

A E ATHERTON & SONS PTY. LTD. (ACN 004 104 607)
PURCHASE ORDER TERMS AND CONDITIONS

1. QUALITY AND PERFORMANCE

1.1. Materials and Workmanship

All Goods shall be fit for the purpose for which they are required. The Supplier must use new and undamaged materials, unless otherwise specified in the Purchase Order and the workmanship must be of the highest quality and standard. The work and Service shall be carried out and provided in accordance with good engineering practice and comply with all applicable Australian Standards and/or other referenced codes, the requirements of all relevant statutory authorities and the Law.

1.2. Supplier Qualifications

The Supplier is an independent contractor and represents and warrants to the Purchaser that it has the necessary skills, resources and experience to successfully supply the Goods and or the Services in accordance with the requirements of the Purchase Order.

1.3. Testing and Inspection

(a) The Goods must be tested in accordance with the requirements of the Specifications. Unless otherwise set out elsewhere in the Purchase Order, any tests and the costs thereof shall be the responsibility of the Supplier. The results of tests must be promptly supplied to the Purchaser in writing.

(b) The Purchaser shall have the right to inspect, test and monitor the Goods prior to delivery and the Supplier shall give the Purchaser access to the Supplier's premises for such purpose during its normal working hours. The Goods will not be deemed to have been accepted by the Purchaser until inspected and approved by the Purchaser. Any inspection or acceptance by the Purchaser shall not relieve the Supplier from its obligations to comply with the requirements of the Purchase Order nor shall it in any way impair the Purchaser's right to require subsequent correction of non conforming Goods or to make a subsequent claim for loss and damage.

1.4. Quality, Safety and/or Environmental Standards

The Supplier shall comply with the quality, safety and/or environmental standards specified in the Purchase Order. If no standards are specified, the Supplier shall comply with the Law or otherwise the best quality, safety and/or environmental standards applicable to the Goods and or Services concerned.

1.5. Defects and Warranty

(a) The Supplier warrants that the Goods shall:

- i) Be free from any Security Interest;
- ii) Be free from defects in design, materials and workmanship;
- iii) Conform to the conditions and Drawings and or Specifications attaching to the Purchase Order or otherwise supplied by the Purchaser; and
- iv) Conform to all Laws and regulations to which the Goods are subject and be new and made to the specified quality.

(b) The warranties noted in Clause 1.5 (a) above are in addition to any statutory warranties applicable to the Goods and or Services.

(c) During the Warranty Period, the Purchaser must give written notice to the Supplier of any failure or defect in the Goods. The Supplier shall without delay and at no cost to the Purchaser, correct any defect or failure in the Goods covered by the warranty, by way of repair, replacement, modification or other means acceptable to the Purchaser.

(d) If the Supplier fails to correct any defects and failures, of which it has been notified by the Purchaser, within the time specified in the notice (which shall not be unreasonable), the Purchaser shall have the right to rectify the Goods itself or have the rectification undertaken by a third party. All costs so incurred shall be a debt due and payable by the Supplier or deducted from moneys otherwise owing to the Supplier.

(e) Any Goods repaired under warranty will be subject to a further full Warranty Period commencing on the date of completion of any such repair.

2. DELIVERY

2.1. Unless otherwise specified in the Purchase Order or by writing from the Purchaser, the Goods shall be delivered CIP, adequately packaged and protected to ensure safe delivery, to the Delivery Point and by the delivery date(s) specified in the Purchase Order. The Goods shall be accompanied by a delivery docket which shall be signed by a duly authorised representative of the Purchaser at the Delivery Point.

2.2. The Goods shall become the property of the Purchaser upon delivery of the Goods to the Purchaser, as evidenced by the signature on the delivery docket by the duly authorised representative of the Purchaser. Notwithstanding that the Purchaser has taken delivery of the Goods, the Supplier shall remain responsible for any loss or damage to the Goods, which may have occurred prior to delivery, and for any non compliance of the Goods with the requirements of the Purchase Order.

2.3. The Supplier shall take all reasonable steps to minimise and prevent any delay to the delivery of the Goods. The Purchaser may, in its absolute discretion, grant an extension of time to the nominated delivery date provided the Supplier has notified the Purchaser of its claim for an extension of time in writing within 7 days of the delay occurring (or such other time as may be specified in the Purchase Order).

2.4. If the Supplier fails to deliver the Goods by the specified delivery date(s), the Purchaser shall be entitled to terminate the Purchase Order for default, either in whole or in part, in accordance with the provisions of Clause 6.2 and/or deduct from moneys due to the Supplier as liquidated damages, representing a genuine pre estimate of the Purchaser's damages and not as a penalty, the amount specified in the Purchase Order, for each week or part thereof by which delivery exceeds the specified delivery date.

