

## General Conditions of Purchase

### 1. Interpretation

In these Terms and Conditions:

1. **"Purchaser"** means Nepean Engineering Pty Ltd, ABN 27 001 375 239, a company registered in NSW.
2. **"Supplier"** means the Person described In the Order;
3. **"Order"** means the Purchaser's official purchase order to which these Conditions apply;
4. **"Conditions"** means these General Terms of Purchase including any special terms and conditions agreed in writing between the Purchaser and the Supplier;
5. **"Contract"** means the contract for the purchase of the Goods between the Purchaser and the Supplier;
6. **"Goods"** means all goods, services or products covered by the Order;
7. **"Person"** includes corporations, partnerships and public authorities;
8. **"Defect"** includes:
  1. any fault, failure, degradation, deficiency, error or non-conformance with the specifications in the Order; or
  2. any breach of the warranties contained in clause 6.1
9. **INCOTERMS** as valid on conclusion of the Contract will apply to the interpretation of trade terms used in the Contract;
10. **Headings** are inserted for convenience and do not affect the interpretation of the Conditions.

### 2. Acknowledgement

By supplying or agreeing to supply Goods, the Supplier acknowledges that it has read and understood these Conditions and accepts and agrees to be bound by them.

### 3. Terms

The Order and the Conditions are the complete and exclusive statement of the Contract. No variation to the Contract shall be binding unless agreed in writing between the Purchaser and the Supplier.

### 4. Order

- 4.1 The Purchaser will not be responsible for any request for Goods unless it is issued on an Order.
- 4.2 The number appearing on the Order must be quoted on all invoices, delivery dockets and consignment notes together with the Purchaser's part number.

### 5. Price

- 5.1 Subject to clauses 5.2 and 5.3, the price of the Goods will be stated in the Order, and will be stated:
  1. exclusive of any applicable goods and services tax, value added tax, consumption tax or any similar tax. ("GST") which shall be payable by the Purchaser to the Supplier or reimbursed by the Purchaser to the Supplier, and the prices stated in the Order shall be fixed for the duration of the supply unless otherwise agreed.
  2. inclusive of all charges for packaging, carriage, insurance, delivery and any other taxes, imposts or levies other than any GST.

The prices stated in the Order shall be fixed for the duration of the supply unless otherwise agreed.

- 5.2 If any supply of Goods (including the supply of any goods, services, other rights, advances, or other things) made under or in connection with this Contract is or becomes subject to GST, the Supplier may, in addition to any amount of consideration payable or to be provided, recover from the Purchaser an additional amount on account of GST, such amount to be calculated by multiplying the value of the consideration payable or to be provided by the Purchaser for the relevant supply by the prevailing GST rate.

- 5.3 Notwithstanding any other provision in the Contract, if the imposition of a GST or any other subsequent change in the GST law is accompanied by or undertaken in connection with the abolition of or reduction in any existing taxes (including income tax), duties or statutory charges ("taxes"), the consideration (excluding any GST) payable by the Purchaser for any supply made under the Contract will be reduced by the same proportion as the actual costs of the Supplier (including income tax), duties or statutory charges ("taxes"), the consideration (excluding any GST) payable by the Purchaser for any supply made under the Contract will be reduced by the same proportion as the actual costs of the Supplier (including any Taxes but

excluding any input GST paid or payable by the Supplier) are reduced as a consequence of the abolition of or reduction in Taxes, whether directly by way of abolition or reduction in Taxes paid or payable by the Supplier to its suppliers or to any government, or indirectly by way of a reduction in the prices (excluding any GST) charged by supplier's to the Supplier.

