

## 1. Terms of the Contract

- 1.1 These Standard Conditions of Purchase and any other terms and conditions described in the purchase order ("Purchase Order") overleaf, together with the Master Agreement (if any), form the contract ("Contract") between SIMPEC ("Purchaser") and the party identified on the Purchaser Order ("Supplier").
- 1.2 In the Contract, "Goods" and "Services" mean, respectively, the goods and the services (if any) described in the Purchase Order.
- 1.3 The Master Agreement (if any) is the separate written agreement between the parties contemplating the issue by the Purchaser of this Purchase Order and/or similar or related purchase orders. To the extent of any inconsistency between the Master Agreement and these Standard Conditions of Purchase, unless provided otherwise in the Master Agreement, the terms of the Master Agreement prevail.
- 1.4 In providing any Goods or Services, the Supplier shall be deemed to have accepted the terms and conditions of the Contract (as identified in clause 1.1 above) for the purposes of that supply and any Supplier terms and conditions (including any such terms provided with the relevant Goods and/or Services whether printed on accompanying consignment notes or elsewhere) will be of no legal effect and will not constitute part of the Contract except as expressly agreed in writing by the Purchaser (provided always that the Purchaser shall not be deemed to have so agreed in writing merely by signing any Supplier documentation provided with the Goods or Services in taking delivery thereof or by otherwise acknowledging receipt of the Goods or Services whether by payment or other means).
- 1.5 The Contract may not be varied except by agreement in writing.

## 2. Delivery Date(s) and Specification

- 2.1 The Goods and/or Services shall be supplied by the Supplier to the Purchaser on the date(s) specified in this Purchase Order ("Delivery Date(s)") and if no date(s) is/are specified, in a timely manner and in accordance with this Contract including any specification set out or referred to in this Contract.

## 3. Price

- 3.1 The Purchaser must pay the Supplier the price ("Price") stipulated in the Purchase Order for the Goods and/or Services (to be calculated by reference to any rates and quantities set out in this Purchase Order where relevant).
- 3.2 Unless otherwise expressly provided in this Contract, the Price includes the cost of transport insurance (to be paid by the Supplier), all duties, taxes (except GST), packing costs and any other costs and expenses associated with manufacture, completion, transport, supply and offloading of the Goods and/or Services free into store to the address stipulated in this Contract ("Delivery").
- 3.3 Any increase in the cost of manufacture and/or Delivery of the Goods and/or Services between the date of this Purchase Order and the date of Delivery shall be borne by the Supplier.
- 3.4 At any time prior to Delivery of the Goods and/or Services, the Purchaser may direct the Supplier to alter, add to or omit all or part of the Goods and/or Services without cause and for its own convenience and for the purpose of having all or part of the Goods and/or Services provided by another supplier. Unless the parties agree upon a price for such variation the price in respect thereof shall be a reasonable price.

## 4. GST

- 4.1 In this Contract, "GST" means any goods and services tax levied in accordance with the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and the expressions "supply", "tax invoice" and "adjustment event" have the same meanings as in that Act.
- 4.2 The Price is exclusive of GST. The Purchaser must reimburse the Supplier for the amount of any GST payable in respect of any supply made under or in connection with this Contract, subject to the Supplier providing the Purchaser with a tax invoice in respect of that supply.
- 4.3 If there is an adjustment event in relation to the supply:
  - (a) the Supplier must refund to the Purchaser the amount by which the amount reimbursed pursuant to clause 4.2 exceeds the adjusted GST on the supply; or
  - (b) the Purchaser must pay to the Supplier the amount by which the adjusted GST on the supply exceeds the amount reimbursed pursuant to clause 4.2.

## 5. Delivery, Acceptance and Title

- 5.1 Without limiting the Purchaser's rights hereunder or otherwise at law, the Supplier shall:
  - (a) repair or replace any Goods which are damaged or found not to be in accordance with this Contract; and
  - (b) re-perform any Services which are found not to be in accordance with this Contract or which, in the Purchaser's reasonable opinion, fail to comply with the standard of care referred to in clause 9.1(c).
- 5.2 Delivery shall not have taken place and risk in the Goods shall not pass until the Supplier has obtained from the Purchaser or its authorised agent a signed

receipt or delivery docket. Title to the Goods shall pass to the Purchaser on Delivery.

