

KEPPEL PRINCE ENGINEERING PTY LTD - TERMS AND CONDITIONS OF PURCHASE ORDER

- 1. GENERAL**
 - 1.1. The clauses set out below form the terms and conditions under which *goods* ordered on the form (as specified on the front of this *Purchase Order*) are to be supplied by the *Supplier* to *KPE*.
 - 1.2. The *goods* shall be supplied and *delivered* in the manner and at the time stated in, and shall otherwise conform in all respects, to the *Purchase Order*.
 - 1.3. Definitions:
 - 1.3.1. *Contract* means the *Contract* formed by the *Supplier's* acceptance of the *Purchase Order* including the Terms and Conditions, as specified on the *Purchase Order*.
 - 1.3.2. *Delivery* means the completion of the *delivery* of the *goods*, by the *Supplier*, in accordance with these terms and conditions of *Purchase Order* and includes the *delivery* of all accompanying materials and documentation.
 - 1.3.3. *Goods* means all goods, works, services, chattels, plant and equipment and the like referred to in this *Purchase Order*, together with any associated documentation.
 - 1.3.4. *Hazardous and/or Dangerous Goods* means any *goods* or substance which has the potential through being used at work to harm the health and safety of person/s, property or the environment, as detailed in the *standards*, laws or regulations of Safe Work Australia (SWA), Worksafe Victoria or Dangerous Goods Acts, as amended from time to time.
 - 1.3.5. *Intellectual Property* means all rights resulting from intellectual activity whether capable of protections by statute, common law or in equity and including copyright, discoveries, inventions, patent rights, registered and unregistered trademarks, design rights, circuit layouts and plant varieties and all rights and interests of a like nature including but not limited to methods and techniques, together with any documentation relating to such rights and interests.
 - 1.3.6. *Purchase Order* means the order on the form accompanying these terms and conditions as referred to in clause 1.1.
 - 1.3.7. *KPE* means Keppel Prince Engineering Pty Ltd. (the Purchaser).
 - 1.3.8. *Supplier* means the person/s, partnership, company or corporation from whom the *goods* have been ordered (as specified on the *Purchase Order*) and shall mean any person/s that, for the purposes of this *Contract*, supplies any *goods* directly to the *Supplier* or indirectly to the *Supplier* through another person and shall include all employees, subcontractors, agents and third parties who may represent the *Supplier*.
 - 1.3.9. *Standards* means any *standards* or codes issued from time to time by industry, national or international *standards*, and any other applicable *standards* and codes specifically referred to in the *Purchase Order* applicable to the *goods*.
- 2. ACCEPTANCE OF PURCHASE ORDER INCLUDING TERMS**
 - 2.1. This *Purchase Order*, bearing an order number, is the only form which will be recognised by *KPE* as authority for charging *goods* to its account and supersedes all previous communications and negotiations.
 - 2.2. No terms or conditions stated by the *Supplier*, in quotations, account/credit applications or by accepting or acknowledging this *Purchase Order*, shall be binding upon *KPE* unless accepted in writing by *KPE*.
 - 2.3. The commencement of supply of any *goods*, by the *Supplier*, will constitute acceptance of the *Purchase Order* terms and conditions by the *Supplier*.
 - 2.4. Unless otherwise stated, the price on the *Purchase Order* (in Australian Dollars) is a firm price and is not subject to rise and fall. All prices quoted in the *Purchase Order* shall include, but not limited to, all taxes, charges, duties, packaging, use of supplied pallets or containers, certification, testing, insurance, tariffs, *delivery* and shall not be increased, unless agreed in writing by *KPE*.
- 3. TAX INVOICE AND PAYMENT**
 - 3.1. After completing *delivery* of all *goods* referred to in the *Purchase Order*, the *Supplier* is to provide a Tax Invoice which satisfies the requirements of the Goods and Services Tax Act (GST) 1999 (if the supply is a 'taxable supply' under the GST Act), as amended from time to time.
- 3.2. A Tax Invoice must only be applicable to one *Purchase Order*.
- 3.3. Before *KPE* makes any payment to the *Supplier*, the *Supplier* is required to represent and warrant that all of the *Supplier's* personnel who have at any time been engaged by the *Supplier* (or if applicable a subcontractor of the *Supplier*) have been paid all monies payable to them for *goods* related to the *contract*.
- 3.4. Terms of Payment – 60 days from the end of month of the Invoice Date.
- 4. DELIVERY (INCL. HAZARDOUS AND/OR DANGEROUS GOODS)**
 - 4.1. Except where the *Purchase Order* provides otherwise, the *Supplier* is responsible for ensuring that the *goods* are properly marked, packed and *delivered* by the time or times, and to the location/s specified, on the *Purchase Order*. *Goods* are to be supplied and *delivered* in accordance with the requirements of all relevant laws and *standards*, in accordance with any shelf life or preservation requirements and to avoid damage during storage, transit, *delivery*, loading or unloading.
 - 4.2. Time is of the essence in the *Supplier's* performance of the *contract*. The *Supplier's* failure to perform any of its obligations under the *Contract* on or before the time specified in the *Contract* gives *KPE* the right, in addition to any other right, to cause the *Supplier* to do whatever is necessary to expedite the provision of the *goods* at the *Supplier's* expense.
 - 4.3. Extension of time may be granted at the sole discretion of *KPE*. If any extension of time in respect of the *Purchase Order* is granted by *KPE*, time will remain of the essence in respect of the extended time.
 - 4.4. If the *Supplier* is unable to make *delivery*, or as specified in clauses 4.1 – 4.3, *KPE* will, unless the delay results from *KPE's* own act of omission, be at liberty to either:
 - 4.4.1. Cancel the *Purchase Order* without prejudice to any right or remedy which has occurred or may thereafter accrue to *KPE*; or
 - 4.4.2. To make special arrangements for transport to *KPE's* site at which the *goods* are required; and *KPE* may deduct from any amount payable to the *Supplier* the transport and related expenses incurred over and above those which would have incurred had *delivery* not been delayed.
 - 4.5. All *Suppliers* invoices, packing slips, *delivery* dockets and correspondence must clearly show the *Purchase Order* Number.
 - 4.6. Unless otherwise agreed in writing, the *Supplier* shall not make partial *deliveries*. If the parties have agreed that partial *deliveries* will be made, then for the purposes of these terms and conditions of purchase, the term *delivery* includes a partial *delivery*.
 - 4.7. In the event of late *delivery* of *goods*, the *Supplier* shall be liable for damages incurred by *KPE* howsoever arising from such late *delivery* including but not limited to damages or costs assessed against *KPE* by other parties.
 - 4.8. *KPE* shall be entitled to reject the *goods* or any of them, notwithstanding that property may have passed, if the correct quantity is not *delivered* or the *goods* are not *delivered* within the time specified in the *Purchase Order*.
 - 4.9. Prior to *delivering* any *goods*, including but not limited to *Dangerous and/or Hazardous Goods*, onto *KPE* premises, the *Supplier* must provide copies (manual and electronic) of all relevant Material Safety Data Sheets (MSDS) which must comply with the all relevant laws and *standards*.
 - 4.10. *Dangerous and/or Hazardous Goods* are to be documented, handled, transported and stored in accordance with all relevant laws and *standards*.
- 5. CONFIDENTIALITY**