### 6. Standards

- 6.1 In addition to any warranties or guarantees implied by Law, the Supplier warrants that the Goods supplied under this Contract shall conform to the following standards;

1. where a sample of the Goods has been approved by the Purchaser the Goods shall be of the same grade or quality as the sample;
2. where there is a purchase of Goods by description the Goods will correspond with the description;
3. where similar Goods have been supplied to the Purchaser by the Supplier the Goods supplied under the Contract should be of the same standard;
4. the Goods will conform with any requirements specified in the Order;
5. the Goods will be new (unless otherwise specified);
6. the Goods will be of merchantable quality and fit for the purpose for which they are supplied;
7. the Goods will be the absolute and unencumbered property of the Supplier free from all liens, charges and other third party rights; and
8. the Goods will comply in all respects with the applicable legal requirements including all applicable Australian safety standards.

- 6.2 Unless otherwise stated in the Order, the Supplier guarantees, at no cost to the purchaser, to repair, replace or rectify any defect in the Goods which occurs during:
  1. the 12 months from the time the Goods are placed into commission by the Supplier; or
  2. the 18 months after delivery of the Goods,

whichever occurs first.

- 6.3 Any service supplied under or in the connection with this Contract shall be supplied in accordance with the highest standard of care and skill. Where such service is provided at the premises of the Purchaser the Supplier will procure that any work place practices of the Purchaser notified to the Supplier will be complied within.

### 7. Packaging

- 7.1 The goods must be properly packed to avoid being damaged during delivery and in accordance with any packaging requirements or specifications communicated by the Purchaser to the supplier. All packages must specify the Purchaser's order number, part number, batch number and expiry date of the Goods where applicable.

- 7.2 The supplier shall comply with all applicable Australian and International laws, regulations and their requirements relating to the carriage, packaging, storage and handling of the Goods.

### 8. Delivery

- 8.1 The time and place for delivery of Goods shall be that specified in the Order unless otherwise agreed.

- 8.2 The time of delivery of Goods stated in the order is of the essence. If any goods are not delivered within the specified time the Purchaser may either:
  1. refuse to accept the Goods and terminate the Order without responsibility to pay cancellation charges to the Supplier, or
  2. require the Supplier at its cost to deliver the Goods by the most expeditious means to such locations as specified by the Purchaser.

- 8.3 If the Purchaser terminates the Order under clause 8.2(a) then, without prejudice to any right or remedy, the Purchaser shall
  1. be entitled to obtain the Goods from another available source; and
  2. the Supplier shall pay all additional costs incurred by the Purchaser in obtaining alternative Goods as a contract debt.

### 9. Inspection

- 9.1 The Purchaser or its nominee has the right to inspect and test the Goods:
  1. at any stage of the engineering, manufacturing or installation process and the Supplier will, on reasonable notice from the Purchaser, arrange access to the Goods for such purpose; and
  2. within a reasonable time after delivery.

- 9.2 In addition to the Purchaser's rights under clause 10.1, the Supplier must comply with the reasonable instructions of the Purchaser or its nominee arising from any inspection.

- 9.3 Any Inspection or failure to inspect does not relieve the Supplier from its obligations under the Contract or at law.

### 10. Liability

- 10.1 If it appears to the Purchaser that any Goods do not correspond with these Conditions ("Defective Goods") then the Purchaser may at its option;
  1. repair the Defective Goods at the Supplier's cost; or
  2. by written notice to the Supplier require the Supplier to correct any defect by repair within 3 days or to replace the Defective Goods; or



- return the Defective Goods within 14 days from the time of inspection at the Supplier's cost and risk in which case any part of the price paid in respect of the Defective Goods must be immediately refunded.

Nothing in this clause shall limit the purchaser's rights and remedies available in law, including the right to rescind the Contract and to claim damage.