- 5.3 Goods and/or Services will not be considered accepted until they have passed any acceptance tests set out in the Contract and are in conformity with this Contract.
- 5.4 Subject to clause 5.5, Goods and/or Services not required to be tested will be deemed accepted by the Purchaser 7 days after Delivery, unless the Purchaser advises otherwise. The inspection and acceptance referred to in this clause 5 shall be without prejudice to any of the Purchaser's rights and remedies under this Contract or otherwise.
- 5.5 Delivery of any Goods and/or Services will not be acceptable to the Purchaser unless:
  - (a) all Goods are securely packed as required by the Purchaser from time to time so as to prevent damage and allow proper storage and stock control;
  - (b) all boxes, packages, containers, invoices and any other related documentation has a suitably visible delivery notice detailing the Goods and/or Services including Purchase Order number, quantity delivered, product number, part number, code number, serial or asset numbers (where available), the Supplier's name and such other details required by the Purchaser from time to time; and
  - (c) the Supplier has provided all designs, specifications and technical information including installation, operating, repair and maintenance manuals, and all other documents and things specified in this Contract or reasonably required to use the Goods and/or Services for their intended purpose.
- 5.6 The Supplier must, in effecting Delivery of the Goods and/or Services:
  - (a) not interfere with the Purchaser's activities or the activities of any other person at the address specified for Delivery;
  - (b) be aware of and comply with and ensure that the Supplier's employees, officers, agents, advisers or subcontractors (Related Persons) are aware of and comply with:
    - (i) all applicable laws of the Commonwealth of Australia or any Australian State, Territory or local authority including, unless otherwise specified in this Contract, paying any fees, duties, levies, taxes, charges and like payments in respect of compliance with such laws;
    - (ii) all Delivery site standards and procedures, to the extent that they are applicable to the Delivery of the Goods and/or Services by the Supplier; and
    - (iii) all lawful directions and orders given by the Purchaser's representatives or any person authorised by law to give directions to the Supplier;
  - (c) ensure that its Related Persons entering the Purchaser's site(s) perform in a safe manner and are properly qualified for, and skilled in, the performance of their tasks and are of such character as not to prejudice safe working practices, safety and care of property and continuity of work; and
  - (d) not subcontract in whole or any part of the Services without the Purchaser's prior written consent and, notwithstanding any such approval to subcontract, the Supplier shall remain fully responsible for the performance of its obligations under this Contract.

## 6. Time

- 6.1 Where specified in the Contract, the Supplier shall provide written confirmation to the Purchaser prior to any Delivery that Delivery will be made at the required time(s) and place(s).
- 6.2 The Purchaser may by notice in writing given at any time prior to actual Delivery postpone the time for Delivery or require the Supplier to Deliver the Goods and/or Services in instalments.
- 6.3 If the Supplier fails to Deliver the Goods and/or Services by the time stipulated in this Contract, the Supplier must pay the Purchaser any amount payable by the Purchaser under any contract under which the Goods and/or Services are to be on sold, together with any amount stipulated in the contract as liquidated damages in respect of the period thereafter up to the date upon which Delivery is achieved. The Purchaser reserves its rights to claim actual damages for delay where no amount or 'nil' is stipulated for liquidated damages. The Supplier will be entitled to (and the Purchaser shall administer) a reasonable extension to any Delivery Date(s) or periods for Delivery for any act of prevention by the Purchaser.

## 7. Payment

- 7.1 Unless this Contract provides for periodic progress payments or payment by instalments, the Supplier may only submit a payment claim after all of the Goods and/or Services have been Delivered and accepted by the Purchaser.
- 7.2 Where this Contract provides for periodic progress payments or payment by instalments, the Supplier may only submit a payment claim for the amount due in respect of the relevant Goods and/or Services in accordance with the agreed payment regime.
- 7.3 Each claim for payment under the Contract shall take into account all adjustments in accordance with this Contract (or as otherwise agreed in writing by the Purchaser) for the period and in respect of the matters the

