

## STANDARD TERMS AND CONDITIONS OF PURCHASE

The following Terms and Conditions cover the Purchase of all Goods and Services (“Works”) by Windsor Engineering Group Limited NZBN: 9429039949783 and Windsor Engineering Group Pty Limited ABN: 40-003 509 653 (“Windsor”) supplied by the other party herein known as “Supplier”. These terms and conditions apply to all Purchase Orders, unless otherwise agreed in writing between authorized representatives of Windsor and the Supplier.

### 1. Acceptance

- (a) These Terms and Conditions become valid and binding on the parties when a Purchase Order from Windsor is accepted by the Supplier in response to an offer made by the Supplier, when the Supplier proceeds with the Works or if the Supplier fails to acknowledge the Purchase Order within 10 days from receipt.
- (b) Any terms or conditions of supply printed or referenced on any documentation at any time including but not limited to any form of order acceptance, correspondence or invoice provided by the Supplier (even if any representative of Windsor signs those terms or annexes those terms to any correspondence) will be of no effect and will not replace or vary these Terms and will not constitute part of these Terms.
- (c) The Purchase Order, these STANDARD TERMS AND CONDITIONS OF PURCHASE, and all documents which are either attached to the Purchase Order or incorporated therein by reference and any agreed and signed variations (in this order of priority) shall be deemed the entire Agreement between the parties. No preliminary or verbal representation or warranty will be of any effect.
- (d) This Contract is governed by the law of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand Courts.

### 2. Payment

- (a) The Contract Price is in New Zealand Dollars (unless otherwise stated on the Purchase Order) and is the agreed Contract Price for the whole of the Works offered, inclusive of testing, packing, documenting and freight to the Delivery Place. The Contract Price is inclusive of all taxes and charges whatsoever and howsoever incurred.
- (b) The Contract Price cannot be varied unless agreed by the parties in writing.
- (c) To the extent that rates for variations are specified, they shall be used by the Supplier to calculate the cost of a variation, but otherwise the cost of the variation shall be estimated by the Supplier at the lowest reasonable cost.
- (d) The Supplier shall invoice Windsor at the end of each month for the Works duly completed in that month. Any invoice for the supply of Goods shall be accompanied by a packing slip signed by an authorised representative of Windsor.
- (e) Supplier’s invoice shall state the Windsor Purchase Order number and shall be itemised strictly as the Purchase Order.
- (f) Windsor will, subject to the Works having been satisfactorily received or completed and accepted by Windsor, pay all undisputed amounts up to 45 days from the month end in which the Supplier’s tax invoice is received by Windsor.
- (g) Windsor may deduct from such amount due and payable by Windsor pursuant to this Contract, any amounts payable by the Supplier to Windsor on any account whatsoever.

### 3. Sub-Contract

- (a) The Supplier may not subcontract, assign or transfer any of its rights or obligations under this Contract without the prior consent of Windsor.
- (b) The Supplier must ensure that its subcontractor(s):
  - i. meet the quality, performance and timeliness requirements of this Contract;
  - ii. effect and maintain the insurances specified in Item 10 below (certificates of currency to be supplied on request);
  - iii. obtains and assigns to Windsor (and its Customer and the End User if requested by Windsor) all the usual customary trade warranties and that copies of such warranties will be supplied to Windsor with the final invoice;
  - iv. are bound by undertakings to the Supplier in relation to Windsor supplied Confidential Information and Intellectual Property no less stringent than those binding the Supplier in this Contract

### 4. Supply of Goods

- (a) The Supplier warrants that:
  - i. the Goods are free of all liens and encumbrances and the Supplier has good and marketable title to the Goods;
  - ii. the Goods will be of merchantable quality and be free from any defect in workmanship;
- (b) Part supplies are not allowed unless agreed in advance and in writing by Windsor.
- (c) Property and ownership in any Goods supplied will pass from the Supplier to Windsor on the earliest of payment by Windsor for those Goods or delivery of the Goods at the Delivery Place.

- (d) Delivery shall be made in accordance with the Incoterms 2020 and to the nominated place as stated on the Purchase Order. If no Incoterms are stated delivery shall be DAP Windsor nominated location.

## 5. Inspection

- (a) Windsor's nominated representative may inspect the Works from time to time during the progress of the Works and on the Completion Date and examine the documentation to ensure compliance to the Contract. Any technical or commercial questions or notices should be addressed to him/her and his/her written instructions in response to those questions or notices will become part of this Contract and should be accepted as lawful instructions for the execution of the Contract.
- (b) Windsor's nominated representative shall be afforded free access to the place(s) where the Works are being carried out during the progress of the Contract for the purpose of expediting or inspection of the Works.

