



PURCHASE ORDER TERMS AND CONDITIONS

Definitions in these Terms and Conditions:

Action means any claim, action, suit, proceeding or demand.

Apportionment Legislation means any legislation under which an apportionment may be made.

Business Days means any day other than a Saturday, Sunday, public holiday and the period between 27 to 31 (inclusive) of December.

Company means the entity stated in the Purchase Order.

Construction Services means all installation, testing and commissioning works and any such works necessary in support of such works which may be required of the Supplier;

Contract means the Purchase Order, these Terms and Conditions and special conditions, if any.

Defect means any aspect of the Goods or 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 means the transfer of Goods into the physical custody of the company at the delivery points nominated on the Contract

Delivery Address means the address for delivery stated in the Contract.

Delivery Date means the date for delivery of the Goods and performance of the Services stated in the Contract.

Dispute Notice means a written notice stating that it is issued under clause 20

Goods means the goods (if any) specified in the Contract including, without limitation, manuals, operating instructions, reports and drawings.

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 trademarks circuit layout designs and rights in relation to circuit layouts, but excludes non-assignable moral rights and similar non-assignable personal rights

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, whether direct or indirect, and includes 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 reputation).

Party means the Company or the Supplier, and a reference to Parties is a reference to both.

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.

Purchase Order means the written order containing any Special Conditions along with any other documents referenced therein, which together constitute the contract signed by or on behalf of the Company for the supply of the Goods and/or the Services.

Professional Services means services such as design, engineering, consultancy, agency or other such services requiring specialist expertise in a given field;

Services means Goods, Professional Services or Construction Services

Site means the premises specified in the Contract.

Special Conditions means any noted conditions (including those contained in any referenced documents) contained in the PO

Supplier means the supplier of the Services and/or Goods specified in the Contract.

1 General

These Terms and Conditions will apply whenever the Company issues a Purchase Order and it supersedes any prior agreements, negotiations or representations by the parties. The parties agree that any reference to the Supplier's terms on any quote, invoice or other document, shall not import those terms into the Contract unless the Company expressly agrees otherwise in writing. In the event of inconsistency between Contract terms and conditions and Special Conditions, the Special Conditions will prevail.

2 Precedence

The Purchase Order prevails in case of any inconsistency with these Terms and Conditions.

3 Goods and Services

3.1 The Supplier will ensure that goods supplied by it:

3.1.1 Are new, ready for use, free from defects performance and fit for purpose;

3.1.2 Comply with all applicable Legislative Requirements and Australian standards at the minimum;

3.1.3 Are supplied with a valid manufacturer's or supplier's warranty where the manufacturer or supplier offers such a warranty in respect of the Goods; and

3.1.4 Are delivered in accordance with any specifications and/or timeframe referred to in the Contract or otherwise provided by the Company to the Supplier.

3.2 The Supplier will ensure that any services by it:

3.2.1 Are performed to a high standard in accordance with industry best practice and, at a minimum, comply with any applicable Australian standards; and

3.2.2 Are performed in accordance with any specifications and/or timeframe referred to in the Contract or otherwise provided by the Company to the Supplier.

4 Delivery

4.1 The supplier must deliver any of the goods and/or services in accordance with the Company specified requirement (as referenced in contract). The Supplier shall insure the Good(s) for replacement while risk is with the Supplier.

4.2 Time is of the essence in the delivery of the Goods.

5 Delay

The Supplier agrees to deliver or supply all Goods and/or Services and ancillary items on time and that, if the Supplier is delayed, or expects a delay, it will notify the Company as soon as possible. The Supplier will take all reasonable steps to prevent delay, including but not limited to working overtime.



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6 Packaging

The Supplier must:

- 6.1 Suitably pack the Goods to avoid damage during loading, transit, delivery, unloading or storage;
- 6.2 Pack and transport the Goods in accordance with any applicable regulations and industry codes; and
- 6.3 Clearly mark all packages of the Goods for delivery and the delivery documents for the Goods with the Contract number and ensure that the delivery documents accompany the Goods to the Delivery Address.

7 Inspection and Testing

The Supplier shall perform any such testing requested of it in the contract or otherwise shall supply all testing necessary and reasonably requested by the company in order to prove the Services are in compliance with the requirements of the contract.