- subject of the claim, including without limitation, adjustments agreed by the Purchaser for any variation to the scope of the Goods and/or Services.
- 7.4 If any of the Supplier's employees engaged in the provision of Goods and/or Services are employed in New South Wales (NSW), each claim for payment must be accompanied by a "subcontractor's statement" as required by applicable law.
- 7.5 The Purchaser may issue to the Supplier a statement setting out the amount payable in respect of the payment claim and the reasons for any difference between that amount and the amount claimed.
- 7.6 The Purchaser shall be entitled to deduct from any amount otherwise payable by the Purchaser to the Supplier under this Contract any amount due from the Supplier to the Purchaser (whether under this Contract or otherwise) and/or any additional costs, loss or damage (including, without limitation, any liquidated damages) which the Purchaser has incurred (or which in the Purchaser's reasonable opinion it will incur) or to which it is entitled by reason of any breach, act, omission or default of the Supplier under this Contract .
- 7.7 Provided the Supplier submits any payment claim it is entitled to submit under the Contract by the 25th of a calendar month, the Purchaser shall pay the Supplier the amount due on the payment claim (less any amounts to be deducted by the Purchaser under clause 7.6 above) within 35 days after the end of the month in which the payment claim is submitted. A payment claim submitted after the 25th day but by the end of a month shall be considered to have been submitted in the following month.
- 7.8 If this Contract is a construction contract for the purposes of the Building and Construction Industry Security of Payment Act 1999 (NSW) or the Building and Construction Industry Security of Payment Act 2002 (Victoria):
- any certificate issued by the Purchaser in response to a payment claim is deemed to be a payment schedule for the purposes of the relevant Act; and
  - the authorised nominating authority to whom any adjudication application may be made is the Institute of Arbitrators and Mediators Australia.
- 7.9 Any amount paid by the Purchaser to any subcontractor or supplier of the Supplier pursuant to any notice of claim served on the Purchaser by such subcontractor or supplier under the Contractors Debts Act 1997 (NSW) or the Building and Construction Industry Security of Payment Act 2002 (Victoria) shall be a debt due and payable by the Supplier to the Purchaser.
- 7.10 Without limiting clause 5.5(b), invoices which do not quote a Purchase Order number will not be accepted for payment by the Purchaser.
- 8. Insurance**
- 8.1 The Supplier shall, until acceptance of the Goods by the Purchaser, at its own cost and in a form acceptable to the Purchaser, insure the Goods (and any Materials provided by the Purchaser to the Supplier pursuant to clause 10).
- 8.2 The Supplier shall have in effect for the duration of this Contract the following insurances:
- where required and permitted by law, adequate Workers Compensation insurance, endorsed to insure the Purchaser as principal, for principal's liability in respect of statutory and common law liability and shall further include a waiver of subrogation in favour of the Purchaser;
  - Public and Products Liability insurance for an amount of at least \$20,000,000.00 per occurrence and in the annual aggregate, which is primary and without any right of contribution from any insurance effected by the Purchaser;
  - adequate Motor Vehicle Third Party Liability insurance for all vehicles in the ownership of the supplier; and
  - where the Supplier is providing Services in a professional capacity, adequate Professional Indemnity insurance for an amount of at least \$2,000,000.00 per claim and in the annual aggregate on a claims made basis; and
  - other insurances required by law.
- 9. Warranty and Indemnity**
- 9.1 Without limiting any of the Purchaser's rights, and without limiting any other obligation or warranty provided elsewhere in this Contract, the Supplier hereby warrants to the Purchaser and agrees that:
- the Goods and/or Services correspond to the description in this Contract and conform to all relevant specifications, drawings, samples and/or descriptions set out in this Contract;
  - the Goods and/or Services are fit and sufficient for the purpose for which they are intended;
  - the Goods and/or Services are of the quality specified or, if no quality is specified, in the case of Goods, new and of the best merchantable quality, and in the case of Services, are performed with all due care, skill and diligence, and to the standard that may reasonably be expected of a skilled professional person, suitably qualified and experienced in the provision of the Services or services in the nature of the Services;
  - the Goods are free of all defects and will operate satisfactorily and reliably under all conditions;
