

## **NQPETRO (IN THE CAPACITY OF THE MANAGING AGENT)**

### **STANDARD PURCHASE ORDER TERMS AND CONDITIONS FOR SUPPLIES**

#### **Definitions**

- 1.1 “Nqpetro” means Nqpetro Pty Ltd, its successors and assignor any person acting on behalf of and with the authority of Nqpetro Pty Ltd.
- 1.2 “Supplier” means the person/s or firm or corporation selling the Goods and Services as specified in any purchase order or other document, and if there is more than one Supplier is a reference to each Supplier jointly and severally. It includes the Supplier’s executors, administration, successors and permitted assigns.
- 1.3 “Goods” means all Goods, Services supplied or Works to be performed to Nqpetro by the Supplier at Nqpetro’s request as expressed in, necessary implied from or contemplated in the Purchase Order (where the context so permits the terms ‘Goods’, ‘Works’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Purchase Order” means the Nqpetro completed standard form designed and issued by Nqpetro to the Supplier in respect of the supply of Goods. It may include any specifications or drawings that may be contained in it or annexed to it.
- 1.5 “Head contract” means a contract between Nqpetro and the Owner which requires Nqpetro to arrange for the provision of the Goods.
- 1.6 “Subcontract” means any subcontract for the provision of services or in respect of any supplies, including but not limited to the Goods as defined in this Contract between the Supplier and Nqpetro (whether as a principal or as an agent of the Owner).
- 1.7 “Variation” means an omission, addition or other change on the Goods directed or approved by Nqpetro in writing.
- 1.8 “Owner” means the owner notified to the Supplier from time to time.
- 1.9 “Personnel” means:
  - In relation to the Supplier, any of its employees, agents and representatives, and any subcontractors and any of the employees, agents and representatives of any subcontractors, involved either directly or indirectly in the supply of the Goods.
  - In relation to Nqpetro, any of their respective officers, employees, agents or representatives.
- 1.10 “Invoice” means a tax invoice issued in accordance with the relevant tax laws under the Contract.
- 1.11 “GST” has the same meaning it has in the GST Legislation.
- 1.12 “GST Legislation” means for Australia a New Tax System (Goods and Services) Tax Act 1999 and all other Acts and Regulations dealing with the imposition of GST.

#### **2. Contract Formation**

- 2.1 These standard terms and conditions for supply of Goods apply when Nqpetro issues a Purchase Order or Letter of Intent or Subcontract to a Supplier after which a contract is formed made up of the Purchase Order, or Letter of Intent or Subcontract and these standard terms and conditions and any Schedules.

### **3. Acceptance**

- 3.1 The Supplier is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Supplier receives an order for or accepts delivery of the Goods.
- 3.2 These terms and conditions may only be amended with Nqpetro's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Supplier and Nqpetro.

### **4. Assignment and subcontracting by Supplier**

- 4.1 The Supplier must not assign all or any part of its right or obligations under the Contract or subcontract or any part of its obligations under the contract (including the delivery and provision of Goods), without the prior written consent by Nqpetro.
- 4.2 A subcontractor will be considered the agent and representative of the Supplier, as between the Supplier and Nqpetro. Any acts and omissions of each of the subcontractors and the subcontractor's employees, agents and representatives will be deemed to be acts or omissions of the Supplier, for which the Supplier is responsible under the Contract, and no subcontracting or assignment will relieve the Supplier of its obligations under the Contract.
- 4.3 If required by Nqpetro, the Supplier must forthwith complete and execute any documents and all things that may be necessary to give effect to, complete or perfect any assignment, transfer of this contract.

### **5. Supplier's obligations**

- 5.1 The Supplier warrants that it, and each of its Personnel (including its subcontractors) shall act in a careful, safe and proper manner to supply Goods in accordance with the requirement of the Contract.
- 5.2 The Supplier must ensure that all its Personnel:
  - a) Are suitably qualified and where applicable are competent tradespersons and technicians experienced and trained in all aspects of the supply of Goods
  - b) Suitably clothed with appropriate uniforms, identification badges, labels and security passes.
  - c) At all times when on site to act in accordance with Nqpetro's policies and procedures and all applicable laws relating to its obligations under the Contract and the delivery of Goods.
  - d) At all times when on site to comply with all reasonable directions of Nqpetro (including in relation to health and safety, industrial relations and environmental matters).
  - e) Obtain and maintain, at the Supplier's expense, all licenses or permits necessary for the supply of the goods under all applicable laws.
  - f) Adhere to accepted safe working practices and take responsible precautions against accident or damage occurring on or to any site from any cause.
  - g) Do not harm or damage the environment in the course of delivering the Goods.
  - h) Immediately report to Nqpetro and clean up at its own cost any damage to the environment caused by it or its Personnel, in connection with the supply of Goods.
  - i) Avoid unnecessary interference with any occupants of the site and unreasonable noise and disturbance in the provision of Goods.
  - j) Ensure the safe transportation, handling, storage and usage of all substances brought onto the site in connection with the supply of Goods.