3. VARIATIONS

3.1. The Purchaser may notify the Supplier of any variations to the Purchase Order or any changed condition thereof and the Supplier shall carry out any such variation as directed by the Purchaser. The Supplier's price (addition or reduction) for any variation and any effect on the delivery date(s) of the Goods and or Services shall be agreed between the Purchaser and Supplier prior to the Supplier carrying out any such variation. However, if agreement cannot be reached, the Purchaser shall acting reasonably, determine the price for the variation and its effect on the delivery date(s) of the Goods and or Services.

3.2. The Supplier shall not vary the work under the Purchase Order or any condition thereof, except as directed and approved by the Purchaser in writing. No variation shall invalidate the Purchase Order.

4. INDEMNIFICATION

The Supplier agrees to indemnify and keep indemnified the Purchaser and its officers, employees and agents against all claims, demands, proceedings, liabilities, costs, charges and expenses arising as a result of any act, neglect or default of the Supplier, its employees or agents related to the supply of the Goods and or Services or otherwise arising from its obligations under the Purchase Order including these terms.

5. INSURANCE

The Supplier warrants that the Supplier and its agents, contractors and subcontractors will at all times effect and maintain all necessary policies of insurance as required by Law and or as specified by the Purchaser including, but not limited to, public liability, workers compensation and motor vehicle insurance.

6. SUSPENSION/TERMINATION

6.1. Suspension

The Purchaser may, at any time by written notice, suspend all or part of the Purchase Order for any reason whatsoever. Upon receipt of a notice of suspension, the Supplier must cease work in accordance with the directions of the notice. The Supplier shall recommence the work and or the supply of the Goods under the Purchase Order within forty eight (48) hours of being directed in writing to do so by the Purchaser.

6.2. Termination by Default

In the event of a breach by the Supplier of any of the terms and conditions of the Purchase Order, which in the opinion of the Purchaser may significantly delay the completion of the Purchase Order, the Purchaser may terminate the Purchase Order in whole or part.

6.3. Termination for Insolvency

If, in the opinion of the Purchaser, the Supplier is unable to effectively perform its obligations under the Purchase Order due to insolvency, bankruptcy or other genuine reasons beyond the control of the Supplier, the Purchaser shall be entitled to terminate the Purchase Order by notice in writing and without legal recourse by the Supplier.

6.4. Termination at Purchaser's Option

Notwithstanding any other provisions of the Purchase Order, the Purchaser may terminate the Purchase Order by giving 14 days written notice to the Supplier.

6.5. Supplier's Rights and Obligations on Suspension /Termination

(a) In the event of suspension or termination of the Purchase Order, the Supplier shall not be entitled to payment by the Purchaser for any costs or loss it may incur as a result of any such suspension or termination.

(b) In the event of any form of insolvency event of the Supplier or any default under Clause 6.2, the Purchaser shall immediately suspend any further payment to the Supplier. Any additional monies required by the Purchaser to complete the Purchase Order in excess of what the Purchaser would have paid under the Purchase Order shall be a debt due and payable by the Supplier to the Purchaser.

(c) In the event of termination by the Purchaser, under Clause 6.4 and provided the Supplier is not in default, the Purchaser shall pay the Supplier for the work carried out prior to termination and all reasonable costs associated with the cancellation of any orders placed by the Supplier prior to termination but not including any loss of profit. The Purchaser shall not be liable for any costs of the Supplier in respect of termination, which cannot be fully substantiated.

7. PRICE AND PAYMENT

7.1. Unless otherwise stated in the Purchase Order, prices shall be fixed and not subject to any variation, including but not limited to variations in the cost of labour, material or exchange rates.

7.2. The Supplier shall be responsible for the payment of all relevant Australian (Federal, State and Local Government) and overseas taxes, duties and charges payable with respect to the Goods and or Services. The Purchase Order price shall be deemed to be inclusive of all such taxes, duties and charges.

7.3. Unless otherwise specified in the Purchase Order, invoices for payment shall be submitted to the Purchaser for payment following delivery of the Goods and or Services and payment of the approved amount shall be made by the Purchaser 60 days after the end of month in which the invoice was received by the Purchaser however the Purchaser is not liable for interest or costs in respect of any late payment.

8. INTERPRETATIONS AND GENERAL MATTERS

8.1. Definitions and Interpretations

(a) "day" means a calendar day.

(b) "Drawings" means any drawings detailed in or annexed to the Purchase Order.

(c) "CIP" has the meaning ascribed to that term by Incoterms 2010 and without limiting that term in relation to delivery of the Goods includes the responsibility (and associated costs) for packing, loading, transportation and insurance (for the full replacement value of the Goods) to the nominated Delivery Point.

(d) "Delivery Point" means the delivery point stated in the Purchase Order or advised by the Purchaser in writing.

(e) "Goods" means all goods, equipment, materials, articles, or any other property or parts to be provided to the Purchaser by the Supplier under the Purchase Order and includes, without limitation design, manufacture, inspection, testing, expediting, quality assurance and control, painting, packing and delivery as specified or required hereunder.