  - the Goods are free of all liens and encumbrances and the Supplier has good title to them; and
  - the Goods and/or Services strictly comply with all applicable laws, regulations, standards and codes.
- 9.2 Without limiting any other rights of the Purchaser, where any breach of clause 9.1 by the Supplier exhibits or is identified within 12 months of the date of any Delivery under the Contract, the Supplier shall, at the option of the Purchaser:
- refund the Price (as defined in clause 3.1) for and, where applicable, remove at Supplier's expense, such of the Goods as do not conform with this Contract;
  - repair, modify or replace at the Supplier's expense, such of the Goods as do not conform with this Contract; and/or
  - resupply the Services which, in the reasonable opinion of the Purchaser, do not so conform with this Contract, and the Supplier shall be liable for all resulting costs and expenses incurred by the Purchaser, including but not limited to, where applicable, any costs and expenses incurred by the Purchaser in recovering the Goods, testing them, returning them to the Supplier, reinstalling and recommissioning them.
- 9.3 The Purchaser may, at its option, have any repair, modification or replacement of the Goods or resupply of the Services referred to in clause 9.2 undertaken by a third party or undertake the repair, modification, replacement or resupply itself, and all resulting costs and expenses shall be borne by the Supplier and/or shall be a debt due from the Supplier.
- 9.4 The Supplier shall indemnify, and keep indemnified, the Purchaser, its Related Bodies Corporate and their officers, employees and agents (in this clause referred to as "those indemnified") from and against any cost, loss, damage or liability (including legal costs and expenses on a solicitor/own client basis) reasonably incurred or suffered by any of those indemnified (including without limitation pursuant to any claim, suit, demand, action or proceeding by any person against any of those indemnified) in respect of:
- Any damage to property;
  - Personal injury or death;
  - Infringement of any rights in respect of intellectual property where such loss or liability was caused by; any unlawful or negligent act or omission of Supplier and/or its Related Persons in connection with this Contract or; a breach of this Contract by the Supplier;
  - any liability or costs incurred by the Purchaser as a consequence of the Supplier (or any of the Supplier's staff) being deemed an employee of the Purchaser
- 9.5 The Supplier's liability to indemnify those indemnified under clause 9.4 is reduced proportionally to the extent that any act or omission of Purchaser or its employees or agents contributed to the loss or liability.
- 9.6 Notwithstanding any provision of the Contract to the contrary, but save as provided in clause 6.3, neither party will be liable to the other party in any circumstances for any indirect, special or consequential loss or damage, including but not limited to loss of revenue, loss of production, loss of product, loss or contract or loss of profit howsoever arising and whether in an action in contract, tort (including without limitation, negligence), in equity, product liability, under statute, or on any other basis.
- 10. Materials Supplied by the Purchaser**
- 10.1 The Purchaser shall provide to the Supplier any patterns, designs, specifications, drawings, samples, dies, tools, jigs, technical information, equipment and other materials specified in this Contract (whether in electronic format or otherwise) or which the Purchaser has agreed in writing to provide to enable the Supplier to produce the Goods and/or supply the Services (Materials).
- 10.2 All Materials, and the Purchaser's intellectual property rights therein (if any), remain the property of the Purchaser. The Supplier must return the Materials to the Purchaser within 7 days after Delivery of the Goods and/or Services.
- 10.3 The Supplier must not use the Materials for any purpose except the Delivery of the Goods and/or Services to the Purchaser.
- 11. Design and Specifications**
- 11.1 If the Purchaser reviews design drawings, specifications, construction drawings or workshop drawings or any other documents prepared by or on behalf of the Supplier, gives any approval, direction, or instruction to the Supplier, or provides information to the Supplier, this shall not relieve or reduce the Supplier's liability for the Delivery of the Goods and/or Services in accordance with this Contract, nor release the Supplier from its obligations under clause 9, and shall not restrict the Purchaser's rights and remedies under this Contract or constitute acceptance by the Purchaser that the Supplier has complied with its obligations under this Contract.
- 12. Confidentiality**
- 12.1 The Supplier shall keep confidential the terms of this Contract and the Materials and shall only disclose the same as required by law and to those

