



PURCHASE ORDERS TERMS AND CONDITIONS

LMS ENERGY Pty Ltd ABN 39 059 428 474 of 79 King William Road, Unley, South Australia 5061, Australia, (LMS)

LMS requires that the Supplier provide LMS with the goods (the "Goods") identified in the relevant numbered Purchase Order ("Purchase Order") in accordance with these Terms and Conditions ("Terms and Conditions") and the Supplier has agreed to provide the Goods on these Terms and Conditions:

1. Terms of Agreement

- 1.1 The Purchase Order, together with any specifications or other documents incorporated in it by reference, and any quotations or other documents issued by the Supplier (to the extent that same are consistent with the Purchase Order), constitutes the entire agreement between the parties with respect to the purchase of the Goods. Acceptance of this document by the Supplier will constitute a binding contract between LMS and the Supplier to supply the Goods set out in the Purchase Order on these Terms and Conditions (this "Agreement").
- 1.2 This Agreement is the entire agreement between the parties relating to its subject matter. Changes to this Purchase Order will be binding only if specified in writing and signed by an authorised representative of LMS.
- 1.3 The Supplier will not provide the Goods to LMS without obtaining a numbered Purchase Order from LMS.
- 1.4 The Supplier must ensure that the Purchase Order number is clearly marked on all delivery dockets, bills of lading, packages, invoices and other documents and correspondence relating to the supply of the Goods.
- 1.5 If the Supplier is unwilling or unable to accept the offer made by LMS in this document on these Terms and Conditions, the Supplier will immediately contact LMS and advise in writing of any variations it requires to be made for the acceptance or rejection in writing by LMS.
- 1.6 If the Supplier proceeds with the manufacture or supply of the Goods without first requesting or receiving LMS' written acceptance of variations proposed by the Supplier, then the Supplier is deemed to have accepted these Terms and Conditions and the terms of the relevant Purchase Order.
- 1.7 It is acknowledged that, as a matter of commercial convenience, the Supplier may from time to time provide LMS with transportation or delivery information or other details concerning the Goods using the Supplier's forms. No such forms or printed or standard terms and conditions contained on any such form will or will be deemed to change, add to, amend or modify this Agreement, regardless of whether or not LMS signs any acknowledgement copy of the same.

2. Conditions and Warranties

- 2.1 The provisions of Schedule 2, Chapter 3, Part 3-2, Division 1 – Consumer Guarantees of the *Competition and Consumer Act 2010* (Cth) (as amended from time to time) will form part of this Agreement as if the same were set out in full in this Agreement with the effect that they would have if:
 - (a) "LMS" was substituted for "consumer"; and

(b) The "Supplier" was substituted for the words "a corporation", "a supplier" or "the supplier" (as applicable), wherever appearing therein.

2.2 In addition to the provisions of clause 2.1, the Supplier warrants that the Goods:

- (a) will be of merchantable quality;
- (b) will be manufactured and delivered strictly in accordance with any drawings, specifications and other instructions of LMS given for the purpose of this Agreement;
- (c) will be free from defects in design, materials and workmanship;
- (d) do not and will not infringe the intellectual property rights of any third party;
- (e) will comply with the requirements of any relevant statutes, regulations or legally applicable standards;
- (f) will be new on delivery to LMS;
- (g) will be in accordance with and will perform in accordance with the Supplier's specifications; and
- (h) conform in all respects to the description in the Purchase Order.

2.3 The warranties in clauses 2.1 and 2.2 are continuing warranties and do not merge on execution, performance or completion of this Agreement.

2.4 Without limiting any other provision of this Agreement, (including this clause 2 or any other provision conferring rights or remedies on LMS):

- (a) the Supplier agrees to provide LMS or procure the provision to LMS of the manufacturer's warranty applicable to the Goods; and
- (b) the Supplier must, if LMS requires, produce written evidence of the assignment to LMS of the manufacturer's warranty in respect of the Goods, or such other evidence sufficient to satisfy LMS that it is legally entitled to the benefit of that manufacturer's warranty.

2.5 LMS relies on the Supplier's skill and judgment. The Supplier undertakes to advise LMS whenever the Supplier believes that compliance with a specification of LMS' would render the Goods unsuitable for LMS' requirements.

