and delivery of the Goods) in accordance with the Agreement; and
 - b. GST and all other Taxes.
- 4.2. The Price may not be increased unless the Purchaser gives its prior written consent.
- 4.3. All claims for payment must be properly invoiced and submitted in accordance with the schedule for payment claims detailed in the Purchase Order.
- 4.4. All invoices for Services must be accompanied by:
 - a. for Services provided on a lump sum basis, a payments certificate of work completed that has been certified by the Purchaser's authorised representative; and
 - b. for Services provided on a schedule of rates basis, daily claim sheets verifying hours worked and equipment used that has been certified by the Purchaser's authorised representative.

General Conditions for the Purchase of Goods and Services via Purchase Order

4.5. All payments will be made in accordance with the terms of the Agreement, including as to currency.

4.6. The Purchaser shall not be liable for any invoice received more than 60 days from the provision of the Goods or Services.

4.7. A tax invoice will only be accepted if:

- a. The invoice is emailed to ap@dghengineering.com.au;
- b. A valid purchase order number is quoted;
- c. It provides a clear description of the goods and services provided.

4.8. Payment terms will commence on receipt of a valid tax invoice.

4.9. Approved invoices will be paid in the next available payment run after the payment due date as follows.

5. Delivery and Performance

5.1. The Supplier must:

- a. supply all labour, tools, equipment and materials necessary to complete the work;
- b. not impede or interfere with other work in progress at the Purchaser's site;
- c. at its own expense, obtain and comply with all requisite licences and permits required to supply the Goods and Services; and

5.2. The Supplier must comply with:

- a. the Purchase Order terms concerning packaging of, and times, method and place of delivery of, the Goods; and
- b. the Purchase Order terms concerning times and place for performance of the Services; and
- c. all other terms of the Agreement.

5.3. The Purchaser shall be entitled to return Goods to the Supplier at the Supplier's cost and withhold payment for Services if:

- a. delivery is not made within the time specified in the Purchase Order or such other time as has been agreed in writing with the Purchaser; or
- b. the Goods or Services are not in accordance with the warranties in clauses 6.3 or 6.4 of the General Conditions.

5.4. In respect of all Goods supplied, the Supplier must provide a delivery docket detailing:

- a. a full description of the Goods;
- b. the quantity of Goods;
- c. any Goods on backorder; and
- d. the Purchase Order number.

6. Safety and environment

6.1. The Supplier must comply with:

- a. all laws relating to health, safety and the environment in supplying the Goods and Services;
- b. all policies and procedures notified in writing to the Supplier, of the Purchaser and the Purchaser's client relating to health, safety and the environment; and
- c. all reasonable directions and orders of the Purchaser and the Purchaser's client relating to health, safety and the environment.

6.2. The Supplier must ensure that:

- a. its personnel attend any inductions or training which the Purchaser requires them to attend;
- b. it advises the Purchaser immediately and, if requested, provide a report if they believe that there are unsafe work practices, or unsafe plant and equipment or premises at which they have to work;
- c. any accident or incident which involves, or could have involved, exposure of persons to risk to their health and safety and any property damage is reported immediately to the Purchaser and detailed information is provided in accordance with timeframes advised by the Purchaser.

6.3. The Supplier warrants that the Goods are free and clear of all liens and encumbrances and that the Supplier has a good and marketable title to them.

6.4. The Supplier warrants that the Goods and Services:

- a. match the description in the Purchase Order and are manufactured or performed in accordance with the specifications provided by the Purchaser;
- b. in the case of Goods, are of merchantable quality, being free from defects in materials, workmanship and design (if design is provided by the Supplier) and unless otherwise stated in the Purchase Order, must be new;
- c. in the case of Services, are in accordance with standards, practices and methods generally followed by and that degree of skill and diligence that would ordinarily be expected of a skilled and experienced supplier;
- d. are fit for the purpose for which Goods and Services of the same kind are commonly supplied and any other purposes described in the Purchase Order or which the Purchaser otherwise makes known to the Supplier;
- e. are of an equal standard to any sample or demonstration provided by the Supplier;
- f. do not, and the Purchaser's use will not, infringe any patent, copyright, moral right, design or trademark;
- g. comply with all applicable laws, regulations, licenses, permits and approvals and any relevant Australian Standard.

6.5. Where Goods or Services breach the warranties under clauses 6.3 or 6.4, the Purchaser may, at its sole discretion:

- a. in the case of Goods, return the Goods to the Supplier at the cost of the Supplier and withhold payment for the returned Goods; and
- b. in the case of Services, refuse payment for the relevant portion of the Services.

7. Inspection, Acceptance and Defects

7.1. The Purchaser or its nominated representative may at any time during manufacture, or delivery of the Goods and

General Conditions for the Purchase of Goods and Services via Purchase Order

performance of the Services, inspect the Goods and Services.

7.2. Inspection of the Goods and Services shall not relieve the Supplier of its obligations under this Agreement or prejudice the Purchaser's rights or remedies.

7.3. The Purchaser will not be deemed to have accepted any Goods or Services until the Purchaser has had a reasonable time to inspect the Goods after delivery and/or the Services after performance. Payment for the Goods and Services or the signing of delivery receipts before inspection does not constitute acceptance of the Goods or Services.

