

PURCHASE ORDER TERMS AND CONDITIONS SERVICES AND ASSOCIATED GOODS

SCEE agrees to purchase the Services from the Supplier and the Supplier agrees to sell the Services to SCEE on these Terms and Conditions.

1. CONTRACT

- 1.1 The Conditions together with the Purchase Order constitute a legally binding contract between SCEE and the Supplier and set out the terms and conditions of the purchase of the Services.
- 1.2 The Contract comes into existence on the issue of the Purchase Order, irrespective of whether the Supplier returns a signed copy of the Purchase Order to SCEE or expressly confirms its agreement to these Conditions.
- 1.3 To the extent the Supplier's terms and conditions are supplied to SCEE, including with Goods or as printed on consignment notes or other documents (including quotations), those terms and conditions will be of no legal effect and will not constitute part of the Contract even if any of SCEE's personnel signs those terms and conditions or annexes the terms and conditions to the Contract.

2. PRECEDENCE

The Purchase Order prevails to the extent of any inconsistency with these Conditions.

3. THE SERVICES

- 3.1 The quantity, quality and description of the Services are as stated in the Purchase Order.
- 3.2 The Supplier must supply the Services in accordance with, and as specified in, the Contract.

4. TIME FOR PERFORMANCE

- 4.1 Time is of the essence in respect of all obligations of the Supplier under the Contract.
- 4.2 The Supplier must deliver any Goods to the Delivery Address by the Delivery Date.
- 4.3 The Supplier must supply the Services by the Delivery Date.
- 4.4 The Supplier must immediately report to SCEE any actual or likely delay in supply of the Services and its cause. The Supplier must take all reasonable steps to prevent delay.

5. INSPECTION AND SAMPLING

- 5.1 If inspection and testing requirements are specified in the Purchase Order, the Supplier must conduct those tests in strict accordance with the requirements of the Purchase Order.
- 5.2 In addition to any specifications as to testing and inspection in the Purchase Order, the Supplier must ensure that SCEE has the opportunity to inspect, test, and witness any test of the Services wherever they may be located. The Supplier must provide or ensure that its suppliers provide unrestricted access to reasonable facilities necessary for SCEE to carry out such inspections or witness such tests.
- 5.3 The Supplier is not relieved of any of its obligations under the Contract because SCEE has inspected the Services or

- 5.4 witnessed any testing prior to delivery of Goods or supply of Services.
- 5.4 SCEE shall be entitled to reject Services that do not comply with the Specification or the requirements of the Contract.
- 5.5 SCEE is entitled to request samples of Goods or components of the Goods in connection with the supply or use of Goods, which must be supplied by the Supplier at its cost.

6. PACKAGING OF GOODS

- 6.1 The Supplier must
 - (a) suitably pack any Goods to avoid damage during loading, transit, delivery, unloading or storage;
 - (b) pack and transport any Goods in accordance with any applicable regulations and industry codes; and
 - (c) clearly mark all packages of Goods for delivery and the delivery documents for the Goods with the Purchase Order number and ensure that the delivery documents accompany the Goods to the Delivery Address.

7. DELIVERY

- 7.1 The Supplier must obtain all necessary permits and licenses which must be obtained in Supplier's name and are necessary for Supplier to perform its obligations under the Contract.
- 7.2 The Supplier must arrange for delivery of Goods to the Delivery Address.
- 7.3 The Supplier must, in providing the Services (including delivering Goods):
 - (a) not interfere with SCEE's activities or the activities of any third party at the Delivery Address or at the Site; and
 - (b) comply with, and ensure that its Personnel comply with all lawful directions and orders given by or on behalf of SCEE at the Delivery Address and/or at the Site.

8. TECHNICAL MATERIAL

- 7.1 The Supplier must, without additional cost to SCEE, supply all required plans, drawings, specifications, manuals, certificates, instructions, fabrication reports and the like in the form and at the times and in the numbers of copies specified in the Purchase Order or otherwise as reasonably required by SCEE.