3. **Inspection and Testing**

3.1 LMS may inspect and test the Goods, including related materials and workmanship, at either the Supplier's premises or at a location designated by LMS. LMS may reject the Goods (or related materials or workmanship) if it does not comply with the requirements of the Purchase Order and direct the Supplier to promptly repair or replace, at Supplier's sole expense, any rejected Merchandise or any materials and workmanship related to the Merchandise. If Supplier fails to promptly repair or replace the Merchandise or any materials or workmanship related to the Merchandise, LMS may arrange repair or replacement of the Merchandise (including any materials and/or workmanship related to the Merchandise) at the cost of the Supplier.

3.2 Any Goods rejected by LMS pursuant to clause 3.1 must be removed by and at the expense of the Supplier as soon as practicable after notice is given to the Supplier of their rejection. If the rejected Goods are not removed within that time, LMS may either return them to the Supplier at the Supplier's expense in all respects, or store them at the Supplier's expense in all respects. LMS will not be liable for any damage to or loss of the Goods whilst they are in transit to the Supplier, or whilst they are in storage.

3.3 LMS will generate a further Purchase Order when replacement Goods are required to replace Goods rejected pursuant to clause 3.1. The Supplier must not replace any

Goods rejected by LMS unless the Supplier has received a Purchase Order for the replacement Goods. In the event that LMS issues such a Purchase Order for replacement Goods then such Purchase Order is issued (and the replacement Goods are supplied performed) without prejudice to any right or remedy that LMS has by reason of the rejected Goods failing to comply with this Agreement. LMS may require the Supplier to refund any purchase price paid by LMS for the Goods and recompense LMS for any loss suffered by LMS in respect of such rejected Goods.

- 3.4 Goods (or any portion thereof) or replacement Goods which have been rejected must not be offered again for acceptance under this Agreement.
- 3.5 LMS' acceptance of the Goods will be without prejudice to any rights or remedies LMS may have arising from any breach by the Supplier of this Agreement. In particular:
 - (a) LMS may reject the whole or any portion of the Goods if it becomes aware (after accepting them) that they do not comply with this Agreement; and
 - (b) the Supplier must not replace those Goods under this Agreement unless a new Purchase Order is generated in accordance with clause 3.3.

4. Price and Payment

- 4.1 The price payable for Goods will be that set out on the Purchase Order. If the Purchase Order is not provided to the Supplier at the time of formation of this Agreement in respect of some or all of the Goods, then the price on any subsequently issued Purchase Order will be determined in accordance with the Specification.
- 4.2 The price set out in the Purchase Order is the amount payable by LMS (subject to this Agreement) under this Agreement excluding GST but including all other taxes, duties, charges, levies and fees payable on or in respect of the Goods. LMS will not be liable for additional costs or charges or an increase in price unless accepted by it in writing prior to the Due Date of the Goods involving such increased cost or charges or price. In this Agreement, "GST" means a goods and services tax or similar value added tax imposed by "*A New Tax System (Goods and Services Tax) Act 1999*" (and any legislation substituted for, replacing or amending that Act) ("the Tax Act").
- 4.3 The price specified in the Purchase Order will include packaging charges. If the Specification states that payments will be made by way of milestones, then LMS will pay the Supplier when LMS determines that the relevant milestone set out in the Specification has been satisfactorily achieved.
- 4.4 The Supplier must furnish LMS with an invoice which complies with the Tax Act:
 - (a) as soon as practicable after and in any event within seven (7) days of each delivery of the Goods; and
 - (b) specifying LMS' Purchase Order number, the amount due to the Supplier, the date of delivery of the Goods to which the invoice relates, a description (including the quantity) of the Goods delivered (by item if applicable) and the Supplier's address for payment.
- 4.5 If the Supplier does not provide its Australian Business Number on any invoice issued pursuant to this Agreement, then LMS may withhold 48.5% of the payment (or such other percentage as applies from time to time) and remit it to the Australian Taxation Office as required by legislation.
- 4.6 Unless otherwise agreed between the Supplier and LMS in writing, amounts payable by LMS pursuant to an invoice rendered in accordance with this Agreement will be paid by LMS by no later than 30 days from the end of the month of the date of invoice provided that the Goods have been accepted by LMS and that the Supplier has complied with this Agreement in all respects. The Accounts Payable office of LMS must receive all invoices on the 25th day of each month in order for payment to be made in

accordance with this clause. In the event that LMS has a bona fide dispute in relation to the contents of any invoice issued by the Supplier then LMS will bring notice of such dispute to the attention of the Supplier within 14 days of receipt of the invoice. LMS will not be required to pay the invoice until the parties have reached agreement in relation to the dispute or until the Supplier will have obtained an arbitral award against LMS in respect of that amount in accordance with clause 15 (whichever occurs first).