8 Quality Assurance

- 8.1 The Company may reject the Goods or any part thereof that does not comply with the Contract. Signed delivery documents confirm the quantity of Goods delivered and do not constitute acceptance;
- 8.2 Upon request by the Company, the Supplier warrants that it will permit the Company access to its premises or the premises of the Supplier's vendors, agents or distributors for the purpose of quality assurance surveillance, inspection and expediting of the Goods. Any such quality assurance surveillance and expediting by the Company will not relieve the Supplier in any way from its obligations under the PO/Contract or otherwise its own quality control and inspection of the Goods.

9 Technical Material

The Supplier must, without additional cost to the Company, 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 contract as reasonably required by the Company.

10 Price

The Contract price is fixed and firm and not subject to adjustment due to currency fluctuation or any other reason. The Contract price includes applicable taxes and Duties (customs, excise, import duties, tariffs, fees, levies, charges, costs or expenses incurred by the Supplier, including transport, packing and insurance costs) except GST unless agreed otherwise.

11 Payment

- 11.1 The Supplier must claim payment for the supply of the Goods and/or the Services by submitting invoices to accounts@perdon.com.au which must:
 - a) be a tax invoice;
 - b) be correctly dated;
 - c) refer to the Contract;
 - d) list the particular Goods and/or Services supplied; and
 - e) be supported by relevant records to enable the Company to calculate and verify the amount stated in any Supplier invoice.

Terms of payment are 30 business days from end of month of a correctly rendered Tax Invoice unless agreed otherwise in writing

The Company may at any time require that the Supplier provides additional records to calculate and verify the amount stated in any Supplier invoice.

If the Company disputes any amount claimed in an invoice, the Company shall make a determination of the amount payable within 14 days from the receipt of the Supplier's payment claim and inform the Supplier of the reasons why its payment claim has (wholly or partially) been rejected.

12 Title and Risk

- 12.1 Risk in the Goods passes to the Company upon deliver to the Delivery Address.
- 12.2 Property in the Goods passes to the Company upon the earlier of payment or delivery to the Delivery Address.

13 Warranties

- 13.1 The Supplier represents and warrants that:
 - 13.1.1 The Goods and/or the Services will be supplied in an efficient manner in accordance with all applicable laws, regulations, codes and standards;
 - 13.1.2 The Goods and/or the Services strictly comply with the Specifications;
 - 13.1.3 The Goods and/or the Services are free from all Defects;
 - 13.1.4 The Supplier will ensure its Personnel will exercise standards of diligence, due care and skill required to perform the relevant part of the Services in respect of which they are engaged;
 - 13.1.5 The Goods and/or the Services are fit for purpose for which goods and services are described;
 - 13.1.6 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;
 - 13.1.7 All the Goods match the description of the Goods in the Contract.
- 13.2 The Supplier must immediately rectify or replace at the Company's option and at Supplier's sole cost any Defective Goods or Services 12 months after the Goods or the Services are first used or enter into the service for which they are purchased, whichever occurs first.
- 13.3 If the Company reasonably considers that it is necessary to rectify or replace Defective Goods or Services then the Company, if time permits, shall give the Supplier an opportunity to rectify or replace such Goods or Services before the Company does so or causes a third party to do so. The Supplier must reimburse the Company for the full cost of such replacement or rectification.
- 13.4 The Supplier's obligation to replace or rectify Defective Goods and/or Services is cumulative of other remedies available to the Company.
- 13.5 The Supplier must ensure that the Company has the full benefit of any manufacturer's warranties that may be applicable to the Goods or the Services and the Supplier must pursue any manufacturer's warranties on the Company's behalf if the Company so requests.
- 13.6 If the Supplier has replaced or rectified Defective Goods or Services, the rectified or replacement Goods or Services must be subject to the same warranty period as the

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original Goods or Services, from the date of rectification or replacement.

- 13.7 If the Company elects to accept Defective Goods or Services on one occasion, such election does not bind the Company to accept any other Defective Goods or Services and does not affect any of the Company's other rights under the Contract in respect of those Defective Goods or Services.

