



## PURCHASE ORDER TERMS AND CONDITIONS

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### 1. DEFINITIONS

**"Buyer"** means Austress Menard Pty Ltd or any one of its related companies or subsidiaries as specified on the Purchase Order Form.

**"Date for Delivery"** means the date specified in the Purchase Order Form by which the Goods are to be delivered to the place specified by the Buyer.

**"Goods"** means all Goods, equipment, materials, articles, or any other property or parts to be provided to the Buyer by the Seller under the Purchase Order and includes, without limitation, all services including design, manufacture, inspection, testing, expediting, quality assurance and control, painting, packing and delivery as specified in the Purchase Order Form or required hereunder.

**"GST"** means the tax introduced by A New Tax System (Goods and Services Tax) Act 1999 (Cth) (the **"GST Act"**) and its associated legislation and regulations.

**"Purchase Order"** means the Purchase Order issued by the Buyer to the Seller as evidenced by the documents listed in the Purchase Order Form.

**"Purchase Order Form"** means the section of the Purchase Order to be completed by the Buyer, which identifies the Buyer and the Seller and includes but is not limited to a brief description of the Goods and a list of the documents comprising the Purchase Order.

**"Seller"** means the person providing the Goods, as identified in the Purchase Order Form.

**"Variation"** means any increase or decrease in, or change to, the scope of the supply of Goods under this Purchase Order, as directed by the Buyer in writing.

**"Warranty Period"** means the period commencing on the date of final supply of the Goods and lasting for a period of twelve (12) months, unless otherwise stated in the Purchase Order.

### 2. APPLICATION

- (a) These terms and conditions apply to and form part of the Purchase Order issued by the Buyer to the Seller for the purchase of the Goods.
- (b) The Seller agrees to supply the Goods described in the Purchase Order and shall supply the Goods to the Buyer strictly in accordance with the terms set out in these terms and conditions.

### 3. ENTIRE AGREEMENT

- (a) These terms and conditions and the Purchase Order issued by the Buyer constitute the entire agreement between the parties and supersedes all previous communications and negotiations.
- (b) No terms stated by the Seller in accepting or acknowledging the Purchase Order will be binding on the Buyer unless expressly accepted by the Buyer in writing.
- (c) The Purchase Order constitutes a contract between the parties and no further document or act will be required of the parties to be legally bound.

**4. SUBCONTRACTING AND ASSIGNMENT.** The Seller shall not subcontract nor assign all or any part of the Purchase Order without the prior written approval of the Buyer. The Buyer's approval of any subcontract shall in no way relieve the Seller of any of its obligations under the Purchase Order.

### 5. INSURANCE

- (a) The Seller shall insure the Goods under an all risks policy for their replacement value against loss or damage, including loss or damage in transit to the delivery place and unloading. The Seller is to maintain insurance of the Goods until risk in the Goods passes to the Buyer, irrespective of whether the Buyer or Seller has title to the Goods.
- (b) Before supplying the Goods the Seller shall effect and maintain public and product liability insurance for a period of at least 12 months from the date of the Purchase Order, and for an amount in respect of any one occurrence of not less than \$10 million. The insurance shall cover the Seller's and Buyer's liabilities to each other and third parties for loss or damage to property (other than property required to be insured by clause (a) herein) and death or injury to any person (other than liability which the law requires to be

covered under a workers compensation insurance policy) however caused.

- (c) Before commencing performance under the Purchase Order, the Seller shall insure against statutory and common law liability for death of or injury to persons employed by the Seller. Insurance cover shall be maintained for the duration of the supply of the Goods.
- (d) Any motor vehicles used by the Seller to effect deliveries of the Goods pursuant to the Purchase Order are to be made by registered vehicles having full comprehensive motor vehicle insurance effected by the Seller.
- (e) All plant hired by the Seller to the Buyer shall be covered by appropriate equipment insurance effected by the Seller.