- 5.3 Time is of the essence in the performance of the Supplier's obligations under the Contract.
- 5.4 If Nqpetro is of the reasonable opinion that any Personnel are incompetent, negligent or guilty of misconduct, or if the Owner provides a written request to remove any Personnel, Nqpetro may at any time direct Supplier to cease using that Personnel in the provision of Goods, including to have that Personnel immediately removed from any site.

## **6. Nqpetro's obligations**

- 6.1 Nqpetro (as agent of the Owner) shall provide the Supplier access to the site. The Supplier must keep the area of the site where it is performing the provision of Goods neat and tidy, including removing its waste and rubbish from the site where applicable.

## **7. Quotation Acceptance**

- 7.1 The commencement of sale of Goods will only occur on the issue of an official order, letter of intent or signed agreement.

## **8. Price and Payment**

- 8.1 Unless Nqpetro agrees otherwise, the Supplier must render an Invoice to Nqpetro at the latest at the end of the month in which Goods are delivered. An invoice must be in the form of a GST-compliant Tax Invoice (less any amounts claimed by Nqpetro from the Supplier).
- 8.2 Nqpetro is entitled to deduct from any monies payable to the Supplier any monies due from the Supplier to Nqpetro (as agent of the Owner) and the value of any claim by Nqpetro (as agent of the Owner) against the Contractor.
- 8.3 Subject to the other provisions of the Contract, and unless the parties agreed otherwise, Nqpetro agrees to pay to the Supplier the amount shown on an Invoice within 30 days after the end of month in which the invoice was received by Nqpetro.
- 8.4 Each Invoice shall contain reasonable details of the Goods supplied and quote the Purchase Order number provided to the Supplier by Nqpetro in respect of Goods and must be addressed to the correct Nqpetro contact.
- 8.5 If a contract is a lump sum contract as specified in the Contract documents, the amount payable under the contract is a fixed lump sum, subject to adjustment only on account of variations agreed in writing by Nqpetro.
- 8.6 If a contract is a 'time charge' contract as specified in the Contract documents, the Supplier shall be paid for the Goods on a time charge basis in accordance with the hourly rates set out in the Contract documents. The Supplier must submit weekly full substantiation and records of actual time incurred to Nqpetro or as otherwise directed by Nqpetro.
- 8.7 The Contract Sum or hourly rates (if applicable) includes all costs, expenses, disbursements, levies, duties and taxes incurred by the Contractor in the supply of Goods.
- 8.8 The payment by Nqpetro of any amount (whether in dispute or not) will not constitute acceptance of Goods or admission of any liabilities or obligation to make that payment under this agreement or at law.
- 8.9 The Price deemed to include:
  - a) Any applicable taxes (excluding GST); and
  - b) All expenses, costs, disbursements, levies, duties and taxes incurred by the Supplier in relation to the supply of Goods (except to the extent, otherwise expressly stated).

## **9. Dispatch and Delivery of Goods**

- 9.1 Delivery (“Delivery”) of the Goods is taken to occur at the time that:
- a) Nqpetro or Nqpetro’s nominated carrier takes possession of the Goods at Supplier’s address; or
  - b) The Supplier (or Nqpetro’s nominated carrier) delivers the Goods to the Nqpetro’s nominated address.
- 9.2 The Supplier must dispatch Goods ordered in a timely manner and deliver Goods to the Delivery Point by the Date of Delivery.
- 9.3 Without limiting clause 9.2, if the Supplier is delayed or becomes aware of the likelihood of delay in its delivery of any Goods, the Supplier must, as soon as possible, after becoming aware of the delay or likelihood of delay notify Nqpetro in writing of the circumstances resulting in the delay.
- 9.4 Where a delay described in clause 9.3 occurs or is likely to occur for any reason, Nqpetro may in absolute discretion by notice to the Supplier:
- a) Cancel the Contract without Liability to Nqpetro.
  - b) Acquire alternative supplies of any shortfall in delivery of Goods from sources other than the Supplier.
- 9.5 If Nqpetro acts in accordance with the clause 9.4, the Supplier shall be liable and must pay or reimburse Nqpetro any price difference which is incurred by Nqpetro between the Goods that would have been acquired and Goods that are actually acquired and any transportation costs incurred by Nqpetro in respect of such alternative supplies.
- 9.6 If a delay described in clause 9.3 occurs, the Supplier may request an extension of time from Nqpetro for the Date of delivery of Goods. Nqpetro in absolute discretion may grant the requested extension of time.
- 9.7 The Supplier must provide copies of any manufacturers or trade warranties associated with the provision of Goods to Nqpetro upon delivery and ensure that Nqpetro has the benefit of these warranties.

