

## **Purchase Order General Terms & Conditions**

### **1. INTERPRETATIONS AND GENERAL MATTERS**

#### **1.1 Definitions and Interpretations**

“**day**” means calendar day unless specifically noted otherwise.

“**FIS**” means, in relation to delivery of the Goods, ‘free into store’ and includes the responsibility (and associated costs) for packing, loading, transportation and insurance (for the full replacement value of the Goods) to the nominated delivery point for the Goods.

“**Goods**” means all Goods, equipment, materials, articles, or any other property or parts to be provided to the Purchaser by the Supplier under the Purchase Order and includes, without limitation, all services including design, manufacture, inspection, testing, expediting, quality assurance and control, painting, packing and delivery, and in the case of subcontract labour shall include labour and equipment necessarily required to perform the work under the purchase order, as specified or required hereunder.

“**GST**” means the tax introduced by A New Tax System (Goods and Services Tax) Act 1999 (Cth) (the

“**GST Act**”) and its associated legislation and regulations.

“**Purchaser**” means ADD Business Group Pty Ltd, its subsidiaries and related parties, ordering the Goods, as identified in the Purchase Order Form.

“**Purchase Order**” means the purchase order issued by the Purchaser to the Supplier as evidenced by the documents listed in the Purchase Order Form.

“**Purchase Order Form**” means the section of the Purchase Order to be completed by the Purchaser, which identifies the Purchaser and the Supplier and includes but is not limited to a brief description of the Goods and a list of the documents comprising the Purchase Order.

“**Supplier**” means the person providing the Goods, as identified in the Purchase Order Form, including any Subcontractor who provides labour and or materials.

“**Taxable Supply**” for the purposes of clause 8 means a taxable supply under the GST Act.

“**Warranty Period**” means the period commencing on the date of final supply of the Goods and lasting for a period of twelve (12) months, unless otherwise stated in the Purchase Order.

**1.1.1** Words importing the singular are deemed to include the plural and vice versa. Headings and subheadings are inserted for convenience only and shall not be used to interpret the text. Words denoting a natural person shall include a corporation and vice versa.

#### **1.2 Supplier to Inform Itself**

The Supplier shall be deemed to have carefully examined all documents furnished by the Purchaser and fully satisfied itself regarding all the conditions, risks, contingencies and other circumstances which might affect the supply of the Goods.

#### **1.3 Order of Precedence**

Unless otherwise stated, the order of precedence of any of the following documents listed in the Purchase Order Form shall be as follows:

- i) The Purchase Order Form;
- ii) Special Terms and Conditions;
- iii) General Terms and Conditions;
- iv) Specification(s);
- v) Drawing(s)

#### **1.4 Ambiguities**

If the Supplier discovers any ambiguity in the Purchase Order it shall immediately notify the Purchaser in writing. The Purchaser shall then determine the correct interpretation of the Purchase Order. The determination of the Purchaser shall be final and binding on the Supplier and have no effect on the Purchase Order price.

#### **1.5 Use of Documentation**

The documents shall not be copied or used for any other purpose than the supply of the Goods, without the prior written approval of the Purchaser.

#### **1.6 Confidentiality**

Any information provided by the Purchaser to the Supplier that is noted as confidential shall not be disclosed to any third party without the prior written consent of the Purchaser. This obligation shall be continuing obligations and shall survive the completion or termination of the Purchase Order.

#### **1.7 Waiver**

No failure or delay on the part of the Purchaser in exercising any of its rights under the Purchase Order shall be construed as constituting a waiver of any such rights.

#### **1.8 Subcontracting and Assignment**

The Supplier shall not subcontract nor assign all or any part of the Purchase Order without the prior written approval of the Purchaser. Approval of the Purchaser to any subcontract shall in no way relieve the Supplier of any of its obligations under the Purchase Order. Subcontractors shall provide evidence of Public Liability Insurance prior to commencement on site, and where the subcontractor has employees, the Subcontractor shall provide a copy of the certificate of Currency for Workers Compensation Insurance. All insurances shall remain in force and be valid for the duration of the project works.

