



TERMS AND CONDITIONS OF A DAVIDSON PROJECTS ORDER

1 Definitions

1.1 In these terms and conditions:-

“Agreement” means the terms and conditions of this document governing the purchase and supply of goods and services.

“Buyer” means Davidson Projects Pty Ltd and its successors and assigns.

“Goods” means any material, plant, item or equipment to be sold by the supplier to the Buyer, as set out in an order for the purchase of such items by us from the supplier of those items.

“Perfection” has the meaning prescribed to it in section 21 of the PPSA.

“PPSA” shall mean Personal Property Securities Act 2009 (Cth).

“PPSR” shall mean Personal Property Securities Register.

“Practical Completion” is that stage in the carrying out and completion of the Agreement when the Purchase Order for the supply of Goods and/ or Services is complete except for any minor defects accepted by Davidson Projects.

“Price” shall mean the cost of the Goods and services as agreed between the supplier and the Buyer, subject to this Agreement and any special conditions.

“Purchase Order” is an offer to purchase Goods or Services from the Buyer subject to this Agreement plus any written special conditions that may be agreed between the Buyer and the Supplier.

“Purchase money security interest” has the meaning prescribed to it in section 14 of the PPSA.

“Security Interest” has the meaning prescribed to it in section 12 of the PPSA.

“Security Agreement”, “Commingled Goods”, “Financing Statement”, “Financing Change Statement”, “Verification Statement”, “Collateral” and “Registration” have the meanings prescribed to them in section 10 of the PPSA.

“Special Conditions” means any written variations or alternations of this Agreement which is agreed in writing by the Buyer and Supplier and attached to the Purchase Order and marked “Special Conditions”.

“Services” means any services supplied by you as set out in the Purchase Order.

“Supplier” refers to an individual, business or company who agrees to supply or provide Goods and Services to the Buyer under the terms of this Agreement.

1.2 Any reference to “Davidson Projects “us”, “we” or “our” “Buyer” and so on, in the provisions of this Agreement and any Special Conditions or annexures, refers explicitly to Davidson Projects Pty Ltd (ABN 37 166 441 167) except where expressly stated.

1.3 Any references to “you”, “your”, “Supplier” and so on, in the provisions of this Agreement refers to the Supplier, inclusive of the directors or partners in a business, company or partnership, providing the Goods or Services pursuant to the Buyer’s Purchase Order except where expressly stated.

1.4 Where the Supplier is a partnership, this Agreement shall be binding on the Supplier’s partners jointly and severally.

1.5 Where the singular is referred to in this Agreement it includes the plural and vice versa.

1.6 A reference to currency is a reference to Australian currency only.

1.7 Headings used in this Agreement are for convenience only and are not comprehensive or binding terms.

2 General

2.1 These are the “Terms and Conditions” referred to in the Davidson Projects Pty Ltd Purchase Order.

2.2 These Terms and Conditions and any other document referenced herein or attached to the Purchase Order, govern the sale of all Goods and Services by the Supplier to the Buyer. Any quote, offer document, offer acceptance or any other document are exclusive of this Agreement and not binding on the Buyer or the Supplier.

2.3 Waiver of any part of this document or documents referenced herein will only be effective in writing and agreed in writing by both Buyer and Supplier.

2.4 To the extent of any inconsistency, this Agreement shall prevail over any previous agreements, Terms and Conditions, between you and the Buyer.

2.5 All additions or alterations to these Terms and Conditions shall be agreed in writing by all parties and attached as Special Conditions to the Purchase Order. In the event of an inconsistency between these Terms and Conditions and any Special Conditions, the Special Conditions, to the extent of any inconsistency, shall prevail.

- 2.6 In the absence of written acceptance by you of these Terms and Conditions, the consignment of any goods or the commencement of performance of our Purchase Order shall constitute acceptance by you of our Purchase Order, these Terms and Conditions and any Special Conditions.
- 2.7 We reserve the right to revise, amend or otherwise alter these Terms and Conditions without prior notice to you and to our complete discretion. It is your obligation to review this document for any amendments.
- 2.8 You are taken to have agreed to any amendments irrevocably unless you expressly revoke your Agreement with the Buyer, and with the consent of an authorised officer of the Supplier.
- 2.9 These Terms and Conditions, any Special Conditions plus our Purchase Order constitute the entire agreement between the Buyer and the Supplier in relation to the subject matter of this Agreement.