14 Liability and Indemnity

- a. The Supplier indemnifies the company on a full indemnity basis against all claims whatsoever in relation to the Suppliers performance and delivery of the Services including (but not limited to) personal injury, death, loss of or damage to property, any infringement of intellectual property rights, and any legal costs arising from the Supplier's performance of its obligations under this Contract.
- b. The Company is not liable for any consequential or indirect loss

15 Suspension

The Company may direct the Supplier to suspend the supply of the Services in whole or in part for such time as it determines appropriate if:

- 15.1 The Supplier has breached the Contract in any way;
- 15.2 Company has been requested to suspend performance of its own works (to which the Services are related) by its own client;
- 15.3 Company is of the opinion that it is necessary because of an act, default or omission of either of the parties;
- 15.4 Company in its opinion considers it necessary for the protection or safety of any person or property; or
- 15.5 It is necessary to comply with a court order
If the Company directs the Supplier to recommence performance of the Services, the Supplier shall immediately recommence the works

16 Termination

- 16.1 The Company may terminate all or part of the contract at any time for any reason, in its sole and absolute discretion by written notice to the Supplier. Upon receipt of the notice the Supplier must stop all work and mitigate all costs and expenses. Company will pay the Supplier for work performed under the contract up to the time of the notice.
- 16.2 The Company may terminate the contract immediately upon any breach of the terms of the contract by the Supplier and seek compensation of all losses and damages incurred. If the agreement is terminated due to breach by the Supplier, Company will be entitled to complete the Services, at its discretion, and seek recovery of the costs from the Supplier. Until such time as either the damages or the costs incurred have been finalised, Company shall have no obligation to pay the Supplier. Any such payments due to the Supplier shall be limited to any balance remaining of the contract price once the relevant costs, losses and damages have been set- off.

17 Insurances

The Supplier must provide written evidence of any applicable insurance policies to the Company before commencement of any Services or within 7 days of receiving a request to do so from the Company.

- 17.1 Goods: Supplier shall insure the Goods for their replacement value against loss or damage, including (where applicable) loss or damage in transit or offloading to the delivery address and shall cover the party's respective rights, interest and liabilities.
- 17.2 Public and Product Liability Insurance: General Third-Party Public and Products Liability with a limit of liability of not less than \$20,000,000 for the one occurrence or in the aggregate for a period which is not to expire until the completion of the whole performance of the Services including any applicable warranty period.
- 17.3 Workers Compensation & Occupational /Industrial Disease: and/or any other insurance required to insure against statutory and common law liability for death of or injury to persons employed by the Supplier which shall be maintained for the duration of the contract and shall extend to cover the Company's statutory liability to the Supplier's employees to any person for the amount of \$50,000,000. The Supplier shall ensure that all its subcontractors have similarly insured their employees.
- 17.4 Professional Indemnity Insurance: If the services of the contract includes, directly or indirectly, the provision of Professional Services, the Supplier must effect and maintain (whether by renewal or otherwise) throughout the term of the contract and for a period of not less than 6 years after the completion of the Services, professional indemnity insurance to a minimum value of A\$5,000,000 for any one occurrence or in the aggregate in respect of liability arising by reason of any act, error, or omission of the Supplier or the Supplier's Personnel in performance of the Professional Services.

18 Personnel

- 18.1 The Company may object to any Personnel who, in the Company's reasonable opinion, do 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 engage in misconduct.

19 Confidentiality and Intellectual Property

- 19.1 The Supplier will ensure that its employees, subcontractors and agents keep all information provided or available to the Supplier confidential prior to entering this agreement, The Supplier shall not use the Company's name or any of the information contained in the Contract for publicity purposes without the Company's prior written consent.
- 19.2 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.
- 19.2.1 The Company acknowledges that ownership of all IP

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Rights used or created under the Contract or in the provision of the Services is retained by the Supplier. The Supplier grants to the Company a non-exclusive, transferable, royalty free, irrevocable and perpetual licence (including a right to sub-licence) to use such IP Rights for the purpose of the Company having the benefit of the Services.

- 19.2.2 The Supplier indemnifies the Company for all loss and expense incurred as a result of a breach of this clause.
- 19.2.3 The Supplier acknowledges that the terms of the Contract are confidential and agrees not to disclose any information regarding the Contract, its existence or its terms to any third party (including by making any media release) without the express written permission of the Company.
- 19.2.4 This clause 19 shall survive the cancellation, termination or repudiation of the Contract for any reason.