#### **1.9 Communications**

Any notice or other communication required under the Purchase Order shall be delivered in writing and shall be in a form which can be read, copied and recorded conveniently. Verbal instructions or directions from the Purchaser shall be confirmed in writing to the Supplier within a reasonable time. The notice shall take effect from the time when it is delivered to or received at the nominated address of the parties.

#### **1.10 Licences and Laws**

The Supplier shall comply with all applicable laws, by-laws, ordinances, regulations, proclamations, orders and rules and with the lawful requirements of Public and other Authorities in any way related to the supply of the Goods.

#### **1.11 Entire Agreement**

The Purchase Order constitutes the entire agreement between the Purchaser and the Supplier. The parties shall not be bound by or liable for any statement, representation, promise or understanding not set forth herein. Nothing contained in proposals, correspondence, discussions or negotiations prior to the date of the Purchase Order has any effect on the Purchase Order unless specifically incorporated herein.

### **2. INSURANCE**

The Supplier shall effect and maintain any policies of insurance specified in the Purchase Order Form.

### **3. INDEMNIFICATION**

The Supplier shall indemnify and keep indemnified the Purchaser and its officers, employees and agents against all claims, demands, proceedings, liabilities, costs, charges and expenses arising as a result of any act, neglect or default of the Supplier, its employees or agents related to its obligations under the Purchase Order.

### **4. PERFORMANCE AND QUALITY**

**4.1** All Goods shall be suitable for the purpose for which they are required. The Supplier shall use new and undamaged materials, unless otherwise specified in the Purchase Order and the workmanship shall be of the highest quality and standard. The work shall be carried out in accordance with good engineering practice and comply with all applicable Australian Standards and/or other referenced codes, the requirements of the relevant Statutory Authorities and the Law.

**4.2** The Supplier represents and warrants to the Purchaser that it has the necessary skills, resources and experience to successfully supply the Goods in accordance with the requirements of the Purchase Order.

**4.3** The Goods must be tested in accordance with the requirements of the Specification. Unless otherwise set out elsewhere in the Purchase Order, any tests and the costs thereof shall be the responsibility of the Supplier. The results of tests shall be promptly supplied to the Purchaser in writing.

**4.4** The Purchaser shall have the right to inspect, expedite and monitor the Goods prior to delivery and the Supplier shall give the Purchaser access to the Supplier’s premises for such purpose during its normal working hours. The Goods will not be accepted by the Purchaser until inspected and approved by the Purchaser. Any inspection by the Purchaser shall not relieve the Supplier from its obligations to comply with the requirements of the Purchase Order and shall in no way impair the Purchaser’s right to require subsequent correction of non-conforming Goods.

**4.5** The Supplier shall comply with the standards of quality specified in the Purchase Order. If no standards are specified the Supplier shall comply with the best quality standards applicable to the Goods.

**4.6** The Supplier warrants that the Goods shall:

**i)** Be free, and remain free from liens, charges, encumbrances, mortgages or other defects in title. The Supplier hereby waives any and all rights of lien against any of the Goods or any work of which the Goods form part or the Site (or part thereof) to the fullest extent consistent with the law. In the event an employee of the Supplier, or a Sub-supplier or a worker employed by them, institutes action to place a lien on the Site (or part thereof), the Supplier will take whatever action is necessary to avoid the lien being registered or to have the lien removed forthwith (as the case may be), and shall indemnify the purchaser against costs, losses or damages whatsoever, that the purchaser may suffer as a result of the registration or proposed registration, of such lien.

**ii)** Be free from defects in design, materials and workmanship. Payment of any invoice for goods supplied shall not be construed as acceptance of defective work or product, but shall be construed as being payment on account only.