of its Related Persons necessary to enable the Supplier to perform this Contract.

### 13. Intellectual Property

- 13.1 In this Contract, "intellectual property" means any intellectual or industrial property whether protected by statute, at common law or in equity, including any patent and patent application, invention, copyright, trade mark, moral right or design right (whether or not registrable and including modifications or improvements to the same), in any design, specification, process, technique, software, computer programs, business names, know how, trade secret, technical information, financial information, business method and confidential information.
- 13.2 The Supplier hereby grants to the Purchaser a perpetual, irrevocable, non-exclusive, royalty-free, transferable licence (with the right to sub-licence) to use all intellectual property (whether owned by the Supplier or not) as required to enable the Purchaser or its Related Bodies Corporate to use the Goods and/or Services in the manner contemplated by the Purchaser.
- 13.3 The Supplier warrants that:
- the Delivery of the Goods and/or Services by the Supplier to the Purchaser and the licence granted by the Supplier pursuant to clause 13.2 does not infringe the intellectual property rights of any third party;
  - the Goods and/or Services are not subject to any intellectual property rights of any third party that in any way restrict the rights of the Purchaser or its customers to use or sell the same; and
  - it has the right to assign all intellectual property to the Purchaser in accordance with clause 13.3.

### 14. Breach and Termination

- 14.1 The Purchaser may terminate this Contract by written notice to the Supplier:
- in its absolute discretion 21 days prior to the date of Delivery stated in the Purchase Order;
  - if the Goods and/or Services are not Delivered by the time(s) stipulated in this Contract, as varied pursuant to clause 6;
  - if the Supplier is in breach of a term of this Contract and fails to remedy the breach within 14 days of the receipt by it of a notice in writing from the Purchaser specifying the breach and requiring the Supplier to remedy it;
  - if the Purchaser is of the reasonable opinion that the Supplier is unable or unwilling to comply with its obligations under this Contract with due diligence or in a competent manner; or
  - if the Supplier becomes bankrupt or makes an assignment of its estate for the benefit of its creditors or makes a composition or other arrangement with its creditors or if, being a company, the Supplier goes into liquidation whether voluntary or compulsory (except for the purposes of reconstruction) or has a receiver appointed over all or any of its assets or if any person or corporation goes into possession of or appoints an agent overall of any of the assets of the Supplier.
- 14.2 Termination of this Contract pursuant to this clause shall be without prejudice to the rights of either party accruing prior to termination.

### 15. Assignment

- 15.1 The Supplier must not assign, sub-licence, sub-contract or transfer in whole or in part any of its interest or obligations under this Contract without the Purchaser's prior written consent, which consent may be granted, withheld or granted subject to conditions in the Purchaser's absolute and unfettered discretion.

### 16. Dispute Resolution

- 16.1 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 this Contract ("Dispute"), either party may by hand or registered post give the other party written notice of dispute identifying and providing details of the Dispute ("Dispute Notice").
- 16.2 On receipt of a Dispute Notice, senior representatives of the parties shall, in good faith, confer to cooperatively resolve the Dispute within 7 days. All aspects of such conference(s) shall be privileged.
- 16.3 Pending resolution of any Dispute, the parties will continue to perform their obligations under this Contract without prejudice to their respective rights and remedies (except where such obligations are the subject of the Dispute).
- 16.4 Except to seek injunctive or urgent declaratory relief, and subject to any agreement to the contrary, neither party may institute legal proceedings in respect of any Dispute unless the dispute resolution process outlined in this clause 16 has first been complied with.

### 17. General

- 17.1 The Purchaser shall have no liability to the Supplier in respect of any matter in connection with this Contract unless the claim together with full

- particulars thereof is lodged with the Purchaser within 21 days of the occurrence of the event(s) or circumstance(s) on which the claim is based.
- 17.2 If any provision or part of any provision of this Contract is unenforceable, such unenforceability shall not affect any other part of such provision or any other provision of the Contract.
- 17.3 Clauses 7, 8, 9, 12, 13 and 14 and all other warranties, indemnities and provisions which expressly or by implication from their nature are intended to survive termination, survive termination of this Contract.
- 17.4 The singular includes the plural (and vice versa) and a reference to any of the words "include", "includes" and "including" are to be read as if followed by the words "without limitation".
- 17.5 Any waiver by the Purchaser of strict compliance with any provision of this Contract shall not be effective unless in writing and signed by an authorised officer of the Purchaser.
- 17.6 Delivery acronyms such as FCA, FOB, CIF used in this Contract shall be interpreted in accordance with INCOTERMS 2000 edition.
- 17.7 This Contract shall be governed by the laws of the Australian State in which the Purchaser accepts the Goods and/or Services and the parties irrevocably agree to submit to the exclusive jurisdiction of the courts of that State and any courts having appellate jurisdiction from them.
- 17.8 No provision of this Contract shall be construed adversely against one party solely on the basis that that party was responsible for the drafting of that provision.