

NQPETRO 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 “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.
- 1.6 “Variation” means an omission, addition or other change on the Goods as directed or approved by Nqpetro in writing.
- 1.7 “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.
- 1.8 “Invoice” means a tax invoice issued in accordance with the relevant tax laws under the Contract.
- 1.9 “GST” has the same meaning it has in the GST Legislation.
- 1.10 “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. Packaging and marking

- 4.1 The Supplier is responsible, at its cost, for packing Goods.

- 4.2 The Supplier must ensure that Goods are packaged adequately and safely and in the form consistent with the best industry practices and all applicable Laws and safety requirements.
- 4.3 Any Goods contained in the package must be adequately protected from potential damage caused by ingress of dust and moisture or during the normal course of long distance transport or storage in a tropical or sub-tropical climate.
- 4.4 Failure to comply with this clause entitles Nqpetro to reject Goods and return them to the Supplier at the Supplier's costs.
- 4.5 All Goods, delivery notes and other relevant information must be clearly marked with the number of the Purchase Order pursuant to which those Goods were ordered and the Delivery Point specified in the Purchase Order.

5. Transport

- 5.1 Unless Nqpetro has agreed to independently arrange for the transportation of the Goods to site, the Supplier shall be responsible (at its own cost) for transporting the Goods to and unloading the Goods at the specified Delivery Point.
- 5.2 If Nqpetro is transporting the Goods to site, subject to the Supplier's obligations under clauses 4.1 - 4.5:
 - a) The Supplier must make Goods available for transportation by Nqpetro.
 - b) The Supplier must provide transportation and loading/unloading instructions for the safe transportation and loading/unloading of the Goods.
 - c) Transportation of the Goods by Nqpetro under the clause 5.1 - 5.2 will not constitute acceptance of the Goods by Nqpetro.

6. Assignment and subcontracting by Supplier

- 6.1 The Supplier must not assign all or any part of its right or obligations under the Contract or subcontract all or any part of its obligations under the contract (including the delivery and provision of Goods), without prior written consent by Nqpetro.
- 6.2 A subcontractor will be considered the agent and representative of the Supplier, as between the Supplier and Nqpetro. Any acts and omissions of 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.
- 6.3 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.

7. Supplier's obligations

- 7.1 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.
- 7.2 The Supplier must, and must ensure that all its Personnel:
 - d) Are suitably qualified and where applicable competent tradespersons and technicians experienced and trained in all aspects of the supply of Goods
 - e) Are required to be suitably clothed with appropriate uniforms, identification badges, labels and security passes.

- f) At all times when on site, 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.
- g) At all times when on site, comply with all reasonable directions of Nqpetro (including in relation to health and safety, industrial relations and environmental matters).
- h) Obtain and maintain, at the Supplier's expense, all licenses or permits necessary for the supply of the goods under all applicable laws.
- i) Adhere to accepted safe working practices and take responsible precautions against accident or damage occurring on or to any site from any cause.
- j) Do not harm or damage the environment in the course of delivering the Goods.
- k) 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.
- l) Avoid unnecessary interference with any occupants of the site and unreasonable noise and disturbance in the provision of Goods.
- m) Ensure the safe transportation, handling, storage and usage of all substances brought onto the site in connection with the supply of Goods.

7.3 Time is of the essence in the performance of the Supplier's obligations under the Contract.

7.4 If Nqpetro is of the reasonable opinion that any Personnel are incompetent, negligent or guilty of misconduct, Nqpetro may at any time direct the Supplier to cease using that Personnel in the provision of Goods, including to have that Personnel immediately removed from any site.

8. Nqpetro's obligations

8.1 Nqpetro 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.

9. Supplier's Warranties

9.1 The Supplier represents and warrants to Nqpetro that:

- a) It has a good and marketable title to the Goods and the right to sell the Goods to Nqpetro on the terms of the Contract.
- b) Nqpetro will receive good title to the Goods, free and clear of all interests including any lien, charge or encumbrance.
- c) The Goods comply with all the requirements of the Contract and correspond in all aspects with the specifications and the representations made by the Supplier.
- d) Nqpetro has the full benefit of any manufacture's or trade warranties that may be applicable to the Goods or any part of the Goods and on delivery of the Goods the Supplier will assign the benefit of any such unexperienced manufacturer's or trade warranties to Nqpetro (including any warranties from any subcontractors).
- e) The Goods are new (unless otherwise stated), of merchantable quality and free from any defects in materials, workmanship and design.
- f) The Goods are fit for any Nqpetro intended purpose and are fit for the purpose for which Goods of a similar nature are commonly supplied.
- g) The Goods comply with all Laws in force in the jurisdiction in which they are supplied.

- h) The use of Goods by Nqpetro, including the resale, will not infringe any third party Intellectual Property Rights.
 - i) It has not entered into the Contract (on the terms and conditions recorded herein) in reliance on any representation expressly or impliedly given by or on behalf of Nqpetro, other than to the extent that a relevant representation is expressly recorded in the terms and conditions of the Contract.
- 9.2 The Contract does not exclude or in any way limit other warranties provided by Law in relation to the Goods.

10. Quotation Acceptance

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

11. Price and Payment

- 11.1 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).
- 11.2 Nqpetro is entitled to deduct from any monies payable to the Supplier any monies due from the Supplier to Nqpetro and the value of any claim by Nqpetro against the Contractor.
- 11.3 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.
- 11.4 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.
- 11.5 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.
- 11.6 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.
- 11.7 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.
- 11.8 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.
- 11.9 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).