## **10. Risk**

- 10.1 Risk of damage to or loss of the Goods passes to Nqpetro on Delivery and the Supplier must insure the Goods on or before Delivery. Risk in all Goods will remain with the Supplier until its delivery to the Delivery Point and Nqpetro is in acceptance of these Goods.
- 10.2 Full unencumbered title for all or each Goods will immediately pass to Nqpetro upon Nqpetro making payment to the Supplier for that Goods (without prejudice to the right rejection of the Goods under clause 8).

## **11. Commencement of Provision of Goods**

- 11.1 The Supplier must commence the provision of Goods on the date specified under the Purchase Order, Letter of Intent or Subcontractor Agreement (or other such date specified by Nqpetro in writing) and complete the provision of Goods in a timely manner, and in accordance with Nqpetro’s requirements, or with any of Nqpetro’s directions, as notified in writing from time to time.

## **12. Indemnities**

- 12.1 The Supplier indemnifies Nqpetro and the Owner against all liabilities, losses, damages, expenses and costs (including reasonably incurred legal costs and expenses) arising directly or indirectly from:
- a) Any breach of the Supplier or the Supplier’s Personnel of the Contract (including the breach of any warranty).

- b) Any negligence, reckless or intentional act or omission of the Supplier or the Supplier's personnel, including any such act or omission resulting in:
  - damage to or loss or destruction of any property of Nqpetro, Nqpetro's Personnel or Owner or any third party; or
  - personal injury, illness or death to any person.
- c) Breach of Law by the Supplier or the Supplier's Personnel.
- d) Any claim made by the Supplier or the Supplier's Personnel in respect of relevant legislation concerning taxes, worker's compensation, employee entitlements, superannuation or any applicable award, deterring of the agreement of competent industrial tribunal.
- e) The receipts of Goods, or Nqpetro possession, use of exploitation of any materials supplied, or Intellectual Property Rights assigned or licensed, by the Supplier to Nqpetro under or in connection with the Contract infringing the rights (including the Intellectual Rights) of any person, and all claims alleging such infringement.

### **13. Insurance**

- 13.1 The Supplier must take out and maintain thought to the duration of the provision of Goods, at its own expense and with a reputable insurer with Standard and Poor's rating at least A minus (or equivalent from another rating agency), in respect of the following:
- a) Provide cover in respect of each and every occurrence for the public liability and in the annual aggregate for the products liability for an amount not less than AUD \$20,000,000 and in respect of public liability must be unlimited as to the number of claims which can be made under the policy.
  - b) Insurance against any liability which may arise at common law or by virtue of any relevant workers compensation legislation for injury or death to its employees or any person deemed to be a worker. Such insurance must, unless prohibited by law:
    - Be in the names of the Supplier and the Supplier's subcontractors for their respective rights and interests, and
    - Be endorsed to protect interests of Nqpetro as principal under the contract and the Owner for benefit under the statute and at common law, and
    - Wave all express or implied rights of subrogation against all insured parties.
  - c) Contractor's all risks insurance providing coverage for construction and/or underground activities (if the scope of work) for the duration of the Contract to the end of the defects liability period, or if there is no defects liability period specified, then to the date when title is transferred to Nqpetro.
- 13.2 The Supplier must on the request of Nqpetro from time to time, demonstrate to Nqpetro's satisfaction, compliance with the clause 13.1 of the Contract.

### **14. Intellectual Property**

- 14.1 Where Nqpetro has designed, drawn or developed Goods for the Supplier, then the copyright in any designs and drawings and documents shall remain the property of Nqpetro.
- 14.2 To the extent that any Intellectual Property Rights subsist in the Goods or in any part of them, the Supplier grants Nqpetro a non-exclusive, irrevocable and perpetual license to exercise those rights as required to use, maintain, re-sell or otherwise exploit Goods, integrate Goods with other products, or specify requirements. This license is transferable to any of Nqpetro's successors in title to the Goods.

14.3 The Supplier agrees that Nqpetro may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Nqpetro has created for the provision of Goods.

## **15. Default and Consequences of Default**

15.1 Without prejudice to any other remedies Nqpetro may have, if at any time the Supplier is in breach of any obligation under these terms and conditions Nqpetro may suspend or terminate the provision of Goods to Nqpetro and will not be liable to the Supplier for any loss or damage the Supplier suffers because Nqpetro has exercised its rights under this clause.