(f) "Incoterms" means the International Chamber of Commerce official rules for the interpretation of trade terms known as "Incoterms 2010".

(g) "Law" means any applicable local, State and or Federal law;

(h) "Purchaser" means A.E.Atherton & Sons Pty Ltd ACN 004 104 607 of 364 Darebin Road, Thornbury, Victoria, 3071.

(i) "Purchase Order" means the purchase order issued by the

Purchaser to the Supplier.

(j) "Secured Party" has the meaning ascribed to that term by the Personal Property Securities Act 2009.

(k) "Security Interest" has the meaning ascribed to that term by the Personal Property Securities Act 2009.

(l) "Services" means the services to be provided to the Purchaser by the Supplier under the Purchase Order.

(m) "Specifications" means any specifications detailed in or annexed to the Purchase Order.

(n) "Supplier" means the person providing the Goods and or the Services, as identified in the Purchase Order.

(o) "Warranty Period" means the period commencing on the date of final supply of the Goods to the Delivery Point and lasting for a period of two years or for such longer period as may be agreed or required by Law.

(p) Words importing the singular are deemed to include the plural and vice versa. Headings and subheadings are inserted for convenience only and shall not be used to interpret the text. Words denoting a natural person shall include a corporation and vice versa.

8.2. Supplier to Inform Itself

The Supplier shall be deemed to have carefully examined all documents furnished by the Purchaser and fully satisfied itself regarding all the conditions, risks, contingencies and other circumstances which might affect the supply of the Goods and or Services. No increase in the Purchase Order price will be allowed for the Supplier's failure to ensure that it is fully informed regarding all the circumstances relating to the Purchase Order.

8.3. Order of Precedence

Unless otherwise stated, the order of precedence of any of the following documents listed in the Purchase Order (if any), shall be as follows:

- (i) This clause 8.3;
- (ii) The Purchase Order;
- (iii) Specification(s);
- (iv) Drawing(s); and
- (v) These Purchase Order Terms and Conditions.

8.4. Ambiguities

If the Supplier discovers any ambiguity in the Purchase Order it must immediately notify the Purchaser in writing. The Purchaser shall then determine the correct interpretation of the Purchase Order. The determination of the Purchaser shall be final and binding on the Supplier and have no effect on the Purchase Order price.

8.5. Confidentiality

(a) Any information provided by the Purchaser to the Supplier, which is by its very nature confidential or is noted as confidential, shall not be disclosed to any third party without the prior written consent of the Purchaser. The obligations under this Clause shall be continuing obligations and shall survive the completion or termination of the Purchase Order.

(b) The Supplier shall not issue any information which includes details about the Goods and or Services or the Purchase Order, for publication in any news or communication media, without the prior written approval of the Purchaser.

8.6. Waiver

No failure or delay on the part of the Purchaser in exercising any of its rights under the Purchase Order shall be construed as constituting a waiver of any such rights.

8.7. Subcontracting and Assignment

(a) The Supplier may with the prior written consent of the Purchaser, subcontract any part of the Purchase Order to others. All subcontractors shall comply with the insurance provisions of this Purchase Order or be covered by the Supplier's insurance.

(b) Any approval by the Purchaser for the Supplier to subcontract all or part of the Purchase Order shall in no way relieve the Supplier of any of its obligations under the Purchase Order.

8.8. Entire Agreement

The Purchase Order constitutes the entire agreement between the Purchaser and the Supplier. The parties shall not be bound by or liable for any statement, representation, promise or understanding not set forth herein. Nothing contained in proposals, correspondence, discussions or negotiations prior to the date of the Purchase Order will have any effect on the Purchase Order unless specifically incorporated herein.

8.9. Communications

Any notice or other communication required under the Purchase Order shall be delivered in writing and shall be in a form which can be read, copied and recorded conveniently. Verbal instructions or directions from the Purchaser shall be confirmed in writing to the Supplier within a reasonable time. The notice shall take effect from the time when it is delivered to or received at the nominated address of the parties.

8.10. Licences and Laws

The Supplier shall comply with all applicable laws, by laws, ordinances, regulations, proclamations, orders and rules and with the lawful requirements of public and other authorities in any way related to the supply of the Goods and or Services.

8.11. Applicable Law

Unless otherwise specified, the Purchase Order shall be governed and construed in accordance with the laws of the State of Victoria and the Purchaser and the Supplier agree to submit to the jurisdiction of the Courts of Victoria.

8.12. Security Interest

Despite clause 1.5(a)(i) the Purchaser may consent to the Supplier registering a Security Interest in respect of the Goods provided that the Supplier first obtains the written approval of, and on terms satisfactory to, the Purchaser. The Supplier must release all Security Interests in respect of any Goods in which the Supplier is the Secured Party within 7 days of a written request from the Purchaser to do so, provided that the Purchaser has paid in full for the relevant Goods.