## 6. Completion

- (a) Time is of the essence; the Supplier shall complete the Works on or before the Due Date for Completion as stated on the Purchase Order.
- (b) The Supplier shall immediately notify Windsor when becoming aware of an imminent or likely delay in delivery of the Goods or completing the Works.
- (c) The Due Date may be amended or the Works may be suspended by Windsor in writing at Windsor's sole discretion. Windsor will pay to the Supplier all reasonable and direct costs actually incurred by this change or suspension.
- (d) Each party shall immediately notify the other party upon the imminent or likely occurrence of a Force Majeure Event (an event or circumstance beyond the reasonable control of either party directly or indirectly impacting the Works, which could not have been reasonably foreseen and insofar they can't be eliminated or mitigated with reasonable alternatives).. The party affected by a Force Majeure Event shall be excused from compliance with this Contract to the extent that party is affected in its compliance and the Due Date for Completion will be amended accordingly.
- (e) If the supplier delivers the Goods after the due date for delivery or completes the Works after the Due Date for Completion, the Supplier shall pay Windsor Delay Liquidated Damages in the amount and up to a maximum as stated on the Purchase Order. Where no amount and maximum is stated, the Delay Liquidated Damages shall be 1% of the Contract Price per week. up to a maximum of 10% of the Contract Price.

## 7. Warranty Period and Rectification of Defective Works

- (a) The Supplier warrants that:
  - i. It will exercise the skill, care and diligence to the standard acceptable to the trade, industry or profession of a similar nature;
  - ii. It will perform the Works in a timely and professional manner using appropriately trained and experienced personnel;
  - iii. It will perform the Works in accordance with the Contract and to the standard agreed by the parties and in accordance with all applicable standards;
  - iv. It will adhere, and its subcontractors will adhere, to all health and safety regulations, and specific site procedures communicated to the Supplier from time to time;
  - v. The Works will be fit for purpose;
- (b) The Supplier shall extend all warranties to Windsor's Customer and the End User.
- (c) The Supplier warrants all Works and workmanship against any defect for the period stated in the Purchase order. Where no period is stated, for a period of 18 months from the receipt of the Goods or 12 months from the completion of the Services or 12 months from the date in which the Goods were first put into service, whichever the later.
- (d) If any part of the Works is defective and/or not in compliance with the Contract the Supplier must as soon as reasonably possible repair or replace the Works which are damaged, defective or found not to be in accordance with the Contract during the Warranty Period, to the satisfaction of Windsor. If the Supplier fails to repair or replace the defective Works within a reasonable time, Windsor shall be entitled to execute the repair or replacement or have a third party perform the repair or replacement on behalf of the Supplier.
- (e) The Supplier shall be responsible for all costs associated with the repair or replacement of the Works.
- (f) The Warranty Period for the part of the Works that was defective and/or not in compliance with the Contract shall re-start upon completion of the repair or replacement.

## 8. Confidentiality and Intellectual Property

- (a) All specifications, drawings, technical instructions, logics and software or any other documentation and information whatsoever ("Intellectual Property") issued to the Supplier by Windsor during tendering and execution of this Contract will remain the property of Windsor.
- (b) The Supplier may not, and must ensure that its subcontractors, agents or other third parties do not, divulge to third parties any information relating to the Works (including Intellectual Property), in full or in part unless such information is within the public domain or express written consent has been given by an authorised representative of Windsor.
- (c) All Intellectual Property developed by the Supplier during the execution of the Works will be the property of Windsor. Windsor hereby grants to the Supplier a perpetual, irrevocable, non-exclusive, royalty free and non-transferable licence to the Supplier to use such new Intellectual Property for the performance of the Works. The Supplier hereby grants to Windsor a perpetual, irrevocable, non-exclusive, royalty free, transferable licence to use all Intellectual Property developed outside this Contract and which is used by the Supplier in connection with the Works under the Contract.
- (d) The Supplier shall indemnify and hold harmless Windsor against and from any claim alleging an infringement of all intellectual property rights, moral rights and ownership rights in any information provided by the Supplier to Windsor.
- (e) The Supplier warrants that:
  - i. the Works and licence granted by it to Windsor do not infringe any intellectual property rights of any third party; and
  - ii. the Works are not subject to any intellectual property rights of any third party that in any way restrict the rights of Windsor Windsor's Customer and the End User to use or sell the Works.

## 9. Indemnity

- (a) The Supplier will indemnify Windsor and keep Windsor indemnified from and against all liabilities, losses, damages, actions, suits, proceedings, claims, costs and expenses (including legal cost) in respect of:
  - i. injury to (including illness or disability), or death, of any person;
  - ii. loss or destruction of or damage to or loss of use of any property, caused or contributed to by the act or omission of the Supplier or its directors, officers, employees, agents or contractors or by any breach of this Contract by the Supplier (including any breach of a warranty), except to the extent that it has been caused or contributed to by the wilful default or unlawful or negligent act or omission of Windsor;
  - iii. failure to meet any of the obligations under this Contract or at law (whether by statute, regulation, bylaw etc.);
  - iv. Delivery of the Goods and/or completion of the Works after the Due Date.

## 10. Insurances

- (a) The Supplier shall take-out and maintain the following insurances, unless otherwise stated in the Purchase Order.
  - i. Professional indemnity for an amount not less than \$500,000;
  - ii. Product liability of not less than \$2 million per occurrence;
  - iii. Public liability of not less than \$2 million per occurrence;
  - iv. Motor vehicle of not less than \$5 million per occurrence;
  - v. Transit insurance for the replacement value of the Goods.
- (b) Certificates of currency shall be supplied to Windsor promptly upon request.