- 4.7 Notwithstanding any other provision of this Agreement, LMS shall be entitled to withhold from any payment, transaction, or non-cash benefit or consideration otherwise due to the Supplier under or in connection with this Agreement, any Withholding Tax (which term includes any tax, duty, levy or similar which LMS as the Purchaser is required or directed to deduct and/or remit to a tax collecting entity, including the Australian Taxation Office, and it specifically includes any amount to be held, withheld or dealt with in a similar manner in relation to Regulation 44D of the Taxation Administration Regulations 1976 (Cth), and/or any “pay as you go” tax law).

5. **Delivery**

- 5.1 The Goods will be delivered on the date specified in the Purchase Order (the “Due Date”). LMS may require that all Goods ordered for a specified Due Date are delivered at the same time or it may accept delivery in part from time to time, such acceptance to be completely within LMS' discretion.
- 5.2 All deliveries shall be accompanied by manuals (if applicable) and a packing list detailing the purchase order number, item number and tag number. Each package or crate shall be clearly identified with Supplier's name, LMS' name, purchase order number, and catalogue number, if any. All items and subparts to items shall be clearly tagged and numbered. A packing list shall be included with the Goods and an additional copy shall be hand-delivered to LMS or its representative on or before delivery.
- 5.3 Subject to clause 6.2 and subject to LMS' right to reject any defective Goods, title will pass to LMS on delivery. The Goods will be deemed to have been delivered only when they have been made available and loaded or unloaded (as applicable) at the nominated delivery point in accordance with the requirements of this Agreement.
- 5.4 The Supplier will pack the Goods to ensure that no loss or damage results from weather or transportation.
- 5.5 LMS will specify the method of delivery required at the time of placing of the Purchase Order. Where the Supplier arranges transportation of the Goods, regardless of whether the carrier is nominated by LMS or not, risk remains with the Supplier until the Goods have been delivered.

6. **Timeliness**

- 6.1 Time is of the essence in the performance of the obligations under this Agreement. The Supplier acknowledges that LMS may return part or all of any shipment of Goods received outside the Due Date and charge the Supplier with any loss or expense sustained as a result of the Supplier's failure to deliver as agreed. Without prejudice to the foregoing, if any circumstances arise which may delay the delivery of the Goods, the Supplier will immediately notify LMS of the circumstances and propose a revised delivery date which LMS may elect to agree or not agree to in its own discretion. The exercise by LMS of its rights under this clause will be without prejudice to any claim for damages or other rights it may have against the Supplier.
- 6.2 The Supplier acknowledges that LMS may terminate this Agreement if the Supplier does not provide the Goods on the Due Date and LMS will not be liable to pay for any Goods which are delivered or performed outside of the Due Date (unless the parties have

agreed in writing to extend the date). The Supplier will submit a program and schedules to LMS in the form and frequency advised.

7. Inspection of Work in Progress

- 7.1 On request and after being given reasonable notice, the Supplier will arrange for LMS' representative to have access to the premises or processes of the Supplier (or any of the Supplier's sub-contractors which LMS has permitted to undertake works pursuant to this Agreement) for the purposes of inspecting any materials, work in progress or finished Goods being supplied to or manufactured for LMS.
- 7.2 Such inspection will not be deemed to be acceptance by LMS of the materials, work or Goods inspected or affect any obligation of the Supplier under this Agreement.

8. Indemnities

The Supplier will indemnify and keep indemnified LMS from and against any liabilities, damages, remedies, losses, penalties, fines, costs, expenses (including reasonable legal fees and expenses), demands, claims and proceedings of any nature incurred by LMS and arising directly or indirectly out of or in connection with:

- (a) any claim or suit for alleged infringement of patents or copyright relating to any use or sale of Goods hereunder and will assume the defence of any and all such suits and will pay all costs and expenses incidental thereto;
- (b) the failure of the Goods to conform to or fulfil any term or condition of this Agreement; and
- (c) the Supplier's performance or non-performance (including the performance or non-performance of any of the Supplier's employees, contractors or agents) of this Agreement including claims for non-compliance with any law, statute, regulation, code of practice, standard, ordinance, other law, or for negligence, nuisance, personal injury, death, property loss or damage, and the claims or liens of workmen or suppliers of goods, except where such injury, death, damage or loss arises solely from the willful misconduct of LMS or LMS' employees or agents.