9. PRICE

- 9.1 The price for the Services is the price stated in the Purchase Order. Unless otherwise agreed and clearly stated in the Purchase Order, the price stated in the Purchase Order excludes GST but includes any other applicable taxes, customs, excise and import duties, tariffs, fees, levies, charges, costs or expenses incurred by the Supplier, including transport, packing and insurance costs.
- 9.2 Unless otherwise agreed and clearly stated in the Purchase Order the Price is fixed and firm and not subject to

adjustment due to currency fluctuation or any other reason.

10. PAYMENT

- 10.1 The Supplier must claim payment for the supply of the Services by submitting to SCEE invoices monthly. Each such invoice must:
 - (a) be a tax invoice;
 - (b) be correctly dated;
 - (c) refer to the Purchase Order;
 - (d) list the particular Services supplied; and
 - (e) be supported by relevant records to calculate and verify the amount set out in the invoice.
 - 10.2 Compliance by the Supplier with clause 10.1 is a condition precedent to the Supplier's entitlement to claim the amount stated in an invoice submitted by the Supplier to SCEE.
 - 10.3 If the Supplier submits an invoice earlier than the time for submission of that invoice set out in these Conditions, the Supplier agrees that the invoice shall not be taken to have been submitted until that time.
 - 10.4 Save to the extent provided for in these Conditions, SCEE shall not be liable to pay for the Services until the Services have been supplied in accordance with, and as specified in, the Contract.
 - 10.5 SCEE may, within 7 days of receiving a Supplier invoice, request by written notice that the Supplier provides SCEE with all additional records to calculate and verify the amount set out in any Supplier invoice, by the time stated in the notice or, whether no time is specified, within 48 hours.
 - 10.6 Subject to clause 10.2, SCEE shall pay the Supplier the amount claimed in an invoice within 30 days of the end of the month in which the invoice was submitted.
 - 10.7 If SCEE disputes any amount claimed in an invoice, SCEE shall make a determination of the amount payable and provide a payment certificate to the Supplier of its determination within 10 days. The payment certificate may take any form.
 - 10.8 SCEE shall pay any amounts not in dispute in accordance with clause 10.6.
 - 10.9 Without limiting clause 10.7, SCEE may issue a revised payment certificate at any time correcting any omission or error discovered in any previous payment certificate or modifying any previous payment certificate issued by it, including as a result of the provision of information under clause 10.5.
 - 10.10 SCEE may deduct from moneys due to the Supplier any debt or other monies which are due from the Supplier to SCEE, whether under the Contract or otherwise.
 - 10.11 Payment to the Supplier is on account only and does not constitute approval of the Services or any other matter or thing in respect of which payment is made.
- 11. TITLE AND RISK**
- 11.1 Risk in Goods passes to SCEE upon delivery to the Delivery Address.

11.2 Property in Goods passes to SCEE upon delivery to the Delivery Address.

12. WARRANTIES

12.1 The Supplier represents and warrants that:

- (a) the Services will be supplied in an efficient manner in accordance with all applicable laws, regulations, codes and standards; the Services strictly comply with the Specifications;
- (b) the Services are free from all Defects;
- (d) the Supplier will, and ensure its Personnel will, exercise the standards of diligence, due care and skill normally exercised by a prudent and similarly qualified and competent supplier supplying equivalent services;
- (e) the Services are fit for the purpose for which services of the same kind are commonly supplied and for any other purpose described in the Purchase Order;
- (f) all Personnel are appropriately qualified, competent and skilled to perform the relevant part of the Services in respect of which they are engaged;
- (g) any equipment used on Site by the Supplier will be in a safe working condition and comply with all Legislative Requirements and be operated by suitably qualified and competent Personnel;
- (h) all Goods match the description of the Goods in the Purchase Order;
- (i) if the Supplier gave SCEE a sample of Goods before SCEE issued the Purchase Order, all Goods correspond with the sample;
- (j) all Goods are of new and of merchantable quality; and
- (k) all Goods are completely owned by the Supplier and will be supplied to SCEE free of any third party interests, liens, charges or encumbrances.

12.2 The Supplier must immediately rectify or replace at SCEE's option and at Supplier's sole cost any Defective Services discovered within 15 months after supply or 12 months after the Services are first used or enter into the service for which they are purchased, whichever occurs first.