All specifications, plans, drawings, blueprints, materials, samples and other information or articles furnished at any time in connection with the *Purchase Order*, are confidential to *KPE* and the *Supplier*. Such information and articles shall be used solely to complete the *Contract* hereby constituted or any other *Contract* between *KPE* and the *Supplier*, and shall remain the property of *KPE*, and to be returned to *KPE* on demand.
- 6. INTELLECTUAL PROPERTY**
 - 6.1. Both the *Supplier* and *KPE* agree that it will not have any claim, ownership or interest in the other party's Background *Intellectual Property* and this includes, subject to this Agreement, any improvements in the Background *Intellectual Property*.
 - 6.2. If any Background *Intellectual Property* subsists in the *goods*:
 - 6.2.1. the *Supplier* grants *KPE* a non-exclusive, irrevocable, perpetual, worldwide, transferable and royalty-free licence to use any of the *Supplier's* Background *Intellectual Property* for the purpose of using or exploiting the *goods* acquired in any *Purchase Order*, to sub-licence the rights to any of *KPE's* customers or other third parties in the resupply of the *goods* to enable a customer or third party to make full use of the *goods* or otherwise use or exploit the *goods* in connection with *KPE's* business; and
 - 6.2.2. *KPE* grants the *Supplier* a non-exclusive, royalty-free, non-sub-licensable licence to use any of *KPE's* Background *Intellectual Property* for the sole purpose of complying with this Agreement and any *Purchase Order*.
 - 6.3. The *Supplier* warrants that:
 - 6.3.1. the use (including the resale) of the *goods* delivered or supplied to *KPE* by *KPE* or any third party does not infringe the *Intellectual Property* rights or other rights of any third party;
 - 6.3.2. it is the owner of its Background *Intellectual Property*; and
 - 6.3.3. it will not seek to challenge, object, oppose, seek to revoke, remove or invalidate *KPE's* Background *Intellectual Property*, prevent *KPE* from seeking to register or use *KPE's* Background *Intellectual Property* or encourage or assist any person to do any of these things.
 - 6.4. The *Supplier* shall indemnify *KPE* against all and any claim or proceeding that is made or commenced and any liability, loss, damage or expense (including legal costs on an indemnity basis) whether incurred directly or indirectly as a result of *KPE's* use or resale of the *goods*, or a claim that *KPE* infringed the *Intellectual Property* rights of a third party and the *Supplier* shall compensate *KPE* for all damage resulting therefrom.
 - 6.5. All drawings, materials and other auxiliary materials provided by *KPE* or made or purchased by the *Supplier* at the expense of *KPE*, are the property of *KPE* and may at all times be claimed by *KPE* without notice. The *Supplier* shall administer all these auxiliary materials and keep them in good condition at its own expense and risk. It shall not use them for, or allow them to be used by third parties except with the written authorization of *KPE*.
- 7. TITLE AND RISK**