9. Notices

Any notice in connection with this Agreement will be deemed to be sufficiently given if sent by facsimile to the facsimile number provided by each party for that purpose, or delivered to either party personally or by forwarding the same to either party by pre-paid letter post, or addressed to or delivered at the registered office of the relevant party. Email notifications will be valid if they can be demonstrated to the satisfaction of LMS to be reliable, accurate and authentic.

10. Site Work

- 10.1 Where the Supplier, its employees, contractors or agents provide work in connection with the installation or fitting of the Goods and enter upon LMS' premises, the Supplier will, and will procure that its employees, agents and contractors will:
 - (a) obtain all relevant information, including with respect to the location, local conditions and local authority and other statutory authorisations;
 - (b) perform all work in a proper and workmanlike manner and in strict accordance with any drawings, specifications and instructions;
 - (c) perform all work so as not to impede, or interfere with any activities being carried out on LMS's premises and further, the Supplier must comply with all of LMS' directions, procedures and policies relating to occupational health and safety (including drug and alcohol consumption), security, environment, anti-discrimination and other site specific requirements whenever it is on LMS' premises;

- (d) comply with all statutory requirements, regulations, codes of practice and other laws, safety requirements, the wearing of safety gear and compliance with LMS' policies and procedures, which will be the Supplier's responsibility to obtain from LMS;
- (e) provide at their own expense (except where otherwise specified) all labour, tools, equipment and material necessary to complete the work;
- (f) enter upon LMS' premises at their own risk; and
- (g) comply with any reasonable directions given by LMS, including a direction for any person to leave the LMS premises immediately.

10.2 LMS will supply the Supplier with any relevant information in LMS' possession upon request of the Supplier but the Supplier will at all times use its skill and expertise to independently assess such information and LMS will not be liable for any inaccuracy or insufficiency of any information supplied by LMS.

11. Defects Liability Period

- 11.1 The Supplier will rectify any omission or defect in the Goods under this Agreement existing at the date of completion or which becomes apparent prior to the expiration of the Defects Liability Period.
- 11.2 Unless otherwise agreed, the Defects Liability Period will be a period of 18 months from the date of delivery of Goods or 12 months from when LMS obtains first beneficial use of the Goods, whichever occurs first.
- 11.3 If the rectification is not commenced or completed as required by LMS, LMS may have the rectification carried out at the Supplier's expense but without prejudice to any other rights LMS may have, and the cost of rectification incurred by LMS will be a debt due from the Supplier.

12. Insurance

- 12.1 The Supplier warrants that it has obtained and maintains throughout the duration of this Agreement (including any Defects Liability Period) all insurance cover required by law and by this Agreement including public and products liability insurance with a minimum limit of not less than \$20,000,000 for any one occurrence.
- 12.2 As and when requested by LMS, the Supplier will provide copies of the policies of insurance the Supplier is required to effect and evidence to LMS' satisfaction of their currency.
- 12.3 If the Supplier fails to effect or maintain any such insurance as specified above, LMS may effect or maintain such insurance and recover from the Supplier as a debt or set off against any amount payable to the Supplier, any premium so paid by LMS.

13. Termination

- 13.1 LMS may terminate this Agreement by notice in writing if the Supplier is in default of any term or condition of this Agreement.
- 13.2 LMS may, without prejudice to any other rights or remedies hereunder, terminate this Agreement by notice in writing if the Supplier:
 - (a) stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
 - (b) is unable to pay its debts as and when they fall due;
 - (c) has an administrator appointed over all or any of its assets or undertaking;
 - (d) has a controller, manager or similar officer appointed to all or any of its assets or undertaking; or

- (e) has an application or order made, proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its bankruptcy, winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them and any such application, order or proceeding is not withdrawn within 21 days.