- 10.2 Without Prejudice to any other remedy of the Purchaser, the supplier will indemnify in full and insure against all liability, loss, damages, costs and expenses awarded against or incurred or paid by the Purchaser as a result of or in connection with:
- a breach of the Contract;
  - a willful, unlawful or negligent act or omission of the Supplier, its employees or agents;
  - any claim by a third party alleging infringement of an intellectual property right in relation to the Goods except to the extent that the claim arises from compliance with any specifications supplied by the Purchaser;
  - any claim by a third party against the Purchaser caused or contributed to by the Supplier, its employees or agents;
  - any loss or damage to any property of the Purchaser caused or contributed to by the Supplier, its employees or agents; and
  - any injury to or death of a natural person, and any loss of or damage to a third party's property, caused or contributed to by the Supplier, its employees or agents.

#### 11. Property and Risk

Property and risk in the Goods will pass to the Purchaser on proper delivery of the Goods in accordance with these Conditions but subject to any right which the Purchaser has to reject the Goods.

#### 12. Payment

- 12.1 Unless otherwise stated in the Order, the terms of payment are 30 days from the date the Goods are duly delivered or receipt of invoice (whichever occurs later). The date of invoice shall not precede the date the Goods are duly delivered.
- 12.2 The purchaser reserves the right to set off any amount owing in respect of any Order against amounts due from the Supplier to the Purchaser for any reason whatsoever.

#### 13. Right of Termination

Where the Supplier is unable to perform its obligations pursuant to this Contract the Supplier must notify the Purchaser immediately, such notification to be confirmed in writing. Where the Purchaser receives such notification, receipt is to be confirmed in writing. Where the Purchaser receives such notification or reasonably believes that the Supplier will fail to perform its obligations, the Purchaser shall be entitled to terminate this Contract. Such termination shall not prejudice any right which the Purchaser has to damages or other remedy against the Supplier.

#### 14. Insurance

The Supplier shall maintain adequate insurance upon such terms as are reasonable in the circumstances of the Order.

#### 15. Confidential Information

- 15.1 Any drawings, specifications, designs, tools, technical data and the information contained therein ("Confidential Information") provided by the Purchaser to the Supplier for the purpose of supplying the Goods are strictly confidential and provided on the following Conditions:
- The Confidential information remains the exclusive property of the Purchaser and must not be copied or transferred to any other person without the Purchaser's written consent.
  - any items which comprise or form part of the Confidential Information shall be marked as being the property of the Purchaser and be securely stored by the Supplier at its cost for the duration of the Contract; and
  - the confidential information may only be used for the purpose of supplying Goods under this Contract and must be returned to the Purchaser within 30 days of the delivery of the Goods.
- 15.2 The purchaser reserves all its rights in Goods produced according to its Instructions or specifications as well as in any process developed by the Supplier.

#### 16. Assignment

- 16.1 The Supplier shall not assign or subcontract any part of the work required by this Contract without the Purchaser's written consent which consent may be exercised in the Purchaser's sole discretion.
- 16.2 The Purchaser's consent to the Supplier sub-contracting any work to be performed pursuant to the Order shall not relieve the Supplier of its responsibility for the whole of the work to be performed pursuant to the Order or any obligations contained in this Contract or at law.

#### 17. Force Majeure

Neither the Supplier nor the Purchaser shall be liable to the other for default in performing its obligations under the Order caused by occurrence beyond its reasonable control including, without limitation, fire, strike, industrial disturbance, riot, war, act of God and Government order or regulation PROVIDED THAT the party affected by such occurrence gives written notice to the other party within 7 days of the commencement of that occurrence.

#### 18. Severance

The Terms and Conditions in this Contract are in addition to any rights which the Purchaser may have under the laws of the Commonwealth or the States. If any term or condition of the Contract is held to be illegal, void or unenforceable this contract shall be read as if such term or condition had never been included and was severable from this Contract leaving the remainder of this Contract legal, valid and enforceable.

#### 19. Choice of Law and Jurisdiction

- 19.1 To the maximum extent permitted by law, the application to this Contract of the United Nations Convention on Contracts for the International Sale of Goods is excluded.
- 19.2 This contract will be governed by the laws in force in the state of NSW and the purchaser and Supplier submit to the non-exclusive jurisdiction of the courts of NSW.