Unless otherwise stated in the *Purchase Order*, title to and risk in the *goods* does not pass to *KPE* until *KPE* takes delivery of the *goods*.
- 8. INDEMNITY AND INSURANCE**
 - 8.1. The *Supplier* indemnifies *KPE* and will keep *KPE* and its Personnel indemnified from and against all claims and losses (including legal costs on a full indemnity basis), that the other may suffer or incur as a result of or in connection with any breach of these terms and conditions, including any warranties, or any act or error or omission of the *Supplier*, in relation to the supply of *goods* to *KPE*.
 - 8.2. The *Supplier* acknowledges that it enters any *KPE* sites at the *Supplier's* own risk. The *Supplier* must ensure that all personnel are also aware that they enter *KPE* sites at their own risk.
 - 8.3. The *Supplier* will effect and maintain at its own expense, at least the following insurance:
 - 8.3.1. Worker's Compensation Insurance in accordance with the laws of the State or Territory in which the work is being done together with insurance in respect of any common law liability of an employer to an employee
 - 8.3.2. Public Liability and Product Liability Insurance with insured limits in respect of bodily injury and property damage of at least \$10million in respect of each and every claim.
 - 8.3.3. Professional Indemnity of at least \$10million in respect of each and every claim (as applicable)

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8.3.4. Motor Vehicles – property damage of at least \$10million in respect of each and every claim, in respect of vehicles registered for use on public roads (as applicable).

9. QUALITY AND INSPECTION

9.1. The *Supplier* shall operate and maintain an effective Quality Management System appropriate to the type of *goods* ordered and/or in accordance with that specified in the *Purchase Order*. The *Supplier* shall provide *KPE*, its principal or authorised representative, access to the *Supplier's* premises or working area for the purpose of verifying quality or carrying out inspections or audits.

9.2. All *goods* supplied, or used in conjunction with the supply, and including all component parts, must be safe, new, free of defects or faults, are of merchantable quality and are suitable for the purpose for which they were ordered

9.3. All *goods* must comply with all applicable *standards* and all requirements stated, referenced or supplied as part of this *Purchase Order*,

9.4. *KPE* shall at all times have the right of access to the premises of the *Supplier*, for the purpose of inspecting and testing *goods* to be supplied under this *Purchase Order*, and *KPE* shall at all times have the authority to inspect and reject all or any *goods* thereof during manufacture and after *delivery*, whether paid for in full or part, which do not conform to the requirements of this *Purchase Order* or found to be unsatisfactory, defective, or of inferior quality or workmanship or fails to meet the specifications or any other requirements of the *Purchase Order* or other supplied relevant documents, specifications etc.. Any such inspection shall not relieve the *Supplier* of any obligations contained in the *Purchase Order*. *Goods* rejected will be replaced or rectified, as directed by *KPE*, at no additional cost to *KPE*.