## 11. Personal Property Securities Act 1999

- (a) This clause is only applicable to Purchase Orders issued by Windsor Engineering Limited New Zealand.
- (b) Words and expressions in this clause, which are defined in the PPSA have the same meaning as in the PPSA.
- (c) The Supplier acknowledges that Windsor has a purchase money security interest in the Goods including, but not limited to, where Windsor has paid the Supplier (in whole or in part) for the Goods prior to delivery.
- (d) The Supplier acknowledges and grants Windsor a security interest in the Goods (and any parts thereof) and any proceeds of those Goods:
  - i. as security for payment of that part and/or of each other part/s of the Goods;
  - ii. for any other amounts owing by the Supplier to Windsor from time to time; and
  - iii. for the performance by the Supplier of all the Supplier's other obligations to Windsor from time to time.
- (e) For the purposes of section 36(1)(b) of the PPSA, and to ensure maximum benefit and protection for Windsor by virtue of section 36(1)(b)(iii), the Supplier grants to Windsor, as security for the Supplier's Indebtedness and Obligations, a security interest in all of the Supplier's present and after-acquired property other than that which comprises items or kinds of personal property:
  - i. in or to which the Supplier has rights; and

- ii. which has not been supplied by the Supplier to Windsor.
- (f) The Supplier agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to the Contract and that it irrevocably and unconditionally waives all its rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131.
- (g) The Supplier irrevocably and unconditionally waives its right to receive a copy of any verification statement received in connection with any financing (change) statement that is registered at any time in relation to the Contract.
- (h) The Supplier agrees to do all things which Windsor reasonably requires to:
  - i. ensure that Windsor has a perfected security interest and a perfected purchase money security interest in each part of the Goods to the extent of the purchase price for that part; and
  - ii. enable Windsor to exercise any of its rights or powers under the Contract.
- (i) Nothing in the Contract shall be construed as:
  - i. an agreement to subordinate the security interest created under the Contract in favour of any person;
  - ii. a consent by Windsor to any other security interest attaching (as that term is used in the context of the PPSA) to, or any other security interest subsisting over, any Goods; or
  - iii. a consent by Windsor to any property that is not Goods becoming an accession to any Good.

## 12. Termination

- (a) Windsor may terminate the Contract in its absolute discretion giving the Supplier 14 days' notice. In the event of termination under this clause 12(a) Windsor shall pay the supplier all reasonable and direct costs actually incurred up to the date of termination.
- (b) Windsor may terminate the Contract immediately upon notice in case of Supplier's default on any of the terms of this Contract, for any reason (including insolvency and change of Supplier's ownership). In the event of termination under this clause 13(b), Windsor can appoint another supplier to complete the uncompleted portion of the Works at the Supplier's cost.
- (c) Termination of the Contract pursuant to this clause shall be without prejudice to any other rights of Windsor.

## 13. Dispute Resolution

- (a) If a difference or dispute between the parties arises in connection with the subject matter or interpretation of this Contract, including a dispute concerning a claim in tort, under statute or on any other basis in law or equity available under the law governing the Contract ('Dispute'), either party may by hand or registered post give the other party written notice of the dispute identifying and providing details of the dispute and titled Dispute Notice ('Dispute Notice').
- (b) Within seven (7) days of receipt of a Dispute Notice, representatives of the parties having authority to bind the parties shall confer to seek to resolve the Dispute or agree on a method of doing so and whether that method shall be binding. If a resolution or method of resolution has not been agreed within twenty-one (21) days of the receipt of the Dispute Notice, the General Manager of the parties shall confer for the same purpose as the parties' representatives. All aspects of such conference(s) shall be privileged.
- (c) Neither party may institute legal proceedings, other than urgent interlocutory relief, in respect of any Dispute unless a Dispute Notice in respect thereof has first been given and then only after a period of twenty-eight (28) days from receipt of such Dispute Notice has elapsed.

## 14. General

- (a) The Supplier must report progress of the Works to Windsor on a regular basis.
- (b) Risk in the Works passes to Windsor upon acceptance of the Works at the Delivery Place.
- (c) Windsor's liability to the Supplier is limited to its liability to pay the Contract Price, as amended from time to time, in accordance with this Contract.
- (d) Windsor will have no liability to the Supplier for any indirect loss, consequential loss or damage however arising including, but not limited to, loss of profits, loss of revenue, loss of productivity, loss or denial of opportunity, loss of goodwill, remote, abnormal or unforeseeable loss.
- (e) If any provision of this Contract is unenforceable, such unenforceability shall not affect any other provision or any other part of the Contract.
- (f) Any waiver by Windsor of strict compliance with any provision of this Contract shall not be effective unless in writing and signed by an authorised officer of Windsor.
- (g) Before substitution is made by the Supplier in any of the Goods or Services, these shall be accepted by Windsor in writing and signed by an authorised officer of Windsor.

(Dated 03/2021)