13.3 If Goods to be supplied under this Agreement are of standard stock of the Supplier, then LMS may terminate this Agreement upon written notice to the Supplier, so far as it relates to any unshipped or undelivered portion of Goods without further obligation hereunder, except payment (subject to the other terms hereof) for the Goods shipped or delivered prior to termination.

13.4 If this Agreement requires Goods to be manufactured to LMS' specification or requires the Supplier to install or fit Goods, then at any time prior to completion of the work to be performed in fulfilment of this Agreement, LMS may terminate this Agreement upon written notice to the Supplier, and upon receipt of such notice the Supplier will stop all work hereunder, except as may be otherwise directed by LMS. Upon termination under this clause, LMS will pay to the Supplier an amount equal to:

- (a) the completed pro-rata amount of the contract price; and
- (b) five percent (5%) of the amount calculated in paragraph (a).

The amount described in paragraph (a) will be agreed by both parties and will reflect the amount completed or committed at the date of termination provided that at such date the Supplier is not in breach of any of these terms or conditions, and provided further that such amount will not exceed the total contract price nor provide for any amount for anticipated profit for performance not rendered or for any amount for consequential loss or damage.

13.5 Termination of this Agreement does not affect any accrued rights or remedies of either party.

14. **Breach**

14.1 If the Supplier breaches this Agreement, or if it advises LMS that it is not or will not be able to perform all or any of its obligations under this Agreement, then without limiting any other right or remedy LMS may have, LMS may:

- (a) terminate this Agreement by notice in writing to the Supplier; and/or
- (b) acquire the Goods (or their nearest reasonably available substitute) from a third party or third parties.

14.2 Indemnity for breach:

- (a) Any additional cost to LMS of acquiring substitute Goods from a third party will be an amount due by the Supplier to LMS immediately upon LMS making demand for that amount.
- (b) The Supplier must pay to LMS the whole of any cost or expense, loss or damage suffered or incurred by LMS as a result of the Supplier's breach of this Agreement.

15. **Assignment**

- (a) The Supplier will not directly or indirectly sub-contract or assign this Agreement or any of its rights or obligations under this Agreement or any part of this Agreement without obtaining LMS' prior written consent which may be granted unconditionally or upon such conditions as LMS thinks fit, and may be withheld by LMS in its absolute discretion. The appointment of subcontractors by the Supplier will not relieve the Supplier from

any liability or obligation under this Agreement. The Supplier will be liable for the acts and omissions of subcontractors and employees, officers, agents and contractors of subcontractors as if they were acts and omissions of the Supplier. The Supplier will ensure that its subcontractors comply with the terms of this Agreement.

- (b) LMS may assign, transfer or otherwise dispose of the whole or any part of its right, title and interest in, to and under this Agreement to:
 - (i) a related body corporate, bank, financial institution or other lender; or
 - (ii) to an assignee who in the reasonable opinion of LMS is technically and financially capable of performing the obligations and meeting the liabilities of LMS under this Agreement.

16. General

- 16.1 This Agreement is confidential to LMS and neither its terms nor any particulars or any information relating to it or supplied to the Supplier by LMS may be published or disclosed to any third party by the Supplier (except to the extent necessary for the purposes of this Agreement) without LMS' prior written consent. This obligation of confidentiality will survive the termination of this Agreement.
- 16.2 All plans, drawings, specifications, documents or other tangible items supplied by LMS to the Supplier in connection with the Goods shall remain the sole property of LMS and any information derived from them or otherwise communicated to the Supplier shall be treated by the Supplier as secret and confidential and shall not, without the prior written consent of LMS, be published or disclosed to any third party or used in any manner by the Supplier, except in connection with this Purchase Order.
- 16.3 This Agreement is governed by and is to be construed according to the laws of the State or Territory in which the Goods are to be delivered and the parties will submit to the jurisdiction of the courts of that State or Territory and any courts which may hear appeals from those courts in respect of any dispute or proceedings in connection with this Agreement.
- 16.4 A party will effectively waive its rights under this Agreement only if it waives those rights in writing signed by that party.
- 16.5 The Supplier performs all work hereunder as an independent contractor and not as an agent or employee of LMS.
- 16.6 In interpreting this Agreement, a singular word includes the plural, and vice versa.
- 16.7 The invalidity or unenforceability of any part or provision of this Agreement does not affect the enforceability of any other part or provision of this Agreement and the invalid or unenforceable part is severable.