9.5. Whether or not *KPE* rejects the *goods* or any of them *KPE* shall be entitled to damages for any actual loss, including loss of goodwill, sustained by reason of the failure of the *goods* to comply precisely with all specifications (whether mechanical or otherwise) or to an approved sample or by any reason that such *goods* are not of merchantable quality, or are not manufactured from materials supplied by *KPE* (if any), or reasonably fit for any purpose which *KPE* has made known to the *Supplier* or for which the *Supplier* represented the *goods* would be fit.

9.6. If it is found (regardless of the results of earlier inspections) that the *Supplier* is in breach of this clause, *KPE* may, at its option:

9.6.1. require the *Supplier* to repair the *goods* or make good what is missing at the *Supplier's* expense; or

9.6.2. reject the *goods* and require the *Supplier* to replace the *goods* at the *Supplier's* expense; or

9.6.3. reject the *goods* and require the *Supplier* to remove the *goods* from *KPE's* Site at the *Supplier's* expense and refund any, all or part of monies already paid by the *KPE*.

9.7. The exercise by *KPE* of any of the options specified in clause 9.6 is without prejudice to *KPE's* other rights under these terms and conditions of *Purchase Order*.

9.8. In all cases where it becomes apparent that the *Supplier* will fail to perform its obligation under this clause, *KPE* shall have the right to carry out the repair or replacement of the *goods* itself or to have the same carried out by a third party, the cost shall be a debt due and recoverable from the *Supplier*. The exercise of such a right shall not release the *Supplier* from its obligations under these terms and conditions of *Purchase Order*.

10. SITE WORKS

10.1. The *Supplier* must, when entering any *KPE* site, comply with the relevant site procedures and policies. Site and area specific inductions must be completed, as required, prior to entering each Site. It is the responsibility of the *Supplier* to obtain each site's procedures and policies.

10.2. All costs associated with these requirements of subclause 10.1 are to be borne by the *Supplier* and deemed to be included in the *Purchase Order* price.

10.3. The *Supplier* shall supply all labour, tools, equipment and materials or other products necessary to complete the supply of the *goods* and ensure they are all kept secure from theft or damage and comply with any relevant law, *standard*, manufacturer or owner specifications, government authorisation and site safety requirements.

10.4. The *Supplier* must not interfere with any of the activities of *KPE* or any other persons at any site and shall ensure that all rubbish and other debris is removed from the site and that the site is left secure, clean, orderly and fit for any use specified by *KPE*, failing which a debt is due to *KPE* from the *Supplier* for any costs incurred to ensure the site is reinstated back to the condition prior to the works commencing.

10.5. The *Supplier* must not cause or allow pollution, contamination or environmental harm to occur in, on or under the works sites or surrounding land.

10.6. *KPE* may direct the *Supplier* to permanently remove from site any person who, in the opinion of *KPE*, is deemed to be incompetent, negligent or engaging in misconduct.

10.7. Site working days and hours will only be as approved by *KPE*, prior to the acceptance of the *Purchase Order*.

11. VARIATIONS

The *Supplier* shall not alter any of the *goods*, except as directed in writing by *KPE*, but *KPE* shall have the right by notice in writing to direct the *Supplier* to add or to omit, or otherwise vary, the *goods*, and the *Supplier* shall carry out such variations and be bound by the same conditions, so far as applicable, as though the said variations were stated in the *Purchase Order*. Where the *Supplier* receives any such direction from *KPE* which would occasion an amendment to the *Purchase Order* price, the *Supplier* shall, with all possible speed, advise *KPE* in writing to that effect giving the amount of any such amendment, ascertained and determined at the same level of pricing as that contained in the *Purchase Order*. If, in the opinion of the *Supplier*, any such direction is likely to prevent the *Supplier* from fulfilling any of its obligations under the *Purchase Order* it shall so notify *KPE* and *KPE* shall decide with all reasonable speed whether or not the direction shall be carried out and shall confirm its instructions in writing and modify the said obligations to such an extent as may be justified. Until *KPE* so confirms its instructions they shall be deemed not to have been given.

12. ASSIGNMENT

12.1. The *Supplier* shall not assign or sub-let the whole or any portion of the *Purchase Order* without the written consent of *KPE*, whether or not the *Supplier* shall have sub-let any portion of the *Purchase Order*, the *Supplier* shall be wholly responsible for the *Purchase Order* at all times.

