

# PRIMERO GROUP STANDARD TERMS AND CONDITIONS OF PURCHASE

## 1. GENERAL

### (a) DEFINITIONS:

- (i) Purchaser - means PRIMERO GROUP LTD (PG) A.B.N. 96 14 996 40 45;
- (ii) Supplier - means the person, firm or company to whom the Purchaser's order is addressed;
- (iii) Destination - means the delivery point for the goods, as identified in the Purchase Order.

- (b) The Purchase Order (including attachments listed therein) and these terms and conditions, constitutes the complete and sole agreement between the Purchaser and the Supplier in respect of the goods or services.
- (c) The Purchase Order constitutes the sole description of the goods and services and the Purchaser accepts no responsibility for any delivery of goods or services not specified on the Purchase Order. No additional items may be added to the Purchase Order.
- (d) In the event of the parties agreeing to vary these terms and conditions, no variation shall be deemed to occur unless and until particulars thereof are agreed in writing and signed by an authorised officer of the Purchaser.
- (e) Failure by the Purchaser to insist upon strict performance of any term or condition hereof shall not be deemed to be a waiver of any of the Purchaser's rights and remedies hereunder nor of any rights arising out of any subsequent breach or default of the Supplier. Acceptance of goods and/or services supplied pursuant hereto shall not imply agreement to the alteration of the Purchase Order in any respect nor a waiver of any rights arising out of any prior or subsequent breach or default.
- (f) The Supplier shall not assign the Purchase Order or any part thereof without the prior written consent of the Purchaser.
- (g) These terms and conditions are governed by the laws of the state of issue of the Purchase Order. The parties agree to submit to the non-exclusive jurisdiction of the courts of the state of issue of the Purchase Order.

## 2. DELIVERY

- (a) Any requirements as to the delivery date specified on the Purchase Order shall be deemed to be a condition of the order and the Purchaser reserves the right to cancel the order in whole or in part, if delivery is not made within the time specified.
- (b) All goods delivered shall be packaged as specified in the Purchase Order. Where packaging is not specified but custom in the trade so requires, goods shall be properly packaged in accordance with good industry practice.
- (c) The Purchaser shall have the right to designate a mode, route, time and place of delivery and to nominate a carrier or delivery agent other than as may be specified on the Purchase Order, but the Purchaser shall pay and bear any cost thereby incurred additional to the cost of delivery as so specified.
- (d) All goods shall be subject to inspection and acceptance by the Purchaser at the Destination. Risk in the goods shall pass to the Purchaser upon acceptance by the Purchaser.
- (e) Goods will not be accepted on delivery unless accompanied by a delivery docket or packing slip quoting the Purchase Order number.
- (f) The Purchaser reserves the right to reject the whole or part of any delivery of the goods or services ordered on the Purchase Order if, after inspection, it is found that such goods or services do not comply with the requirements, specifications or description as stated on the Purchase Order or the Supplier has failed to comply with any of its obligations. Any rejected goods, including oversupply, will be returned at the Supplier's risk and expense (including but not limited to transport and other handling costs), and such expense shall be a debt due from the Supplier to the Purchaser.
- (g) All dangerous goods and substances must be adequately packaged and clearly labelled and accompanied by the appropriate documentation. Such goods will be transported in accordance with the Australian Code for the Transport of Dangerous Goods by Road and Rail (ADG Code) and the National Model Regulations for Hazardous Substances and be provided with a current Material Safety Data Sheet (MSDS) in Worksafe Australian format. MSDS must be provided prior to or accompany the first delivery and new or amended MSDS must be immediately re-issued to the Purchaser.