20 Dispute Resolution

- 20.1 If at any time a dispute or difference arises between either party in relation to the Contract, such dispute must be dealt with by the parties following this procedure before either party may take legal actions against the other.
- 20.2 The parties agree to meet and do everything practically possible to negotiate in good faith to resolve the matter in dispute.
- 20.3 If the matter cannot be resolved the disputing party shall provide a written notice to the other party outlining the Dispute ("Dispute Notice").
- 20.4 After receipt of the Dispute Notice the parties shall, within 7 days, arrange for a meeting of senior representatives to attempt to resolve the dispute.
- 20.5 If the Dispute cannot be resolved by the senior representatives within 21 days, then either party may initiate legal proceedings.
- 20.6 Notwithstanding the existence of a dispute, the Supplier shall continue to perform its obligations under the Contract.

21 Site

To the extent the Supplier or Personnel are required to perform construction services on or in the vicinity of the Site, the Supplier must:

- 21.1 Comply and ensure its personnel complies with all policies and procedures of that site where the construction works are to be carried out, including but not limited to Health & Safety, quality, site hours and industrial agreements.
- 21.2 Attend all induction courses as reasonably required by the Company.
- 21.3 Unless stated otherwise, price is deemed to include provisions for all allowances such as (but not limited to) labour, plant and equipment, materials, tools, consumables, risks, liabilities etc, to complete the works.
- 21.4 Unless stated otherwise in the contract, the supplier has allowed for risk associated with site conditions and the environment in, under and surrounding the site including (but not limited to) any traffic routes for delivery of materials, any requirements for

accommodation and/or transport for it employees due to the location of the site etc.

- 21.5 The Supplier acknowledges that it will not have exclusive possession of any part of the Site and will only be granted access to the Site to the extent necessary for the performance of the Services. The Supplier must cooperate and coordinate its performance of this Contract with other contractors and persons on the Site.

22 General

- 22.1 **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. Any terms that may have been attached or embodied in the Supplier's tender or offer or other correspondence (including quote forms and Contracts) whether before, at or after the acceptance of the Contract are not applicable.
- 22.2 **Governing Law:** Unless otherwise stated in the in the contract, the contract is governed by the laws of the State of Western Australia. The company and the Supplier agree to submit to the non-exclusive jurisdiction of the courts of Western Australia and the courts of appeal from them
- 22.3 **Waiver:** The Company's failure or delay to exercise a power or right does not operate as a waiver of that power or right. No waiver by the Company 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, signed by the Company.
- 22.4 **Assignment / Subcontracting:** The Supplier must not assign or subcontract all or any of its obligations under the Contract without the prior written consent of the Company. Assignment or subcontracting will not relieve the Supplier from any of its obligations under this contract nor impose any liability upon the company to an assignee or subcontractor.
- 22.5 **Notification:** The Supplier must as soon as it becomes aware of any circumstances that would prevent it from being able to fulfil its obligations under the PO/Contract must immediately notify the Company in writing, providing details of those circumstances providing and the impact on the Contract. Upon receipt of the notice the company may at its sole discretion:
 - (i) cancel all or any part of the PO/Contract; or
 - (ii) vary the PO/Contract, at no cost to the Company in order to allow the Supplier to fulfil its obligations under the PO/Contract.
- 22.6 **Scheduling:** Where applicable, the Supplier shall provide the company with reasonable advance notice of when the Supplier needs information, materials, documents or instructions from the Company. On request from the Company the Supplier shall prepare (on an agreed format) a schedule for the Services which sets out the order, sequence, times for commencement and completion, critical path and manning information (where applicable) in respect to the delivery of the



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Services.

- 22.7 Exclusion and Apportionment:** The operation of, to the extent not prohibited by law, Apportionment Legislation is excluded. The Supplier indemnifies the Company 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 the Company but for, or which the Company is not able to recover from the Supplier because of, any apportionment under any Apportionment Legislation.
- 22.8 Urgent Protection:** If urgent action is necessary to protect the Services (including the timely completion of the Services), other property or people and the Supplier fails to take the action, in addition to any other remedies, the company may take such action and any cost incurred shall lay with the supplier.
- 22.9 Care of Work:** The supplier shall be responsible for the whole of the services until such time as the whole of the services are completed and delivered or handing over to the company regardless of whether any title in Goods has passed to the company.