3 Delivery

- 3.1 You must supply the ordered Goods and Services as, where and when specified in our Purchase Order or otherwise as directed by Davidson Projects Pty Ltd (at any time) in writing.
- 3.2 You must keep us informed of any delays or variances which may affect the execution of our Purchase Order.
- 3.3 Should there be a delay as a result of Davidson Projects, a client of Davidson Projects or another Davidson Projects sub-contractor, Davidson Projects may specify in writing to you that your order be delayed as a result of the current delay to a time that Davidson Projects specifies.
- 3.4 Signing of your delivery documentation does not constitute acceptance of the Goods and/or Services ordered. Davidson Projects reserves the right to inspect the Goods and/or Services at a later time, and if the inspection reveals that the Goods, Services or any part thereof, do not comply with the description in the Purchase Order or the definition of Quality in 6. below, then Davidson Projects may reject the Goods and/or Services or any part thereof, by written notice of rejection to you, and terminate this Agreement.
- 3.5 Ownership of, any risk of loss of, or damage to the Goods or Service, passes to Davidson Projects upon your delivery, except in the case of the Goods being rejected by Davidson Projects as above in 3.4. Any intellectual property rights created as a result of your performance of this Agreement vest in and are assigned to Davidson Projects upon delivery of the Goods and/or completion of the Services.

4 Price and Payment

- 4.1 The Price for the Goods and Services stated in our Purchase Order is a fixed total and complete price inclusive of all duties, taxes, GST, customs and clearance fees, insurance, packing and delivery charges, labour costs and any other imposts for which you are responsible.
- 4.2 Prices quotes are based on the full quantities specified in the Purchase Order and do not operate pro rate for any greater or lesser quantities.
- 4.3 Where applicable, the price also includes all costs associated with the use of patents, copyright registered designs, trademarks and any other intellectual property rights.
- 4.4 You must only invoice Davidson Projects after we agree evidence exists for completion of the Purchase Order to the extent represented on the invoice (be it 100 per cent or less).
- 4.5 Your invoice must be addressed in accordance with the Purchase Order, identify the Purchase Order number, be a valid Tax Invoice for GST purposes, and, for a progress claim, be accompanied with documentation substantiating the claim.
- 4.6 In the event that any party to the Agreement disputes an invoice, the Supplier must provide all documentation and information in relation to the supply, delivery and quality of the Goods and Services. Any payment will be suspended for the period that the invoice is in dispute.
- 4.7 Davidson Projects may deduct from any moneys owing to you, all costs, damages and expenses which Davidson Projects may have paid for of or in connection with our Purchase Order, which you were liable to pay but failed to do so.
- 4.8 Davidson Projects may deduct from any moneys owing to you all expenses incurred as a result of improper or faulty packaging, marking or failure to comply with the instructions and directives in the Purchase Order.
- 4.9 In addition to any other of our rights, we may deduct from your invoice any amount you owe us (including under any indemnity).
- 4.10 Davidson Projects will pay any correctly rendered and undisputed invoices by cheque 30 days from the end of month in which the invoice is issued.

5 Quality

- 5.1 Goods and Services supplied by you must be free from defects in materials, installation and workmanship and “as new” quality.

5.2 Any Goods or Services can be rejected at any time if they do not comply with our Purchase Order, any Special Conditions and/or these Terms and Conditions.

5.3 Any works conducted by you on Davidson Projects sites must comply with all relevant Municipal, State and Commonwealth laws and Australian Standards including, but not limited to, National Construction Code, Fair Work (Building Industry) Act 2012, Workers' Compensation and Injury Management Act 1981, Occupational Safety and Health Act 1984, Occupational Safety and Health Regulations 1996, Environmental Protection Act 1986 and Environmental Protection Regulations 1987.

5.4 Davidson Projects is not liable to pay for any Goods or Services rejected under 5.1 or 5.2 above, or for any costs associated with inspection or rejection.

5.5 Rejected or faulty Goods and/or Services must, without prejudice to Davidson Projects' rights, be either

5.5.1 replaced or repaired at your cost, or

5.5.2 removed and Davidson Projects refunded for the rejected Goods and/or Services.

5.6 If any of the Goods are damaged or destroyed prior to them passing to the Buyer, the Supplier is entitled, without prejudice, to receive any insurance proceeds without reference to the Buyer.