7.4. For a period of 12 months from when the Goods were delivered or Services were completed, the Supplier must immediately replace, repair or re-perform any Goods and Services (as applicable) that the Purchaser reasonably considers are defective or not in accordance with this Agreement.

7.5. If the Supplier fails to comply with clause 7.4, the Purchaser may:

- a. replace, repair or re-perform the defective Goods and Services (as applicable); or
- b. engage a third party to replace, repair or re-perform the defective Goods and Services (as applicable).

7.6. The Supplier must bear all costs incurred by it or the Purchaser in the replacement, repair or re-performance of defective Goods and Services pursuant to the Agreement.

8. Title and risk in Goods

8.1. Title to and property in the partly completed or completed Goods and any materials and parts to be used in their manufacture passes to the Purchaser upon payment or delivery (whichever occurs first).

8.2. Notwithstanding clause 8.1, if:

- a. the Supplier is responsible for delivery of any Goods, then risk in those Goods remains with the Supplier until the Purchaser inspects and accepts delivery of them; and
- b. if the Purchaser is responsible for delivery of any Goods, then risk in those Goods remains with the Supplier until the Purchaser's representative takes possession of them.

8.3. The risk of loss of the Services remains with the Supplier until the Purchaser inspects and accepts the Services.

9. Termination

9.1. The Purchaser may terminate the Agreement immediately, on written notice to the Supplier, if:

- a. an Insolvency Event occurs in respect of the Supplier;
- b. the Supplier breaches any term of this Agreement including any of the warranties, and fails to rectify the breach within 7 days of receipt of a written notice from the Purchaser notifying the Supplier of the breach; or
- c. the Head Contract is terminated.

9.2. Subject to clause 9.4, the Purchaser may, at its complete discretion, cancel the Purchase Order, or any part thereof, at any time prior to the Goods being supplied or the Services being performed, without liability, for any undelivered Goods or unperformed Services.

9.3. The Supplier shall upon receipt of a termination or cancellation notice under this clause:

- a. Immediately cease work on the date and to the extent specified in the notice;
- b. Take such action as necessary or as directed for the transfer, protection and preservation of Goods and Services in the Contractor's possession and in which the Purchaser has or may acquire an interest; and
- c. Do its best to minimise the cost of termination to both parties.

9.4. If the Purchaser terminates the Agreement in accordance with clause 9.1.c or cancels the Purchase Order in accordance with clause 9.2 and the Goods and Services that have been supplied to the date of termination or cancellation have been manufactured or performed in accordance with this Agreement, the Supplier will be entitled to be paid for the supply of the Goods and Services up to the date of termination, provided that the Purchaser receives title to any materials or Goods or the products of any Services that are paid for in accordance with this clause.

9.5. Other than as described in clause 9.4, the Supplier will not be entitled to any loss of profit or other compensation or to make any other Claim in connection with termination of this Agreement.

10. Test Certificates or other certificates

10.1. If requested, the Supplier must provide certification of testing of the Goods from an accredited certification body or other such certification as determined by the Purchaser.

11. Indemnity in relation to Goods and Services

11.1. The Supplier indemnifies the Purchaser against:

- a. breach of any warranty or any of the terms and conditions of this Agreement;
- b. the illness, injury or death of any of the Supplier's employees, agents, contractors and or subcontractors arising out of or in connection with this Agreement;
- c. any personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind caused or contributed to by the supply of the Goods or performance of the Services;
- d. any negligent or wilful act or omission by the Supplier or the Supplier's employees, agents, contractors or subcontractors in connection with this Agreement;
- e. all Claims, loss or damage relating to infringement of any intellectual property rights in respect of the Goods supplied;
- f. any Claim made against the Purchaser by any of the Supplier's employees, agents, contractors or subcontractors in respect of any law concerning income tax, workers compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent tribunal;

General Conditions for the Purchase of Goods and Services via Purchase Order

- g. any penalty imposed for breach of an applicable law in connection with the supply of the Goods or Services.

11.2. Clause 11.1 shall not apply to the extent that any liability, loss or damage is caused or contributed to by acts or omissions of the Purchaser or that of the Purchaser's employees, agents, contractors and subcontractors (other than the Supplier).

12. Consequential Loss

12.1. Neither party shall be liable to the other (to the fullest extent permitted at law) for any loss of profits, loss of use, loss of revenue, loss by reason of shutdown or non-operation or loss of anticipated savings or for any consequential or indirect loss or damage but does not include losses related to any:

- a. liability to any third party;
- b. claim in respect of personal injury or death;
- c. liquidated damages (if applicable); and
- d. claim resulting from wilful misconduct of the Supplier.

13. Insurance

13.1. When the Purchase Order relates to the manufacture or supply of Goods, the Supplier shall insure the Goods against loss or damage for their replacement value. If the Supplier is responsible for delivery or unloading of the Goods, it shall ensure that this insurance extends to cover these activities.