**iii)** Conform to the conditions and specifications of the Purchase Order.

**iv)** Conform to all applicable laws and regulations to which the Goods are subject.

**v)** Be new and made to the specified quality.

The warranties noted above are in addition to any statutory warranties applicable to the Goods.

**4.7** During the Warranty Period, the Purchaser shall give written notice to the Supplier of any failure or defect in the Goods. The Supplier shall without delay and at no cost to the Purchaser, correct any defect or failure in the Goods covered by the warranty, by way of repair, replacement, modification or other means acceptable to the Purchaser.

**4.8** If the Supplier fails to correct any defects and failures, of which it has been notified by the Purchaser, within the time specified in the notice (which shall not be unreasonable), the Purchaser shall have the right to rectify the Goods itself or have the rectification undertaken by a third party. All costs so incurred shall be a debt due and payable by the Supplier or deducted from moneys otherwise owing to the Supplier. The act of supplying goods upon receipt of this order shall constitute unqualified acceptance of this provision which shall survive and replace any and all prior agreements or conditions by either party. Any Goods repaired under warranty may be subject to a further full Warranty Period, if required by the Purchaser, commencing on the date of completion of any such repair.

### **5. DELIVERY**

**5.1** Unless otherwise specified in the Purchase Order, the Goods shall be delivered, adequately packaged and protected to ensure safe delivery, to the delivery point and by the delivery date(s) specified in the Purchase Order Form. The Goods shall be accompanied by a delivery docket which shall be signed by a duly authorised representative of the Purchaser at the point of delivery.

**5.2** The Goods shall become the property of the Purchaser upon delivery of the Goods to the Purchaser, as evidenced by the signature on the delivery docket by the duly authorised representative of the Purchaser. Notwithstanding that the Purchaser has taken delivery of the Goods, the Supplier shall remain responsible for any loss or damage to the Goods, which may have occurred prior to delivery, and for any non-compliance of the Goods with the requirements of the Purchase Order.

**5.3** The Supplier shall take all reasonable steps to minimise and prevent any delay to the delivery of the Goods.

**5.4** If the Supplier fails to deliver the Goods by the specified delivery date(s), the Purchaser shall be entitled to terminate the Purchase Order for default, either in whole or in part, in accordance with the provisions of Clause 7.1 and/or deduct from monies due to the Supplier as liquidated damages, representing a genuine pre-estimate of the Purchaser's damages and not as a penalty, the amount specified in the Purchase Order Form, for each week or part thereof by which delivery exceeds the specified delivery date.

## **6. VARIATIONS**

**6.1** The Purchaser may vary the work under the Purchase Order or any condition thereof and the Supplier shall carry out any such variation as directed by the Purchaser. The Supplier's price (addition or reduction) for any variation and any effect on the delivery date(s) of the Goods shall preferably be agreed between the Purchaser and Supplier prior to the Supplier carrying out any such variation. However, if agreement cannot be reached, the Purchaser shall determine the price for the variation and its effect on the delivery date(s) of the Goods.

**6.2** The Supplier shall not vary the work under the Purchase Order or any condition thereof, except as directed and approved by the Purchaser in writing. No variation shall invalidate the Purchase Order.

## **7. TERMINATION**

**7.1** In the event of a substantial breach by the Supplier of any of the terms and conditions of the Purchase Order, which in the opinion of the Purchaser, significantly delay the completion of the Purchase Order and which is not remedied within seven (7) days of the Purchaser notifying the Supplier in writing of any such breach, the Purchaser may terminate the Purchase Order in whole or part without any prejudice to the rights of the purchaser who shall not be liable for any consequential loss of whatsoever type as may be incurred by the supplier.

**7.2** If, in the opinion of the Purchaser, the Supplier is unable to effectively perform its obligations under the Purchase Order due to insolvency, bankruptcy or related reasons, the Purchaser shall be entitled to terminate the Purchase Order without Prejudice or penalty to the Purchaser.