### 6. SUPPLY

- (a) The Goods described in this Purchase Order shall be supplied by the Seller to the Buyer strictly in accordance with the terms set out herein and no alteration or variation shall be made thereto without the written authorisation of the Buyer.
- (b) The Seller, at its expense, shall deliver the Goods ordered on the Date for Delivery and at the place specified by the Buyer in the Purchase Order. The Seller shall promptly unload the Goods at the place specified for delivery. The Buyer may direct the Seller to change the Date for Delivery, the mode of delivery, or the place of delivery.
- (c) With each consignment of Goods to the Buyer, the Seller shall include a written delivery note stating the date of the consignment, a description and quantity of the Goods delivered, the delivery place, the Date for Delivery, the Purchase Order ordering the goods so consigned and any variance (with reasons) from the Purchase Order.
- (d) Delivery occurs when the Goods have been unloaded by the Seller at the place for delivery and the delivery note is signed by an authorised representative of the Buyer.

**7. PROPERTY IN GOODS.** In this clause, "Goods" includes all components, elements, parts and articles comprising the Goods.

- (a) Ownership of, and unencumbered title in, the Goods passes from the Seller to the Buyer on the earlier of the following:
  - i) Payment of any deposit or initial progress payment with respect to the Goods;
  - ii) Payment to the Seller of the value of the Goods;
  - iii) Delivery of the Goods as required by the Purchase Order.
- (b) The goods shall remain at the risk of the seller until the buyer has accepted the same in writing after inspection.
- (c) Where the Buyer directs the Seller to remove the Goods, or any part of them pursuant to clause 8, the Seller assumes the risk in the Goods rejected from the time of removal.
- (d) In the event of the Seller's default (including alleged default), breach of the Purchase Order (including alleged breach) or insolvency, the Buyer may attend at the Seller's premises, or such places as the Goods are located to which the Seller has access, and collect the Goods to which it holds title. The Seller hereby agrees to provide reasonable access to the Buyer, or its duly authorised representatives, to collect the Goods, in the event that the Buyer exercises its entitlement to collect the Goods pursuant to this clause.
- (e) The Seller acknowledges that it is liable for the care, safe custody and control of the Goods until the risk in the Goods passes to the Buyer.

The Seller hereby agrees to waive its entitlement to exercise any lien in respect to the Goods, whether arising by statute or common law.

### 8. TESTING, INSPECTION AND RETURN OF GOODS

- (a) The Goods must be tested in accordance with the requirements of the Purchase Order. Unless otherwise set out elsewhere in the Purchase Order, any tests and the costs thereof shall be the responsibility of the Seller. The results of tests shall be promptly supplied to the Buyer in writing.
- (b) The Buyer shall have the right to inspect and monitor the Goods prior to delivery and the Seller shall give the Buyer access to the Seller's premises for such purpose during its normal working hours.

- (c) Any inspection by the Buyer shall not relieve the Seller from its obligations to comply with the requirements of the Purchase Order and shall in no way impair the Buyer's right to require correction of non-conforming Goods.
- (d) The Buyer is entitled to a reasonable opportunity to inspect the Goods following delivery.
- (e) Upon inspection, the Buyer may reject any Goods which do not comply with the Purchase Order or which are otherwise unacceptable in the reasonable opinion of the Buyer.
- (f) The Buyer may either repair the Goods at the Seller's expense, obtain credit for the returned Goods, obtain replacement Goods from the Seller, source the Goods elsewhere and recover any additional cost or expense so incurred from the Seller, or terminate the Purchase Order in whole or in part and seek damages.
- (g) During the Warranty Period, the Buyer shall give written notice to the Seller of any failure or defect in the Goods. The Seller shall without delay and at no cost to the Buyer, correct any defect or failure in the Goods covered by the warranty, by way of repair, replacement, modification or other means acceptable to the Buyer.
- (h) If the Seller fails to correct any defects and failures, of which it has been notified by the Buyer, within the time specified in the notice (which shall not be unreasonable), the Buyer 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 Seller or deducted from moneys otherwise owing to the Seller.
- (i) Any Goods repaired under warranty may be subject to a further full Warranty Period, if required by the Buyer, commencing on the date of completion of any such repair.
- (j) Notwithstanding that the Buyer has taken delivery of the Goods, the Seller 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.
- (k) The Buyer may, at its election, deduct from any money payable to the Seller, under this Purchase Order or any other contract or agreement between the parties, the costs of repairing defective Goods, replacing defective Goods, sourcing the Goods from elsewhere or rectifying the Goods during the Warranty Period, referred to in this clause.

