

WARRINGTON PROPERTY

Standard Terms and Conditions of Purchase

October 2015

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1. DEFINITIONS

- i. **"Agent"** means Warrington Management Pty Ltd trading as Warrington Property.
- ii. **"Buyer"** means the registered proprietor of the land or building indicated in the Purchase Order in respect of which the Products are acquired. The Seller acknowledges that Warrington Property acts as agent of the Buyer and is not directly liable to the Seller under the Contract.
- iii. **"Products"** means all goods, products or services (including but not limited to consultancies and the provision of maintenance) covered by the Contract, including raw materials, processed materials or fabricated products.
- iv. **"Purchase Order"** means the Buyer's purchase order issued by the Buyer to which these conditions apply, and includes printed purchase orders, whether delivered by email, hand, mail or facsimile.
- v. **"Seller"** means the person, firm, partnership, company or other legal entity to whom the Purchase Order is issued and includes its servants, agents and sub-contractors.
- vi. **"Contract"** means the contract between the Buyer and the Seller for the sale and purchase of the Products consisting of the Purchase Order and any related quote or offer by the Seller for the Products and the acceptance of the Purchase Order by the Seller.
- vii. **"Purchase Price"** means the price of the Products and any other fees or charges as stated in the Purchase Order.
- viii. **"Invoice"** means the invoice rendered by the Seller to the Buyer and includes a tax invoice.

2. PURCHASE ORDER AND INCORPORATION OF CONDITIONS

- 2.1 The number appearing on the Purchase Order must be quoted by the Seller and by the Buyer on all Invoices, delivery dockets and parcels. These Conditions of Purchase and the Purchase Order represent the entire agreement between the parties and shall be incorporated in the contract for the purchase of Products in the Purchase Order. These Conditions of Purchase shall apply to the exclusion of all other terms and conditions whether contained in the Seller's Invoice or conditions of sale otherwise. These Standard Terms and Conditions ("Conditions") of Purchase are incorporated and form part of the Contract. Where a term of the Contract conflicts with these Conditions then the Contract term shall prevail. No variation of

a Purchase Order will be effective unless approved in writing by the Agent.

3. WARRANTIES

- 3.1 The Seller warrants that the Products:
 - a) Conform with the description provided by the Seller;
 - b) Conform with any applicable specifications agreed by the Buyer and the Seller;
 - c) are of merchantable quality and are fit for purpose for which they are sold;
 - d) are free from defects in material, workmanship and design;
 - e) are new (unless otherwise specified);
 - f) are free from all liens and encumbrances and the Seller has good marketable title thereto; and
- 3.2 Where the Products are a service, the Seller warrants that:
 - a) It will perform the Contract and supply the service with reasonable care and skill;
 - b) The Products comply with the current best practice in the industry in relation to environment, building, planning and local government compliance.
- 3.3 The warranties set out in clauses 3.1 and 3.2 are in addition to any other warranties or guarantees contained in the Purchase Order, the Contract, implied by law or provided by the Seller or any third party. In supplying the Products, the Seller shall comply at all times with all applicable Federal, State and local laws and regulations, including without limitation environmental laws, occupational health and safety laws, building and planning laws and any local government laws.
- 3.4 The Seller warrants that it owns all intellectual property rights in relation to the Products. The Seller indemnifies the Buyer and the Agent against any loss, damage, expense, claim or liability suffered or incurred by the Buyer or Agent as a result of any claim by a third party alleging infringement of any intellectual property rights in relation to the Products or any work to be performed pursuant to the Contract.

4. PRICE

The Purchase Price shall be fixed, and includes all of the Seller's costs of providing the Products. The Purchase Price cannot be varied except in writing and signed by the Agent.

5. TERMS OF PAYMENT

The terms of payment are 30 days from a proper Invoice, which must specify the Buyer,

the premises, the Purchase Order number and be a tax invoice for GST purposes. The Buyer may set off any amount owing under the Contract against any amount due from the Seller to the Buyer for any reason whatsoever.

6. DELIVERY OF TIME FOR PERFORMANCE

- 6.1 Unless otherwise specified in the Purchase Order, the date of delivery of the Products shall be promptly after the issue of the Purchase Order and the place of delivery shall be the premises stated in the Purchase Order.
- 6.2 Time is of the essence insofar as it applies to the obligations of the Seller under the Contract. If any Products are not delivered within the time specified in the Purchase Order, the Buyer may at its discretion refuse to accept such Products and terminate the Contract; or cause the Seller to deliver the Products by the most expeditious means at the Seller's expense; or cause the Seller to compensate the Buyer for any claims made against the Buyer by its clients as a result of late delivery.
- 6.3 Without limiting any other clause of this Contract, the Seller indemnifies the Buyer and the Agent against any loss, damage, expense, claim or liability suffered or incurred by the Buyer or the Agent as a result of the late delivery of the Products.

7. REJECTION

- 7.1 Notwithstanding clause 6 hereof, the Buyer may reject Products not conforming for any reason whatsoever to the Contract upon delivery of such Products or within a reasonable time thereafter.
- 7.2 Any interim payment or instalment of the Purchase Price is a payment on account only and shall not prejudice its right of rejection contained herein. The Seller shall reimburse the Buyer for:
 - a) any purchase price paid by the Buyer with respect to such Products; and
 - b) any costs incurred by the Buyer in connection with the rejection of such Products.