## 3. PRICES AND PAYMENT

- (a) Unless stated to the contrary therein, Purchase Order prices are fixed and exclusive of GST (but inclusive of any other applicable taxes and duties), and all packaging, handling, crating, freight, insurance and other delivery charges are at the Supplier's expense and cost.
- (b) Amounts payable by the Purchaser hereunder shall be paid within 45 days of the month end in which the Supplier's tax invoice (as required by any Goods and Services Tax legislation), is received by the Purchaser.
- (c) The Purchaser may deduct from such amount as may be due and payable by the Purchaser pursuant hereto, any amounts payable by the Supplier to the Purchaser on any account whatsoever.

- (d) The Supplier shall submit one copy only of each invoice or credit note in respect of the Purchase Order and show itemised prices.
- (e) Where progress payments are applicable by prior agreement, the Supplier shall submit such claims on the Purchaser's Progress Claim Forms.
- (f) The Supplier shall forward all invoices and credit notes to "Accounts Payable" at the Purchaser's Perth address.
- (g) The Supplier shall send bills of lading, airway bills and shipping notices promptly to "Purchasing Department" at the Purchaser's Perth address.

## 4. INSPECTION

The Purchaser or its representatives shall have full and free access to the shops, factories or other places of business of the Supplier, subcontractors to and suppliers of the Supplier, at all reasonable times and without the need to give prior notice. Inspection shall not be deemed acceptance of the goods nor shall it detract from the Purchaser's right to reject goods and/or services not in accordance with the Purchase Order.

## 5. SUPPLIER'S WARRANTIES

- (a) The Supplier acknowledges that it has been informed or is aware of the particular purpose for which goods and/or services to be supplied pursuant to the Purchase Order are required and expressly warrants that such goods and/or services will where applicable be equal to sample and suitable for their intended purpose and will in all cases for a period of not less than 12 months from the Purchaser's acceptance in accordance with clause 2(d), be free of all defects in design, workmanship and materials. If goods and/or services supplied hereunder are not in the opinion of the Purchaser in its sole discretion, equal to sample or are defective in design or quality of workmanship or materials or are unfit for the particular use for which such goods and/or services were ordered, then the Purchaser may (in its sole discretion) without prejudice to any other rights or remedies which it may have at law or in equity arising hereunder,
  - (i) return the whole of the goods or the defective parts thereof at the Supplier's risk and expense and seek restitution or terminate the Purchase Order insofar as it relates to goods and/or services to be supplied subsequent to such termination and sue for damages incurred as a result of or consequent upon any breach of the Supplier's warranty; or
  - (ii) by notice in writing, direct the Supplier to remedy the deficiency or defect within a specified time and in default of compliance with such notice, the Purchaser may cause such deficiency or defect to be remedied and may recover from the Supplier all costs, losses and damages incurred as a result of or consequent upon any breach of the Supplier's warranty.
- (b) The Supplier warrants that any design, materials, documents and methods of working provided by the Supplier will not infringe any intellectual property rights and the Supplier indemnifies the Purchaser against any such infringements. "Intellectual property rights" means any patent, registered design, trademark or name, copyright or other protected rights.
- (c) The Supplier warrants that all goods and services specified on the Purchase Order comply with all relevant State and Commonwealth legislation.
- (d) Workmanship and materials used by the Supplier and goods supplied pursuant to the Purchase Order shall be in strict accordance with drawings, specifications and samples.

## 6. INDEMNITY

- (a) In addition to any insurance which the Supplier is by law obliged to effect, the Supplier shall procure and maintain at its own expense such policies of insurance which the Purchaser may reasonably require, having regard to the nature of goods and/or services to be supplied hereunder.
- (b) If the Supplier, its servants or agents, enters upon any premises for any purpose relevant to the Purchase Order for any reason whatsoever, it shall do so at its own risk.
- (c) The Supplier indemnifies the Purchaser against:
  - (i) loss or damage to the property of any person or persons (including the Purchaser and the Supplier and the servants, agents, invitees and licensees of either or both);
  - (ii) third party claims; and
  - (iii) claims in respect of personal injury or death or loss of any other property or damage to the property of any person or persons (including the Purchaser and the Supplier and the servants, agents, invitees and licensees of either or both), arising out of or as a consequence of,
    - the act or omission of the Supplier, its servants, agents, suppliers or subcontractors or any of them in the performance of the Purchase Order; or
    - the breach by the Supplier of any one or more of the warranties herein relating to the supply of goods and/or services pursuant hereto; or
    - any conjunction or combination of paragraphs (i) and (ii) of this clause 6(c).