**7.3** Notwithstanding any other provisions of the Purchase Order, the Purchaser may terminate the Purchase Order by giving fourteen (14) days written notice to the Supplier.

**7.4** In the event of insolvency of the Supplier or its default under Clause 7.1, the Purchaser shall immediately suspend any further payment to the Supplier. Any additional monies required by the Purchaser to complete the Purchase Order in excess of what the Purchaser would have paid under the Purchase Order shall be a debt due and payable by the Supplier to the Purchaser.

**7.5** In the event of termination by the Purchaser, under Clause 7.3 and provided the Supplier is not in default, the Purchaser shall pay the Supplier for the work carried out prior to termination and all reasonable costs associated with the cancellation of any orders placed by the Supplier prior to termination.

## **8. PRICE AND PAYMENT**

**8.1** Unless otherwise stated in the Purchase Order, prices shall be fixed and not subject to any variation, including but not limited to variations in the cost of labour, materials, plant, transport or exchange rates.

**8.2** The quote for the Goods to be supplied under the Purchase Order shall be inclusive of GST calculated in accordance with the GST Act unless otherwise specifically stated in writing. The Supplier must, in relation to the consideration for any Supply:

(a) maximise its own claims for input credits on all creditable acquisitions made by its enterprise in connection with the agreement; and

(b) pass on to the Purchaser by way of a reduction in the net consideration for any such Taxable Supply the benefit of any cost savings it achieves relevant to this agreement in connection with the abolition or reduction of other indirect taxes associated with the introduction of the GST Act.

**8.3** The Supplier must in any such case issue to the recipient at the time of claiming payment a valid tax invoice for the purpose of obtaining an input tax credit for any GST so paid.

**8.4** If there is an Adjustment Event in relation to a Taxable Supply which results in the amount of GST on a Taxable Supply being different from the amount recovered by the Supplier, the Supplier shall issue the relevant Adjustment Note and addition or deduction shall be paid or credited accordingly.

**8.5** Before becoming entitled to receive payment (and unless otherwise specified in the Purchase Order), the Goods must be delivered together with any certificates or warranty documents in relation to the Goods. Subject to clause 8.8, the price indicated on the Purchase Order will be paid by the Purchaser no later than thirty (30) days from the end of the month in which the invoice is received, or, where the Construction Contracts Act 2004 applies, within 28 days of a compliant Tax Invoice being received by the purchaser.

**8.6** The Supplier shall be responsible for the payment of all relevant Australian (Federal, State and Local Government) and overseas taxes, duties and charges payable with respect to the Goods. The Purchase Order price shall be deemed to be inclusive of all such taxes, duties and charges.

**8.7** The Purchaser may deduct from moneys due to the Supplier any money due from the Supplier to the Purchaser under or in respect of this Purchase Order or otherwise.

**8.8** In the event the Supplier refers any claims for payment to adjudication under applicable legislation that has amongst its objectives the creation of a statutory entitlement to progress payments for the performance of work or supply of goods or services or provides procedures for determining or securing payment of that entitlement, pending any final assessment under the relevant construction contract then the amount of any determination by an adjudicator appointed under the relevant Act in respect of that claim will be the maximum amount of the Supplier's entitlement in respect of that claim under this Purchase Order.

## **9. DISPUTES**

**9.1** Notwithstanding any dispute between the Purchaser and the Supplier, the Supplier shall ensure that the progress of the work under the Purchase Order is continued without any effect on the specified delivery date.

**9.2** Disputes or differences arising between the Purchaser and the Supplier shall be settled quickly and by negotiation at senior management level if required.

**9.3** Notwithstanding any dispute, the parties shall continue to perform their mutual obligations and the supplier shall not abandon the works nor instigate any legal proceedings until a minimum period of 90 working days shall have passed from the date the dispute was formally Notified in writing and confirmed by Registered mail. The intent is to enforce a cooling off period where the parties can negotiate in good faith without prejudice to the project or purchaser's client.