13.2. The Supplier must effect and maintain the following insurances:

- a. a comprehensive public and products liability policy, with a limit of liability for each and every event of not less than \$10 million or other amount agreed to in writing by the Purchaser;
- b. comprehensive motor vehicle third party liability insurance for any vehicle owned or used by the Supplier; and
- c. workers' compensation insurance;
- d. professional indemnity insurance with a limit of liability of \$5 million if providing professional services.

13.3. In relation to the requirement for workers' compensation insurance in 13.2 b where permitted by law, the policy shall:

- a. Provide a blanket principal's indemnity to indemnify the Purchaser and its end client against any liability which it may incur to the Supplier's employees arising by virtue of the applicable workers' compensation statute or regulations or at common law; and
- b. Waive all express or implied rights of subrogation against the Purchaser, its employees and the end client or their employees.

13.4. The Supplier must:

- a. maintain the insurances required by this clause from the commencement of any works relating to the supply of Goods or performance of Services until the end of the later period described in clause 7.4; and
- b. when requested by the Purchaser, provide evidence to the satisfaction of the Purchaser that the Supplier has complied with its obligations under this clause.

14. Personal Property Securities Act 2009 (Cth)

14.1. The words 'Accession', 'Commingled', 'Financing Statement', 'Grantor', 'Personal Property', 'Proceeds', 'Security Interest' and 'Verification Statement' have the meanings given to them in the *Personal Property Securities Act 2009* (Cth) (PPSA).

14.2. The parties acknowledge that this Agreement may constitute a Security Interest in favour of the Purchaser.

14.3. If the Purchaser determines that this Agreement (or a transaction in connection with it) is or contains a Security Interest, the Supplier agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Purchaser asks and considers necessary for the purposes of:

- a. ensuring that the Security Interest is enforceable, perfected and otherwise effective;
- b. enabling the Purchaser to apply for any registration, complete any Financing Statement or give any notification, in connection with the Security Interest; or
- c. enabling the Purchaser to exercise rights in connection with the Security Interest.

14.4. The Purchaser is not required to give any notice under the PPSA (including notice of a Verification Statement) unless the notice is required by the PPSA to be given (even though the parties have waived the right to receive notice).

14.5. The Supplier must notify the Purchaser as soon as the Supplier becomes aware of any of the following:

- a. if any Personal Property which does not form part of the Purchaser's Personal Property becomes an Accession to the Purchaser's Personal Property and is subject to a Security Interest in favour of a third party;
- b. if any of the Purchaser's Personal Property is located or situated outside Australia or, upon request by the Purchaser, of the present location or situation of any of the Purchaser's Personal Property; or
- c. if the Supplier parts with possession of the Purchaser's Personal Property.

14.6. The Supplier must not:

- a. create any Security Interest or lien over any Personal Property that the Purchaser has an interest in (other than Security Interests granted in favour of the Purchaser);
- b. sell, lease or dispose of its interest in Personal Property that the Purchaser has a Security Interest in;
- c. give possession of the Supplier's Personal Property that the Purchaser has a Security Interest or the Purchaser's Personal Property to another person except where the Purchaser expressly authorises it to do so;
- d. permit any of the Purchaser's Personal Property to become an Accession to or Commingled with any asset that is not owned by the Purchaser; or
- e. change its name without first giving the Purchaser 21 days' notice of the new name or relocate its principal place of business outside Australia (where applicable) or change its place of registration or incorporation.

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- 14.7. Everything the Supplier is required to do under this clause is at the Supplier's expense.
- 14.8. Neither the Purchaser nor the Supplier will disclose information of the kind mentioned in section 275(1) of the PPSA and the Supplier will not authorise, and will ensure that no other party authorises, the disclosure of such information. This clause does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) (b), (d) and (e) of the PPSA.

15. Proportionate Liability

- 15.1. Each party agrees that the Proportionate Liability Legislation, to the extent that the same may be lawfully excluded, is excluded from operation with respect to any dispute or action brought by one party against the other party arising out of or in connection with:
- a. This Agreement; and
 - b. Any of the Supplier's subcontractors, suppliers or their employees.

16. General

- 16.1. In performing the Services or supplying the Goods, the Supplier is an independent contractor and not an agent or employee of the Purchaser.
- 16.2. The Supplier must not assign the Agreement or subcontract any part of the supply of the Goods and Services, without the prior written consent of the Purchaser. Such consent may be withheld or granted on conditions that the Purchaser determines.
- 16.3. Any waiver of the Agreement must be made in writing and signed by both parties and shall only operate to the extent to which it was made. No failure or delay on the part of the Purchaser in exercising any right shall operate as a waiver of that right.
- 16.4. This Agreement supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties. To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion has no effect except to the extent expressly set out or incorporated by reference in this document.
- 16.5. Any changes or variations to this Agreement or to the Goods or Services to be provided must be agreed in writing by the parties.
- 16.6. This Agreement is governed by and interpreted in accordance with the laws of the state where:
- a. In relation to Services, the state where the Services are being performed;
 - b. In relation to the provision of Goods, the state where the goods are to be utilised by the Purchaser;
- and both parties submit to the non-exclusive jurisdiction of the courts as determined above.