## 7. TERMINATION

- (a) The Purchaser may forthwith terminate the Purchase Order by notice in writing if the Supplier is in default of these terms and conditions.
- (b) If judgement is entered against the Supplier or if the Supplier commits an act of bankruptcy or makes or endeavours to make any scheme of arrangement with creditors, or if any order appointing a Receiver or for the winding up of the Supplier (whether voluntary or otherwise) be made in any Court of competent jurisdiction, the Purchaser may without prejudice to any other rights or remedies hereunder, terminate the Purchase Order forthwith by notice in writing to the Supplier.
- (c) If the goods covered by this Purchase Order are standard stock, the Purchaser may at its option terminate at any time any unshipped portion without further obligation hereunder except to make payment for goods actually shipped prior to such termination.
- (d) If this Purchase Order covers goods manufactured or fabricated to the specifications of the Purchaser then at any time prior to completion of the work to be performed hereunder, the Purchaser may (in its sole discretion),
  - (i) where the Supplier is not in default of these terms and conditions, terminate the Purchase Order by providing 7 days written notice to the Supplier; or
  - (ii) where the Supplier is in default of these terms and conditions, terminate the Purchase Order by providing 7 days written notice to the Supplier.
- (e) In the event the Purchaser incorrectly terminates a Purchase Order using clause 7(d)(ii), termination will be deemed to have occurred in accordance with clause 7(d)(i).
- (f) Upon termination under clause 7(c) or 7(d), the Supplier shall immediately stop all work except as otherwise directed by the Purchaser in writing.
- (g) Where the Purchase Order is terminated,
  - (i) in accordance with clause 7(d)(i), the Purchaser shall reimburse the Supplier's reasonable out of pocket costs and expenses to the date of termination including its expenses in connection with cancellation of any subcontracts, all as determined by the Purchaser plus five per cent (5%) of such costs and expenses; or
  - (ii) in accordance with clause 7(c) or 7(d)(ii), the Purchaser shall not be liable for any costs incurred by the Supplier.
- (h) Upon payment in accordance with clause 7(g)(i), any goods or uncompleted portions of the work shall be the property of the Purchaser and subject to its disposition.
- (i) Notwithstanding anything else contained in these terms and conditions, the total amount to be payable under clause 7(g)(i) shall not exceed the purchase price specified on the Purchase Order.
- (j) Nothing in these terms and conditions shall affect the Purchaser's right to terminate the Purchase Order on account of a default by the Supplier under any of the terms and conditions of this Purchase Order or to pursue remedies as provided by law for such default.
- (k) Notwithstanding anything else contained in these terms and conditions, the Purchaser shall not be liable to the Supplier for any indirect loss or damage, consequential loss or damage, special loss or damage, loss of profits, loss of revenue, loss of opportunity, failure to realise expected profits or savings, or other commercial or economic loss of any kind.

## 8. DOCUMENTATION

- (a) If requested by the Purchaser, the Supplier shall furnish for approval by the Purchaser all samples and documentation reasonably required by the Purchaser.
- (b) Upon completion or sooner termination of the Purchase Order, the Supplier shall deliver up to the Purchaser all drawings and specifications prepared (whether by the Purchaser or the Supplier, or an agent of either of them) in connection herewith or as a preliminary hereto.
- (c) All documentation supplied by the Purchaser whether in hard copy or electronic format, together with all intellectual property rights contained therein, will remain the exclusive property of the Purchaser to the extent they are the proprietor of the documentation or intellectual property rights. The Supplier agrees not to reproduce or otherwise copy the documentation other than to fulfil the requirements of this Purchase Order and to return such items to the Purchaser on demand.