8. TITLE AND RISK

Title to and risk of loss in the Products shall pass to the Buyer upon delivery to the Buyer in accordance with the Contract, but without prejudice to any right of rejection or other rights which may accrue to the Buyer hereunder.

9. OCCUPATIONAL HEALTH AND SAFETY

- 9.1 The Buyer shall be liable for any personal injury or death to any person arising from the provision of the Products.
- 9.2 The Buyer shall comply with all statutes, regulations, by laws and the requirements of any authority in relation to the safe provision of the Products. The Buyer shall obtain all necessary approvals and permits required or reasonably necessary for the safe and lawful provision of the Products.
- 9.3 The Buyer shall:
- use only properly qualified and competent employees and contractors;
 - prepare an appropriate risk assessment,
 - use tools, equipment and materials which meet current best practice in the relevant industry;
 - ensure all employees and contractors are supplied with and use protective equipment which meets current best practice in the relevant industry;
 - continuously monitor the activities of employees and contractors to ensure continuous safety and compliance with this Contract, and immediately suspend any activity which is unsafe or does not comply with this Contract; and
 - report any hazards to the Agent.
- 9.4 The Seller shall notify the Agent in advance of any noisy, noxious or hot works or works which may impair or interfere with the operation or function of utilities and services and shall comply with the Agent's directions in relation to the method and performance of such works.

10. LIABILITY

- 10.1 The Seller shall indemnify the Buyer and the Agent, and hold the Buyer and the Agent harmless against any loss, damage, expense, claim or liability suffered or incurred by the Buyer or the Agent, whether consequential, indirect or otherwise, as a result of a breach of the Contract.
- 10.2 Without limiting clause 9.1, the Seller shall repair or replace, at the Buyer's option, all Products which are or become defective or otherwise fail to comply with all warranties contained in the Contract within 30 days of notification of such defect or failure from the Buyer. Clause 3 shall apply to such repairs or replacements.
- 10.3 Part 1F of the Civil Liability Act 2002 (WA) is excluded from the Contract.

11. SUB-CONTRACTING AND ASSIGNMENT

The Seller shall not assign its rights or obligations hereunder or sub-contract any work to be performed pursuant to the Contract without the prior written consent of the Agent. The Agent's consent to the Seller sub-contracting any work to be performed pursuant to the Contract shall not relieve the Seller of its responsibility for the whole of the work to be performed pursuant to the Contract or of any obligations contained in the Contract or at law. Where the Agent has consented to the placing of sub-contracts by the Seller, copies of each sub order shall be sent by the Seller to the Agent immediately they are issued.

12. INSURANCE

The Seller shall take out and maintain insurance in the name of the Seller, the Buyer and the Agent for accidental loss and damage to the Products (which are goods), and public liability, in an amount not less than \$10million (any one event), worker's compensation (including common law liability), motor-vehicle and compulsory third party, freight liability insurance and product damage insurance for the Purchase Price of the Products. The Seller shall provide evidence of such insurance within 14 days of a request to do so by the Buyer, and upon such other terms and conditions as specified in writing by the Buyer.

13. BUYER'S INTELLECTUAL PROPERTY

- 13.1 Any specifications, plans, drawings, process information, patterns or designs supplied by the Buyer or the Agent to the Seller in connection with the Contract shall remain the property of the Buyer, or the Agent (as the case may be).
- 13.2 All information in relation to the Contract or derived from the material supplied under clause 12.1, or otherwise communicated to the Seller in connection with the Contract shall be kept confidential and shall not, without the written consent of the Agent, be published or disclosed to any third party, or made use of by the Seller except for the purpose of implementing the Contract.
- 13.3 Any specifications, plans, drawings, process information, patterns or designs supplied by the Buyer or Agent to the Seller must be returned to the Buyer or Agent on request. Any invention or improvement made by the Seller attributable in whole or in part to

such specifications, plans, drawings, process information, patterns or designs shall be the property of the Buyer.

14. GOODS AND SERVICES TAX

Unless otherwise stated, the Purchase Price is inclusive of GST. The Seller shall be liable for all other taxes, levies, fees, deductions, imposts or duties and other charges whatsoever in connection with delivery of the Products to the Buyer. Where there is a reduction in or abolition of any existing taxes, levies, fees, deductions, imposts or duties and other charges, the consideration (excluding any GST) payable by the Buyer for Products shall be reduced by the same proportion as the actual total supply costs of the Seller are reduced as a consequence of that reduction or abolition of those transaction taxes. The Seller shall issue to the Buyer a tax invoice on delivery in the form prescribed by any relevant law or regulation.

15. APPLICABLE LAW

The Contract shall be governed by, subject to and construed in accordance with the laws of Western Australia and the parties submit to the jurisdiction of the courts of Western Australia and the Commonwealth of Australia.

16. NOTICES

- 16.1 A notice required to be given by one party to another must be in writing and:
- delivered personally; or
 - sent by pre-paid mail to the address of the addressee specified on the Purchase Order; or
 - sent by facsimile transmission to the facsimile number of the addressee with acknowledgment of receipt from the facsimile machine of the addressee.
- 16.2 A notice is taken to have been given:
- if mailed, on the third business day after posting; or
 - if sent by facsimile before 4 pm on a business day at the place of receipt, on the day it is sent and otherwise on the next business day at the place of receipt.
- 16.3 A party may change its address for service by giving notice of that change in writing to the other parties.