#### 9. MATERIALS AND WORKMANSHIP

- (a) All Goods shall be suitable for the purpose for which they are required.
- (b) The Seller shall use new and undamaged materials, unless otherwise specified in the Purchase Order and the workmanship shall be of the highest quality and standard. The work shall be carried out in accordance with good engineering practice and comply with all applicable Australian Standards and/or other referenced codes, the requirements of the relevant Statutory Authorities and the law.
- (c) The Seller shall comply with the standards of quality specified in the Purchase Order. If no standards are specified the Seller shall comply with the best quality standards applicable to the Goods concerned.

**10. INSTALLATION.** The following conditions apply where the Seller, under the terms of the Purchase Order or to enable the performance of the Purchase Order, is required to be present or perform work on or near the Buyer's premises or sites:

- (a) the Seller shall supply all labour, tools, equipment and materials necessary to complete the work and to perform the Purchase Order;
- (b) subject to any applicable law, the Seller, its employees, agents, contractors and subcontractors enter the Buyer's premises and sites at the Seller's own risk. The Seller indemnifies the Buyer against loss, damage, claims, and liability arising out of or connected with performance of the Purchase Order or presence of the Seller, its employees, agents, subcontractors at the Buyer's sites and premises including claims against the Buyer, in connection with the supply of the Goods, whether alleging negligence on the part of the Buyer or otherwise;
- (c) the Seller, its employees, agents, subcontractors shall comply with all safety and other regulations applicable to the Buyer's site and premises and shall obey all instructions of the Buyer, its managers, supervisors or other authorised officers;
- (d) the Seller performs all work under the Purchase Order as an independent contractor.
- (e) the Seller must at its own expense procure and maintain an insurance policy for an amount not less than that required by any legislation for any liability, loss, claim or proceedings relating to workers' compensation or employers' liability

whether arising by virtue of any statute or at common law in respect to any person employed by the Seller.

**11. SELLER'S DEFAULT.** The Seller shall take all reasonable steps to minimise and prevent any delay to the delivery of the Goods. If the Seller fails to deliver the Goods to the delivery site nominated by the Buyer by the Date for Delivery, the Buyer shall, without prejudice to any of its other rights pursuant to the Purchase Order or otherwise, be entitled to:

- (a) refuse to accept Goods delivered to or left at the delivery site in respect of which property therein has not passed to the Buyer;
- (b) procure the Goods from third parties. In this instance, the Seller shall be liable for any additional costs incurred by the Buyer as a consequence of procuring the Goods from third parties and any incidental losses of whatsoever nature incurred as a consequence of such default;
- (c) terminate the Purchase Order for default, either in whole or in part, in accordance with the provisions of clause 17;
- (d) deduct from monies due to the Seller as liquidated damages, representing a genuine pre-estimate of the Buyer's damages and not as a penalty, the amount specified in the Purchase Order Form, for each week or part thereof by which delivery exceeds the specified Date for Delivery.

#### 12. SELLER'S WARRANTIES AND ACKNOWLEDGEMENT

- (a) The Seller warrants and represents that the Goods shall:
  - i) Be free from liens, charges, encumbrances or other defects in title;
  - ii) Be free from defects in design, materials and workmanship;
  - iii) Conform to the conditions and specifications of the Purchase Order;
  - iv) Conform to all applicable laws and regulations to which the Goods are subject;
  - v) Be new and made to the specified quality.
- (b) The warranties noted above are in addition to any statutory warranties applicable to the Goods.
- (c) The Seller acknowledges that the Goods are supplied to the Buyer for commercial use and pursuant to a contract between the Buyer and a third party.

#### 13. VARIATIONS

- (a) The Buyer may vary the work under the Purchase Order or any condition thereof and the Seller shall carry out any such variation as directed by the Buyer. The Seller's price (addition or reduction) for any variation and any effect on the Date for Delivery of the Goods shall preferably be agreed between the Buyer and Seller prior to the Seller carrying out any such variation. However, if agreement cannot be reached, the Buyer shall determine the price for the variation and its effect on the Date for Delivery of the Goods.
- (b) The Seller shall not vary the work under the Purchase Order or any condition thereof, except as directed and approved by the Buyer in writing. No variation shall invalidate the Purchase Order.
- (c) None of the terms and conditions of this Purchase Order will be varied, waived, discharged or released either at law or equity, except with the Buyer's prior written consent.