12. Inspection of Goods

- 12.1 The Supplier must ensure that Nqpetro has access to the Goods for inspection at all times (including during the manufacture of Goods) and must provide all facilities necessary for the supervision, inspection and testing of all Goods at the Delivery Point or wherever the Goods are stored or in the course of manufacture.

- 12.2 Signed delivery documents will only mean conformation of the number of packages or cartons delivered and will not constitute acceptance by Nqpetro of the Goods.
- 12.3 Nqpetro may reject the Goods if Goods are defective or damaged or do not comply with the requirements of the Contract.
- 12.4 Without limiting any other provision of the Contract, Nqpetro must inspect the Goods, within a reasonable time after delivery to the Delivery Point, and give notice to the Supplier whether or not Nqpetro accepts or rejects the Goods.
- 12.5 Nqpetro's rights to claim against the Supplier Goods that do not comply with the Contract is not limited or precluded by acceptance of the Goods or by payment of any money to the Supplier.
- 12.6 Nqpetro must promptly notify the Supplier of any defects or damage to any Goods as soon as reasonably practicable after Nqpetro becomes aware of any defects or damage.
- 12.7 Upon receipt of a notice from Nqpetro of any defects or damage to any Goods, each affected Goods, item or part must be repaired or replaced as appropriate by the Supplier prior to the expiration of the time specified by Nqpetro in the notice.
- 12.8 For a period of 12 months following the Date of Delivery, the Supplier shall bear all costs and expenses of the repair or replacement of the Goods under clause 12.7, including the removal and transportation costs for the Goods from and back to Nqpetro's premises, also labour costs and the costs of replacing or providing new parts for the Goods.
- 12.9 If the Supplier fails to make or replace within the specified period under clause 12.7, Nqpetro may repair or replace the Goods at the Supplier's risk and cost. Any cost and expenses incurred by Nqpetro will be recoverable from the Supplier as a debt due and payable.

13. Dispatch and Delivery of Goods

- 13.1 Prior to the delivery or provision of any Goods, the Supplier must provide to Nqpetro all safety information and other necessary or relevant data relating to Nqpetro's use of the Goods, including material safety data sheets and operation manual.
- 13.2 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 Nqpetro's nominated address.
- 13.3 The Supplier must dispatch Goods ordered in a timely manner and deliver the Goods to the Delivery Point by the Date of Delivery.
- 13.4 Without limiting clause 13.2, 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.
- 13.5 Where a delay described in clause 13.3 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 the Goods from sources other than the Supplier.
- 13.6 If Nqpetro acts in accordance with the clause 13.4, 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.

- 13.7 If a delay described in clause 12.3 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.
- 13.8 The Supplier must provide copies of any manufacturer's or trade warranties associated with the provision of Goods to Nqpetro upon delivery and ensure that Nqpetro has the benefit of these warranties.

14. Risk

- 14.1 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 each and all Goods will remain with the Supplier until its delivery to the Delivery Point and Nqpetro acceptance of these Goods.
- 14.2 Full unencumbered title for each and all Goods will immediately pass to Nqpetro upon Nqpetro making payment to the Supplier for the Goods (without prejudice to the right rejection of the Goods under clause 11).

15. Commencement of Provision of Goods

- 15.1 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.

16. Indemnities

- 16.1 The Supplier indemnifies Nqpetro 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 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, determining of the agreement of competent industrial tribunal.
 - e) The receipts of Goods, or Nqpetro possession, use or 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.

17. Insurance

- 17.1 The Supplier must take out and maintain throughout 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 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 that title is transferred to Nqpetro.

17.2 The Supplier must on the request of Nqpetro from time to time, demonstrate to Nqpetro's satisfaction, compliance with the clause 17.1 of the Contract.

18. Intellectual Property

- 18.1 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.
- 18.2 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 right 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.
- 18.3 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.

19. Default and Consequences of Default

- 19.1 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.
- 19.2 On receipt of a direction from Nqpetro 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 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.
- 19.3 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.

20. Termination and Cancellation

- 20.1 Nqpetro may terminate the Contract at any time without cause by giving no less than 24 hours written notice to the Supplier, and clause 20.3 will apply, if the Supplier or its Personnel (without limiting clause 20.1):
- 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 of 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 of the Contract.
 - f) Give Nqpetro reasonable cause to believe that the Supplier is unable to pay any of its debts when they fall due.
- 20.2 Nqpetro may terminate the Contract in whole or in part by written notice.
- 20.3 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 property in the Supplier's possession.
- 20.4 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.
- 20.5 Without prejudice to any of its rights, Nqpetro 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 for work 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 20.5.
- 20.6 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).
- 20.7 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.

21. Confidential Information

- 21.1 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.

22. Contract Variation



- 22.1 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.
- 22.2 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.
- 22.3 The Supplier must deliver the Goods in compliance with this Contract. Nqpetro is not liable to pay additional costs associated with a variation unless the variation commences, Nqpetro has agreed either the full cost of the variation or the specific methods of calculating such costs.

23. General

- 23.1 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.
- 23.2 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.
- 23.3 Nqpetro may license or sub-contract all or any part of its rights and obligations without the Supplier's consent.
- 23.4 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.
- 23.5 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.
- 23.6 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.