12.3 If SCEE reasonably considers that it is necessary to immediately rectify or replace Defective Services then SCEE is not obliged to give the Supplier an opportunity to rectify or replace such Services before SCEE does so or causes a third party to do so. The Supplier must reimburse SCEE for the full cost of such replacement or rectification.

12.4 The Supplier's obligation to replace or rectify Defective Services is cumulative of other remedies available to SCEE.

12.5 The Supplier must ensure that SCEE has the full benefit of any manufacturer's warranties that may be applicable to the Services and the Supplier must pursue any manufacturer's warranties on SCEE's behalf if SCEE requests.

12.6 If the Supplier has replaced or rectified Defective Services, the rectified or replacement Services must be subject to the same warranty period as the original Services, from the date of rectification or replacement.

12.7 If SCEE elects to accept Defective Services, such election does not bind SCEE to accept any other Defective Services and does not affect any of SCEE's other rights under the Contract in respect of those Replacement Services.

12.8 SCEE may assign any or all of the above warranties to any of its clients or related companies and the Supplier consents to such assignment.

13. INTELLECTUAL PROPERTY

13.1 The Supplier warrants that any design, equipment, methods of working and documentation including but not limited to specifications, drawings, reports and publications used or produced by the Supplier in connection with the Services do not infringe any IP Right.

13.2 The Supplier warrants that any Goods do not infringe any IP Right.

13.3 SCEE acknowledges that ownership of all IP Rights used or created under the Contract or in the provision of the Services is retained by the Supplier. The Supplier grants to SCEE a non-exclusive, transferable, royalty free, irrevocable and perpetual licence to use such IP Rights for the purpose of SCEE having the benefit of the Services.

13.4 The Supplier indemnifies SCEE for all loss and expense incurred as a result of a breach of this clause.

13.5 This clause 13 shall survive the cancellation, termination or repudiation of the Contract for any reason.

14. LIABILITY AND INDEMNITY

14.1 The Supplier is liable for, indemnifies and will indemnify and keep SCEE indemnified against all Loss, and hereby releases and will release SCEE from any Action arising directly or indirectly from any breach of any warranty or obligation of the Supplier under the Contract, except to the extent caused or contributed to by any wrongful act or omission of SCEE.

14.2 Notwithstanding any other provision of the Contract, in no event shall either party be liable to the other in respect of any Consequential Loss arising out of or in connection with this Contract.

14.3 The rights and obligations under clauses 12 and 13 survive termination of the Contract.

15. CANCELLATION

15.1 In addition to its rights under clause 15, SCEE may cancel all or any part of the Purchase Order at any time for any reason, in its sole and absolute discretion by written notice of cancellation to the Supplier.

15.2 Upon receipt of notice of cancellation the Supplier must:

- (a) immediately cease performance of the Services to the extent specified in the cancellation notice;

(b) immediately take all possible action to mitigate any costs incurred by it as a result of the cancellation;

(c) provide SCEE with a detailed report in the form required by SCEE in relation to the Services supplied prior to cancellation.

15.3 In the event of cancellation by SCEE under this clause:

(a) the Supplier will be entitled to payment for Services (not comprising Goods) supplied and Goods delivered to SCEE prior to cancellation but not already paid for;

(b) if Goods have been shipped, but not delivered, at the time of cancellation SCEE may either:

- (i) accept those Goods when delivered, and pay the Price for them; or
- (ii) return those Goods to the Supplier at SCEE's expense;

(c) if Goods have been manufactured or fabricated in accordance with the Specification (but not shipped) at the time of cancellation, SCEE shall pay costs reasonably incurred by the Supplier prior to the date of the cancellation which is directly attributable to the placing of the Purchase Order and which the Supplier is not able to recoup in some other way;

(d) the maximum compensation payable to the Supplier arising out of the cancellation shall not exceed the Price of the relevant Services cancelled; and

(e) the Supplier is not entitled to the Price or to any other compensation arising out of the cancellation other than as specified in this clause.