6 Defect Liability Period and Defective Goods and/or Services

6.1 Unless stated to the contrary in our Purchase Order or any other part of our Contract, the Defect Liability Period shall be 12 months from the date of Practical Completion of the Goods or Services.

6.2 If, at any time before or during the Defect Liability Period, Goods and/or Services supplied by you are found to be defective by Davidson Projects or our client for any reason, you must replace or repair the defect at no cost to Davidson Projects immediately upon our request to do so.

6.3 The Supplier has the right and shall be given the opportunity to inspect the Goods and/or Services within a reasonable time following notification of any alleged defects, missing items, or failure to comply with the description of the Goods.

7 Wages and Conditions

7.1 You must comply with the Terms and Conditions of any relevant award or industrial agreement relating to the wages and conditions of your workers and shall observe the conditions provided for in any industrial agreement affecting your completion of our Purchase Order.

7.2 You are responsible for ensuring good industrial relations of and by your workers and will pay to Davidson Projects all costs and associated damages to the project and/or any other party affected directly or indirectly due to non-compliance with this condition.

7.3 Without our prior written approval, you must not negotiate with trade unions or enter into any industrial agreement that may affect the performance or agreed price of our Purchase Order.

8 Public Liability and Workers Compensation

8.1 For suppliers of services to Davidson Projects, you will, for so long as any obligations remain in connection with this contract, maintain current insurance policies for Public Liability to a minimum of \$20 million, and Workers Compensation Insurance with an approved WorkCover WA insurance underwriter.

8.2 Davidson Projects must possess copies of your Public Liability and Workers Compensation policies prior to any works proceeding on a Davidson Projects site.

9 Sub-Contracting

9.1 You must not sub-contract or assign the whole or any part of your obligations under this contract without our written prior approval, which may be granted or withheld at our sole discretion.

9.2 Should such written approval be provided by Davidson Projects, you will remain principally liable for the performance of this contract and the acts and omissions of any sub-contractor.

10 Supplier's Obligations

10.1 You will provide all manuals, instructions, warranties and any other documentation (such as shop drawings) relevant to your Purchase Order.

10.2 If you are required to place and unpack goods on a Davidson Projects site, you are to leave the site in a clean condition and remove any rubbish (including packaging materials) at your expense.

10.3 You are obliged, pursuant to this Agreement, to comply with the (Western Australian) Occupational Safety and Health Act 1984 and Occupational Safety and Health Regulations 1996 in the course of providing any Goods or Services to the Buyer.

10.4 The Supplier undertakes to notify the Buyer in writing, not less than seven (7) days prior, of any proposed change in the Supplier's Registered Business Names, Address, Phone and Fax numbers, change of ownership, management or shareholders, or the business practice of the Supplier's Company.

- 10.5 The Supplier may not assign nor transfer any of its obligations under this Agreement without prior written consent of the Buyer.
- 10.6 Each company director of the Supplier must guarantee the Supplier's obligations in accordance with this provision and the entirety of this Agreement.

11 PPSA

- 11.1 The Buyer and the Supplier hereby acknowledge that these Terms and Conditions constitute a Security Agreement which creates a Security Interest in all Goods including Services previously supplied by the Supplier to the Buyer (if any) and all Goods and Services acquired after including services supplied to the Buyer from the Supplier (or for the Buyer's account) to secure the payment from time to time and at a time, including future advances. The Buyer agrees to grant to the Supplier a Purchase Money Security Interest.
- 11.2 The Buyer gives the Supplier a Security Interest in the Buyer's present and after-acquired property in which Goods including Services supplied or financed by the Supplier have been attached or incorporated, including any Commingled goods.
- 11.3 The Supplier agrees to give written notice to the Buyer if the Supplier seeks Registration of its Security Interest as a purchase money security interest on the PPSR and under the PPSA.
- 11.4 The Buyer acknowledges, agrees and undertakes to:
- 11.4.1 Sign any further documents and/or provide any further information (which information the Buyer warrants to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to enable Perfection of its Security Interest or registration of a financing statement or financing change statement on the PPSR;
 - 11.4.2 Not register a financing change statement as defined in section 10 of the PPSA or make a demand to alter the financing statement pursuant to section 178 of the PPSA in respect of the Goods including any Services without the prior written consent of The Supplier;
 - 11.4.3 Pursuant to section 157 of the PPSA, unless otherwise agreed in writing by the Supplier, the Buyer has the right to receive the Verification Statement in respect of any Financing Statement or Financing interest statement relating to the Security Interest;