15.2 On receipt of a direction from Nqpetro (as agent of the Owner) the Supplier must remedy any default under the Contract. If the Supplier fails to remedy a default within 14 days after receipt of such direction then, without affecting any other rights that Nqpetro or the Owner may have, Nqpetro may remedy the default and deduct the costs of doing so from the monies payable to the Supplier, as a debt due from the Supplier to Nqpetro (as agent of the Owner).

15.3 Without prejudice to Nqpetro's other remedies at law, Nqpetro shall be entitled to cancel all or any part of any order to the Supplier which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:

- a) any money payable to Nqpetro becomes overdue, or in Nqpetro's opinion the Supplier will be unable to make a payment when it falls due;
- b) the Supplier becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Supplier or any asset of the Supplier.

## **16. Termination and Cancellation**

16.1 Nqpetro (as an agent of the Owner) may terminate the Contract at any time without cause by giving no less than 24 hours written notice to the Supplier, and clause 16.3 will apply, if the Supplier or its Personnel (without limiting clause 16.1):

- a) Fails in the provision of Goods in accordance with the Contract.
- b) Are negligent or engage in unlawful conduct or willful misconduct.
- c) Breaches the Contract which is not, in reasonable opinion of Nqpetro, capable of remedy.
- d) Demonstrates a breach of the contract that is not remedied within 3 business days (unless Nqpetro agrees to a different amount of days for remediation) of receiving written notice from Nqpetro.
- e) Commits a material damage to the Supply of Goods under the Contract.
- f) Give Nqpetro a reasonable cause to believe that the Supplier is unable to pay any of its debts when they fall due.

16.2 Nqpetro may terminate the Contract in whole or in part by written notice.

16.3 Upon receiving notice of termination, the Supplier will immediately cease providing the Goods and comply with Nqpetro's discretion including, without limitation, any direction to protect Nqpetro or the Owner's property in the Supplier's possession.

16.4 If Nqpetro terminates the contract as a result of the supplier's breach or as a result of the Supplier's insolvency, the Supplier must refund all amounts paid under the Contract prior to the date of termination.



- 16.5 Without prejudice to any of its rights, Nqpetro (as agent of the Owner) may terminate the Contract at its sole discretion and at any time giving 14 days' written notice to the Supplier. If Nqpetro terminates this Contract for convenience, the Supplier must immediately invoice Nqpetro (as agent of the Owner) for works performed up to the date of termination. Nqpetro will not be liable to the Supplier for any loss, liability, expenses or claims made in respect of the termination other than for the amount payable under the clause 16.5.
- 16.6 In the event that the Supplier cancels delivery of Goods, the Supplier shall be liable for any and all loss incurred (whether direct or indirect) by Nqpetro as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 16.7 Without prejudice to any of its rights, if the Head Contract expires or is terminated, Nqpetro may terminate the Contract at its sole discretion and at any time by giving 3 Business Day written notice to the Supplier.
- 16.8 If Nqpetro terminates the Contract, the Supplier will be entitled to payment for the provision of the Goods up to the date of termination. Nqpetro will not be liable to the supplier for any loss, liability, expense or claim made in respect of the termination other than for the amount payable under this clause.

## **17. Confidential Information**

- 17.1 The Supplier must not, and must ensure (without the prior written approval of Nqpetro) the Supplier's Personnel do not disclose to any person, information acquired in connection with, or during the performance of the provision of Goods. Except as required by law, no media release or public announcement may be made by the Supplier in relation to the existence or subject matter of the Contract unless the Supplier approves in writing, the wording of such media release or public announcement and the manner of publication.

## **18. Contract Variation**

- 18.1 Any variation to the original agreement may constitute an extension of time to the contract period, the extent of which shall be governed by the work involved.
- 18.2 Any alteration to, deviation from the original agreement involving extra work, cost of parts or materials or additional labor over the sum stated in the original agreement must be agreed by Nqpetro in writing.
- 18.3 The Supplier must deliver the Goods in compliance with this Contract. Neither Nqpetro nor the Owner are liable to pay additional costs associated with a variation unless the variation commences, Nqpetro (as agent of the Owner) has agreed either the full cost of the variation or the specific methods of calculating such costs.

## **19. General**

- 19.1 The failure by Nqpetro to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Nqpetro's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which Nqpetro has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 19.3 Nqpetro may license or sub-contract all or any part of its rights and obligations without the Supplier's consent.
- 19.4 The Supplier agrees that Nqpetro may amend these terms and conditions at any time. If Nqpetro makes a change to these terms and conditions, then that change will take effect from the date on which Nqpetro notifies the Supplier of such change. The Supplier will be taken to have accepted such changes if the Supplier makes a further request for Nqpetro to provide Goods to the Supplier.



- 19.5 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, damage caused by electrical supply power fluctuations or other event beyond the reasonable control of either party.
- 19.6 The Supplier warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.