#### 14. PRICE AND PAYMENT

- (a) 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, materials, plant, transport or exchange rates.
- (b) Prices stated in the Purchase Order shall include import or other costs attributable to exchange rates, customs or import duties, freight and insurance charges, all duties and taxes, costs of packing, carriage and delivery, samples and testing and all other costs and expenses involved in fulfilling and complying with all the terms, conditions and obligations of this Purchase Order.
- (c) The quote for the Goods to be supplied under the Purchase Order shall be inclusive of GST calculated in accordance with the GST Act unless otherwise specifically stated in writing.
- (d) The Seller must notify the Buyer immediately if it ceases to be registered for GST at any time during its performance of the Purchase Order.
- (e) Before becoming entitled to receive any payment (and unless otherwise specified in the Purchase Order), the Goods must be delivered and the Seller must submit to the Buyer a valid tax invoice for payment together with any certificates or warranty documents in relation to the Goods.
- (f) The Buyer may require as a condition precedent to payment that the Seller provides proof of all insurances required by the Purchase Order, and that the Seller has provided a statutory declaration in a form satisfactory to the Buyer confirming

payment of workers, workers compensation premiums and payroll tax.

- (g) Subject to the Seller's compliance with the Purchase Order and the provisions of this clause 14, the price indicated on the Purchase Order will be paid by the Buyer no later than forty-five (45) days from the end of the month in which the invoice is received.
- (h) Payment shall be payment on account only and not be evidence that the Goods comply with the Purchase Order. The Buyer shall have no obligation to pay for any defective or unsuitable Goods.
- (i) Where the manufacture, creation or compilation of the Goods occurs over an extended period, the Buyer may, at its sole discretion, withhold from any progress payment which may otherwise be due to the Seller pursuant to this clause, retention monies not exceeding 10% of the value of the progress payment, and the total of which does not exceed 10% of the price of the Purchase Order. The retention monies are to be paid to the Seller on the Buyer's acceptance of the Goods and are for the purpose of securing the Seller's proper performance of the Purchase Order.

**15. SET OFF.** Without limiting the Buyer's rights under the Purchase Order or at common law or in equity, the Buyer may set off against payments due to the Seller (including retention monies) any monies due to the Buyer or claimed to be due to the Buyer under the Purchase Order or any other contract between the Seller and the Buyer.

#### **16. INSOLVENCY**

- (a) Either party may terminate the Purchase Order immediately by written notice if the other party ceases to carry on business, or threatens to do so, becomes insolvent (which includes being unable to pay debts when they fall due), has execution levied against it, enters into a compromise with creditors, has a controller or administrator appointed, or has a third party exercise security over its property.
- (b) In the event of termination due to insolvency in accordance with subparagraph (a) herein, the Buyer shall not be liable to pay for any Goods not then delivered to or accepted by the Buyer.

#### **17. TERMINATION**

- (a) The Buyer may at any time, at its absolute discretion and for any reason, terminate the Purchase Order with respect to any undelivered Goods.
- (b) If the Purchase Order relates to standard stock goods, the Buyer's only obligation shall be to pay for Goods shipped prior to the termination.
- (c) If the Purchase Order relates to Goods manufactured or fabricated to the Buyer's specifications or specifications prepared by the Seller for the Buyer:
  - i) on receipt of notification of cancellation from the Buyer, the Seller shall cease manufacture, supply or work in accordance with and to the extent specified in the notice and shall immediately do everything possible to mitigate any cost after such cancellation;
  - ii) provided that the Seller is not in default, the Buyer shall pay to the Seller:
    - 1) the reasonable costs incurred by the Seller in connection with the Purchase Order prior to date of cancellation; and
    - 2) in lieu of profit, 5% of the Seller's reasonable costs, provided however that the total cancellation payment plus any previous payments made by the Buyer to the Seller shall not exceed the total price of the Purchase Order.
  - iii) Upon payment by the Buyer to the Seller following cancellation of the Purchase Order, title to and property in any material or incomplete Goods shall pass to the Buyer.