12.2. The *Supplier* may not assign any of its rights and obligations under the *Purchase Order* to third parties without the prior written permission of *KPE*.

12.3. The *Supplier* may not *contract* out the performance of any of its obligations under the *Purchase Order* to third parties without the prior written permission of *KPE*.

13. TERMINATION

13.1. If the *Supplier*:

13.1.1. fails to deliver the *goods* by the date required in the *Purchase Order*;

13.1.2. is in breach of any term of these terms and conditions of *Purchase Order*;

13.1.3. being an individual, commits an act of bankruptcy, becomes a bankrupt, executes a deed of assignment or deed of arrangement under Part 10 of the Bankruptcy Act 1966 as amended or a creditor accepts a composition under that Act or any analogous overseas law;

13.1.4. being a corporation (other than for the purpose of a reconstruction or amalgamation) commits an act of insolvency, is the subject of a compromise or arrangement with its creditors, or in respect of which an administrator or a provisional liquidator or liquidator is appointed, *KPE* can, without prejudice to any other rights and remedies it has under these terms and conditions of purchase, terminate the Agreement in whole or part by notice in writing to the *Supplier*

13.2. On such termination *KPE* can:

13.2.1. cease payment of the Price;

13.2.2. recover from the *Supplier* all portions of the Price paid for undelivered *goods*; and

13.2.3. purchase similar *goods* from alternative *Suppliers* and claim by way of indemnity from the *Supplier* any loss it may incur in doing so.

13.3. In addition to *KPE's* other right to cancel or terminate this *Purchase Order*, *KPE* may, at its option, immediately terminate all or any part of this *Purchase Order*, at any time and for any reason, by giving written notice to the *Supplier*. Upon such termination, the *Supplier* is to stop work to the extent required by the written notice and *KPE's* obligation shall be only to pay for *goods* supplied, prior to the Termination.

14. INSOLVENCY

If the *Supplier* becomes insolvent or (being a Company) makes an arrangement with its creditors or has a receiver appointed or commences to be wound up (other than for the purposes of amalgamation or reconstruction), *KPE* may, without prejudice to any other rights, terminate the *Contract* by written notice to the *Supplier* or any person in whom the *Contract* may have become vested

15. WARRANTY

15.1. The *Supplier* warrants that the *goods* conform to the *Purchase Order*.

15.2. Without limiting clauses 9 and 15.1, the *Supplier* warrants that the *goods*:

15.2.1. comply with the drawings, specifications and any other references set out in the *Purchase Order*;

15.2.2. are unencumbered by any rights of third parties and are not the subject of any registered security interest within the meaning of the Personal Properties Securities Act 2009 granted by the *Supplier* to any third party;

15.2.3. bear and are accompanied by all information and instructions which are necessary for their correct and safe use, and the *goods* are provided with and accompanied by all documentation requested by *KPE*, regardless whether that documentation was requested by *KPE* before, during or after the *Purchase Order* was issued.

15.3. The *Supplier* warrants that *KPE* acquires the unencumbered ownership of the *goods* upon completion of *delivery*.

15.4. Without limiting clauses 15.1 to 15.3, the *Supplier* warrants that all information which the *Supplier* has provided to *KPE* in relation to the *goods* is true and accurate.

15.5. The *Supplier* must if applicable provide all usual manufacturers', importer's and any applicable third party warranties in respect of the *goods*.

15.6. If the *Supplier* does not provide any warranties under clause 15.5, the *Supplier* must if applicable obtain for the benefit of *KPE* all usual manufacturers', importer's and any applicable third party warranties in respect of the *goods*.

15.7. After *KPE's* acceptance of the *goods*, the *Supplier* agrees to promptly replace and reinstall any defective *goods* (including parts or units) at no cost to *KPE* (including without limitation labour, material, freight and *delivery* charges) or re-supply free of charge any *goods*, as appropriate and only as agreed by *KPE*, as per the usual manufacturer's, importer's and any applicable third party warranties, or if not applicable, for a minimum period of twelve (12) months unless otherwise specified by *KPE*.

16. GOVERNING LAW

The legal relationship between *KPE* and the *Supplier* is governed exclusively by the laws of the Commonwealth of Australia and the State of Victoria.