12 Indemnity

- 12.1 You indemnify Davidson Projects, our officers, employees, agents and clients against all loss, damage, claim, injury, expense or liability we may sustain or incur as a result, whether directly or indirectly, of :

- 12.1.1 Your performance or breach of this Agreement, or
- 12.1.2 Any product or service you supply, or
- 12.1.3 Any claim or allegation by any third party that the product or service you supplied in any way infringes any patent, copyright, registered design, trademark or any other intellectual property rights, or
- 12.1.4 Any negligent or wilfully wrong act or omission by you, your employees, agents or contractors.

13 Confidential Information

- 13.1 All specifications, drawings, data in any form, proposals and any other information developed by or for Davidson Projects and/or provided to you by Davidson Projects for the purpose of this Purchase Order shall be regarded as confidential.
- 13.2 Without our prior written approval, you will not directly or indirectly disclose, use, record, memorise, reverse engineer or copy any Davidson Projects confidential information for any purpose other than to perform this Agreement.
- 13.3 Divulgence of any confidential information outside of your company may result in punitive action against you by Davidson Projects.

14 Termination or Cancellation

- 14.1 Davidson Projects may cancel or terminate this Agreement at any time and for any reason by notice to you in writing. Davidson Projects shall not be liable for any loss or damage whatever arising from such cancellation of any Purchase Order.
- 14.2 Davidson Projects may cancel or terminate our Purchase Order in whole or in part where:
 - 14.2.1 You fail to supply Goods or Services by the date required or to the quality required in our Purchase Order.
 - 14.2.2 You in any way breach this Contract or Purchase Order.
 - 14.2.3 You become or appear to become insolvent or bankrupt or enter into a compromise or arrangement with creditors or any form of external administration.
- 14.3 This Agreement can only be varied by written consent of the Buyer. Any variation to our Purchase Order will be covered under these Terms and Conditions and any Special Conditions. Any difference in price or time for performance resulting from such variation shall be equitably adjusted and agreed in writing.

- 14.4 You and Davidson Projects are independent contractors. No relationship of employment, agency, partnership or joint venture is created by this Agreement.
- 14.5 Our delay or failure to exercise a right under this Agreement is not a waiver of that right or any other rights. Our consent to a breach of this Agreement is not a waiver to any subsequent breach.
- 14.6 Any delivery variance to our specifications and/or directives in the Purchase Order may result in punitive action against you by Davidson Projects, including fulfilling the requirements of the Purchase Order through an alternate source.

15 Jurisdiction

- 15.1 These Terms and Conditions and any further agreements between the Buyer and the Supplier are governed by and construed in accordance with the laws in force in Western Australia. You submit to the jurisdiction of the courts of Western Australia and waive any right to claim they are inconvenient forums.
- 15.2 In the event of any dispute(s) or claims(s) which arise against us, you will submit to the proceedings taking place in Perth, Western Australia.
- 15.3 You agree to be held responsible for all costs incurred and related to the proceedings.
- 15.4 If you fail to comply with your obligations under these Terms and Conditions and/or bring a claim outside of the jurisdiction specified in this Agreement, then you shall indemnify us on a full indemnity (solicitor-client) basis for any costs we incur.
- 15.5 In the event the Supplier is unable to perform its obligations under this Agreement, or the Supplier becomes insolvent or makes an assignment for the benefit of its creditors, or a liquidator or similar person is appointed to disperse the assets of the Supplier's company, then the Buyer shall be entitled to cancel all or any part of the Purchase Order made by the Buyer which remains unperformed to and without prejudice to any other remedies.
- 15.6 No waiver by the Buyer of any default shall be deemed a waiver of any prior or subsequent default.

16 Severance

- 16.1 Each of the rights and obligations in these Terms and Conditions and any attached Special Conditions are severable and independent.
- 16.2 If any clause or part thereof contained in this document shall be judged to be invalid for any reason whatsoever such invalidity shall not affect the validity or operation of the remainder of this document and such invalid clause or part thereof shall be deemed to have been deleted from this document.