#### **18 INDEMNITY**

- (a) The Seller indemnifies the Buyer and keeps the Buyer indemnified from and against any claim, demand, cause of action, damage or loss, consequential loss, costs and expenses (including legal expense) made against or suffered by the Buyer arising out of, or in connection with, or as a result of:
  - i) The Goods supplied or to be supplied under the Purchase Order;
  - ii) Any actual or threatened infringement of a third party's industrial and/or intellectual property rights relating to the Goods; and
  - iii) The Buyer breaching contracts or arrangements it has entered into in reliance upon the acknowledgement and acceptance of the Seller of the matters herein, where the Seller, for whatever reason, fails to comply with the

terms and conditions, in particular the delivery conditions, of the Purchase Order.

- (b) The Seller shall indemnify and keep indemnified the Buyer 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 Seller, its employees or agents related to its obligations under the Purchase Order.

**19. SAFETY, QUALITY, ENVIRONMENT AND TRAFFIC MANAGEMENT.** The Seller shall comply with all instructions of the Buyer and all applicable laws with respect to site safety, environment management and traffic management.

#### *Seller*

- (a) The Seller shall comply with the Contractors Safety Information contained in the Buyer's Health and Safety Policy. A copy of the Policy is available upon request.
- (b) If any Goods supplied pursuant to the Purchase Order are dangerous or hazardous to environment or health, the Seller shall notify the Buyer in writing and prior to delivery. Such notification is to be made in writing to the Seller's Head Office, with the delivery advice note for every consignment and with the packaging of the Goods.
- (c) Any plant hired pursuant to the Purchase Order shall be subject to the current general conditions for the hiring of plant issued by the Construction Plaintiff-Hire Association.
- (d) The Buyer reserves the right to apply the requirements of its Quality Management system to this Purchase Order.
- (e) The Buyer reserves the right to apply the requirements of its environmental policy, which is adopted on every site. The Seller shall produce, on request, evidence of its positive management of environmental effects as identified in ISO 14001.

**20. INTELLECTUAL PROPERTY.** The Seller hereby indemnifies the Buyer, its successors, assigns, customers and users of the Goods, from and against all actions, suits, claims and demands and costs of whatsoever nature arising out of or in any way connected with any infringement of any patent, registered design, copyright or trade mark in any way connected with the Goods or the use thereof.

#### **21 DISPUTE NOTIFICATION AND RESOLUTION**

- (a) The Buyer shall not be liable for any claim made by the Seller in respect of any matter arising out of or in any way connected with this Purchase Order unless the claim, together with full particulars of its factual and legal basis and quantification of the claim are notified in writing to the Buyer within 14 days of the first occurrence of the events or circumstances upon which the claim is based.
- (b) Notwithstanding any dispute between the Buyer and the Seller, the Seller shall ensure that the progress of the work under the Purchase Order is continued without any effect on the specified delivery date.
- (c) Disputes or differences arising between the Buyer and the Seller shall preferably be settled quickly and by negotiation at senior management level if required.
- (d) Failing such agreement, the parties agree that the dispute shall be resolved by mediation conducted in accordance with the Australian Institute of Arbitrators and Mediators mediation procedures.

**22. SEVERANCE.** Every provision of these terms and conditions shall be deemed to be severable and if any provision of these terms and conditions shall be void or illegal or unenforceable for any reason then the same shall be severed from the terms and conditions and the remaining provisions shall otherwise be of full force and effect.

**23. LAW.** The applicable law for the interpretation and enforcement of the Purchase Order is that of the state or territory to which the Goods are being delivered or supplied.

**24. CIVIL LIABILITY ACT.** To the extent permitted by law, the provisions of Part 4 of the Civil Liability Act (NSW) 2002 are excluded.

**25. THE NATIONAL CODE OF PRACTICE.** The National Code of Practice for the Construction Industry (the Code) and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, reissued June 2006 (the Guidelines), apply to this project. By agreeing to undertake the works, you will be taken to have read and agree to comply with the Code and Guidelines.