16. DEFAULT AND TERMINATION

16.1 The Contract may be terminated by SCEE immediately on giving written notice of termination to the Supplier if the Supplier:

(a) fails to remedy any breach of its obligations under the Contract within 7 days after receiving written notice from SCEE requiring it to do so;

(b) is unable to pay its debts when they fall due;

(c) ceases to hold any licence, qualification, approval, authority or consent required to supply the Services;

(d) threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvent administration;

(e) enters into any negotiations for any arrangement or composition with its creditors;

(f) being a company, goes into liquidation, whether voluntary or compulsory, or has a receiver or receiver and manager or administrator appointed, or an application is made for the Supplier to be wound up;

(g) being an individual, has a trustee in bankruptcy appointed;

- (h) ceases or threatens to cease to carry on business; or
- (i) assigns or subcontracts the Contract or any part of the Supplier's obligations under the Contract without the prior written consent of SCEE,
- in which case SCEE's liability to the Supplier shall be limited to payment of the Price for Services supplied prior to such termination.
- 16.2 Termination of the Contract does not affect or prejudice any rights of SCEE which have accrued prior to the termination. SCEE's exercise of its rights under this clause does not affect or limit its ability to exercise any other rights under the Contract, at law or in equity.
- 17. INSURANCE**
- 17.1 The Supplier must for as long as it has obligations outstanding in connection with the supply of the Services, effect and maintain:
- (a) all insurances specified in the Purchase Order; and
- (b) insurances with the following minimum limits, unless otherwise specified in the Purchase Order:
- (i) Public and product liability: \$20 million;
- (ii) Professional indemnity: \$5 million;
- (iii) Motor vehicle: \$20 million; and
- (iv) Workers' compensation: as required by applicable Legislative Requirements.
- 17.2 The Supplier must provide evidence satisfactory to SCEE of such insurance to SCEE as a condition precedent to the Supplier being entitled to:
- (a) access to the Site;
- (b) make a claim for payment for the supply of the Services; or
- (c) payment for the supply of the Services.
- 18. PERSONNEL**
- SCEE may object to any Personnel who, in SCEE's opinion, does not have the appropriate qualifications, competency or skill to perform the relevant part of the Services in respect of which they are engaged or who engages in misconduct. The Supplier must remove and immediately replace such Personnel with a suitable replacement upon being directed to do so by SCEE.
- 19. SITE**
- 19.1 This clause 19 applies to the extent the Supplier or Personnel are required to be on or in the vicinity of the Site.
- 19.2 The Supplier must:
- (a) comply, and ensure its Personnel comply, with all Legislative Requirements and all policies, standards, rules and procedures in force from time to time, including in relation to HSE;
- (b) submit and amend any HSE management plan(s) as reasonably required by SCEE;
- (c) attend all induction courses as reasonably required by SCEE;
- (d) permit SCEE to have access to the Supplier's premises, documentation, data and Personnel as necessary to enable SCEE to verify, monitor and audit the Supplier's compliance with this clause 19;
- (e) give SCEE not less than 7 days prior written notice before commencing Services on the Site.
- 19.3 The Supplier acknowledges that it must not have exclusive possession of any part of the Site and must only be granted access to the Site to the extent necessary for the performance of the Services. The Supplier must cooperate with other contractors and persons on the Site and coordinate its work with them.
- 20. SECURITY OF PAYMENT**
- 20.1 The parties agree that for the purposes of any adjudication under any security of payment Legislative Requirement in relation to the Contract or the Services:
- (a) the prescribed appointor shall be the Chairperson from time to time of the Chapter of Institute of Arbitrators and Mediators Australia in the State in which the Services are supplied;
- (b) the amount set out in a payment certificate given by SCEE under clause 10.7 is the amount of the 'progress payment' calculated in accordance with the terms of the Contract to which the Supplier is entitled; and
- (c) the date under clause 10.1 on which the Supplier must claim payment is the 'reference date'.
- 21. GENERAL**
- 21.1 **Entire Agreement:** The Contract comprises the entire agreement between the Parties in respect of its subject matter and supersedes all prior agreements, quotation requests, understandings, representations, warranties, promises, statements, negotiations, letters and documents in respect of its subject matter.
- 21.2 **Severance:** If any provision of the Contract is determined to be void by any court then that determination does not affect any other provision of the Contract which otherwise remains in full force and effect.
- 21.3 **Waiver:** No waiver by a Party of any breach of a provision of the Contract is a waiver of any subsequent breach of that provision or any other provision. A waiver is not effective unless it is in writing.
- 21.4 **Variations:** An amendment or variation to the Contract is not effective unless it is in writing and signed by the Parties.
- 21.5 **Assignment:** The Supplier must not assign the Contract or any part of the Supplier's obligations under the Contract without the prior written consent of SCEE, which must not be unreasonably withheld.
- 21.6 **Subcontracting:** The Supplier must not subcontract all or any of its obligations under the Contract without the prior written consent of SCEE, which must not be unreasonably withheld.
- 21.7 **Exclusion and apportionment:** The operation of the Convention and, to the extent not prohibited by law, Apportionment Legislation is excluded. The Supplier indemnifies SCEE against any claim, cost, expense or liability whatsoever arising out of or in connection with the Contract which are caused or contributed to by the Supplier's Personnel and for which the Supplier would have been liable to SCEE but for, or which SCEE is not able to recover from the Supplier because of, any apportionment under any Apportionment Legislation.
- 21.8 Governing Law:** The Contract is governed by, and is to be interpreted in accordance with the laws in force in the State in which the Delivery Address is located and the Parties submit exclusively to the jurisdiction of the courts in that State.
- 22. DEFINITIONS**
- In these Conditions:
- Action** means any claim, action, suit, proceeding or demand.
- Apportionment Legislation** means any legislation under which an apportionment may be made.
- apportionment** includes an apportionment of liability for damages, a limit on the amount of damages that may be awarded against a party or a determination of or judgment for the proportion of any damages which should be borne by a party.
- Conditions** means these terms and conditions of purchase including any additional special conditions stated in the Purchase Order and any variations agreed by the Parties in writing.
- Consequential Loss** means consequential loss, damage or expense (including but not limited to loss of profit or revenue, loss of market or loss of contracts or damage to commercial reputation).
- Contract** means the Purchase Order and the Conditions.
- Convention** means the United Nations Convention on Contracts for the International Sale of Goods, adopted at Vienna, Austria on 10 April 1980.
- Defect** means any aspect of the Services not in accordance with this Contract, or which is damaged, deficient, faulty, inadequate or incomplete in design, performance, workmanship, quality or makeup and Defective has an equivalent meaning.
- Delivery Address** means the address for delivery stated in the Purchase Order
- Delivery Date** means the date for delivery of Goods and/or Services stated in the Purchase Order.
- Goods** means the goods specified in the Purchase Order and any Specification, including, without limitation, manuals, operating instructions, reports and drawings.
- GST** has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999*.
- GST Act** means *A New Tax System (Goods and Services) Act 1999* (Cth).
- HSE** means health, safety and environment.
- IP Rights** means all industrial and intellectual property rights whether protectable by statute, at common law or in equity, including all copyright and similar rights which may subsist or may hereafter subsist in works or any subject

matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registrable), rights in relation to registered or unregistered trade marks, circuit layout designs and rights in relation to circuit layouts, but excludes non-assignable moral rights and similar non-assignable personal rights of authors and producers.

Legislative Requirements means any applicable statutes, regulations, by-laws, orders, awards, proclamations of the Commonwealth, certificates, licences, consents, permits, approvals, codes, standards and requirements of organisations.

Loss means any loss, damage, expense, payment or liability, but excludes Consequential Loss.

Party means SCEE or the Supplier, and a reference to Parties is a reference to both of them.

Personnel means any person, consultant or subcontractor engaged by the Supplier to provide all or any part of the Services on behalf of the Supplier.

Price has the meaning given in clause 9.1.

Purchase Order means the written order signed by or on behalf of SCEE and accepted by the Supplier for the supply of the Services.

Services means the services set out in the Purchase Order and any Specification and includes any associated Goods.

SCEE means Southern Cross Electrical Engineering Ltd (ABN 92 009 307 046).

Site means the premises specified in the Purchase Order.

Supplier means the supplier of the Services specified in the Purchase Order.

Specification means all codes, standards, drawings, scopes of work and specifications applicable to the Purchase Order, referred to in the Purchase Order or otherwise incorporated into the Purchase Order by reference and to be complied with by the Supplier.