**9.4** Failing such agreement, the parties agree that the dispute shall be resolved by mediation conducted in accordance with the Australian Commercial Disputes Centre ("ACDC") mediation procedures.

**9.5** In the event that the dispute has not been settled within six (6) weeks (or such other period as may be agreed to in writing between the parties) after the appointment of the mediator, the dispute shall be referred by either party to arbitration in accordance with the provisions of the Commercial Arbitration Act in force in the State or Territory in which the Purchase Order is issued. In any arbitration both parties shall be entitled to be legally represented. Unless the parties agree upon an Arbitrator, the Arbitrator shall be appointed by the President, for the time being, of the Australian Institute of Arbitrators.

## **10. SET OFF**

Where any payment has been made, or is due to be paid by the Purchaser to a Supplier, regardless whether it relates to the goods or work performed or supplied under this purchase order, or for any other Purchase Order or project, the supplier accepts the right of the purchaser to set off payments against other works that may have been overpaid, or where the purchaser has incurred provable costs in relation

to resupply by others, making good or replacement of defective work or goods provided by the supplier. The Purchaser reserves the right to set off the amount of any overpayments made in error against any future debt or liability owing by the Purchaser to the Supplier.

## **10. APPLICABLE LAW**

Unless otherwise specified, the Purchase Order shall be governed and construed in accordance with the laws in place in the State or Territory in which the Purchase Order is issued. The Purchaser and the Supplier shall submit to the jurisdiction of the courts of the said State or Territory

## **11. SUB-LETTING**

The Supplier shall not, without the express written approval by the Purchaser, sub-let or subcontract any part of the works or services to be performed under this Purchase order.

## **12. OCCUPATIONAL HEALTH AND SAFETY**

The Supplier shall ensure that all employees or subcontractors under their control maintain appropriate compliance levels of OHS. Further, The Supplier unconditionally indemnifies the Purchase against any and all claims for injury, loss of time and any and all costs that may arise as a consequence of failure by the Supplier to provide and maintain compliance with the Occupational Health and Safety legislation.

## **13. SHORT FORM OF CONTRACT**

**13.1** Where subcontract works are performed under the auspices of this Purchase Order, such work shall be considered as a short term subcontract agreement, and the Terms and Conditions of this Purchase Order shall apply, together with any special terms and Conditions which may be written into the Purchase Order. The Supplier unconditionally indemnifies the Purchaser from all payroll tax, Long service leave, holiday pay, severance pay, workers compensation, sick leave, severance pay or any such like entitlements that are commonly understood to be entitlements under a salary or wages agreement.

**13.2** Where the works are on a subcontract basis, the Supplier Shall issue a Tax Invoice, or other Invoice that clearly provides all details of

- i. The Job address
- ii. The purchase order number
- iii. The nature of the work performed
- iv. The basis of the progress claim

**13.3** The Supplier unconditionally agrees to make good any defective or incomplete work within reasonable times required by the Purchaser.

**13.4** The Supplier shall not be entitled to payment for any amount greater than the amount stated in the Purchase Order unless a Variation in Cost has been authorized in writing by the Purchaser issuing another Purchase Order that will confirm the extent and cost of the approved amount. Work done without receipt of written approval under this clause Shall prevent the Supplier from being entitled to make any claim for payment for any additional labour or materials or any other costs.

**13.5** The Supplier Shall comply with all reasonable instructions and requests which may include performing work out of sequence or on other days and times different to any previously issued work program, and the Purchaser shall not be liable for any costs associated with such instruction unless the Purchase has issued written acceptance of any notified costs prior to work proceeding under such instruction. Such costs Shall be issued not later than 24 hours prior to commencing work and failure to comply shall be a Time Bar to any such costs claims by the Supplier.