## 9. SECURITY OF PAYMENT LEGISLATION

Insofar as State Government Legislation concerning security of payments or the like shall be applicable to any work performed hereunder:

- (a) The Supplier shall ensure that a copy of any written communication of whatever nature that it delivers or arranges to deliver to the Purchaser in relation to an application for adjudication, is provided to the Project Manager and the Contracts Services Manager (at the Purchaser's Perth address), at the same time.
- (b) On becoming aware that a subcontractor is entitled to suspend work pursuant to the legislation, the Supplier shall promptly and without delay provide the Project Manager and the Contracts Services Manager (at the Purchaser's Perth address), with a copy of any written communication of whatever nature in relation to the legislation which the Supplier receives from the subcontractor.

- (c) The Supplier shall indemnify the Purchaser against all damage, expense (including legal costs), loss (including consequential and economic loss) or liability of any nature suffered or incurred by the Purchaser arising out of,
  - (i) a suspension by a subcontractor pursuant to the legislation; or
  - (ii) a failure by the Supplier to comply with clause 9(b).
- (d) In the event of an application for adjudication by the Supplier, the prescribed appointer shall be the Institute of Arbitrators and Mediators Australia.

## 10. MARKINGS

The Supplier shall mark the number of the Purchase Order and the relevant destination on all individual goods, packages, boxes and the like, shipping notices, bills of lading, invoices, packing slips, cartnotes and other documents and correspondence. Where the individual lifting weight of an item is in excess of 20 kg, the weight shall also be marked thereon.

## 11. VARIATION

The Purchaser may at any time prior to acceptance of the Goods or Services make changes to any part or all of the Purchase Order, including, but not limited to, the location, manner, materials, sequence or time. If any change causes an increase or decrease in the Purchase Price or an amendment to the delivery date and the Supplier provides documentation evidencing the increase to the reasonable satisfaction of the Purchasers, a fair and equitable variation to the Purchase Price and delivery date shall be mutually agreed or, in the absence of agreement, as may be determined by the Purchaser. Any variation will be the subject of a written variation order raised by an authorised officer of the Purchaser.

## 12. TAXES AND CHARGES

The Purchase Price includes GST (if GST is applicable). All other government, semi government, statutory and regulatory body or authority, and local authority taxes and charges (including customs duty, and excise on fuel) necessary to complete the supply of the Goods and Services are included in the Purchase Price. Withholding tax, if applicable, may be deducted by the Purchaser from the Purchase Price.

## 13. INSURANCES

In addition to any insurance which the Supplier is by law obliged to effect, the Supplier shall procure and maintain at its own expense, with a reputable insurance company, such policies of insurance which the Purchaser may reasonably require having regard to the nature of Goods being supplied. In any event, the Supplier shall maintain relevant and prudent insurance cover for its liabilities covering all events that may cause loss of or damage to property or injury or death of a person in the supply of the Goods. Such insurance shall at least include Workers Compensation, Public Liability and Goods in Transit until delivered to the Purchaser. The Supplier shall ensure that every subcontractor it engages pursuant to the Order carries similar policies of insurance.

## 14. SECURITY

- (a) If required by the Purchaser, the Supplier shall provide security to the Purchaser in an amount equal to 10 per cent of the price to be paid by the Purchaser to the Supplier in respect of the Goods and Services provided pursuant to the Purchase Order. The Purchaser reserves the right to retain the security in the form of cash.
- (b) The Purchaser may have recourse to any security whenever it claims to be entitled to the payment of monies by the Supplier under the Purchase Order or otherwise.
- (c) Subject to any provision of the Purchase Order, within 14 days of acceptance of the Goods and or Services or achievement of Practical Completion for the relevant project, whichever is the later, by the Purchaser, the Purchaser will release the security.