

General Purchasing Terms

Terms and Conditions

1. DEFINITIONS

In these general terms and conditions the following terms shall have the following meanings:

TERMS & CONDITIONS shall mean these general terms and conditions for the purchase of Goods, Works and/or Services along with any appendices and amendments hereto as agreed between ABH and Supplier.

ABH shall mean: AUSTRALIAN BARGE HIRE PTY LIMITED (ACN 119 657 386) with registered address at 8 Northumberland Rd Taren Point NSW 2229

Supplier shall mean the person or entity to whom the PURCHASE ORDER is issued.

PURCHASE ORDER shall mean the order assigned in writing to the Supplier pursuant to which Supplier undertakes to deliver the Goods, Works and/or Services to ABH.

Goods, Works and/or Services: shall mean goods, works and/or services to be rendered by the Supplier as specified in a PURCHASE ORDER.

2. APPLICABILITY, VALIDITY, INTERPRETATION

These TERMS & CONDITIONS shall apply to all requests for proposals, orders, agreements, PURCHASE ORDER and other legal relationships with ABH.

By entering into agreement with ABH Supplier shall be deemed to have waived its own or any other terms and conditions and deviating supplemental clauses, notwithstanding any reference to these or a specific statement concerning them.

These TERMS & CONDITIONS shall govern all subsequent agreements relating to PURCHASE ORDER.

In the event of any ambiguity or contradiction between TERMS & CONDITIONS and

PURCHASE ORDER, the latter shall take precedence.

3. PRICES

All prices are fixed and not subject to revision, escalation or any adjustments, whether on account of inflation, currency fluctuations, cost of labor or materials.

Unless otherwise specified in the PURCHASE ORDER the prices are inclusive of any taxes, duties and other levies as applicable.

The prices mentioned in PURCHASE ORDER may not be changed or adjusted unilaterally by Supplier.

Extra work or extra deliveries can only be charged to ABH if a separate PURCHASE ORDER has been issued in writing.

4. WARRANTIES

4.1 Goods: Conformity and Guarantee

Supplier warrants that the Goods:

- (i) are in all aspects in conformity with requirements and specifications as set out in the PURCHASE ORDER,
- (ii) have been constructed from sound materials,
- (iii) are of good design (if applicable),
- (iv) are suitable for the purpose for which ABH has ordered the Goods,
- (v) are in conformity with the statutory, (flag) state, classification society requirements and other good industry practices.

Above mentioned guarantees shall be valid for a period of:

- (i) 12 (in words: twelve) months from the date the items being put in service,
- (ii) 12 (in words: twelve) months as from assembly date of Goods, or
- (iii) if delivered without being assembled, for a period of 18 (eighteen) months after delivery of Goods.

Supplier warrants that the Goods shall be delivered free and clear of any liens and encumbrances and in this connection, Supplier shall hold ABH harmless and shall indemnify ABH against any claims made by third party.

4.2 Repairs

Supplier shall repair, replace or make good any defect, damage or non-conformity of the Goods or part thereof, provided that such defect, damage or non-conformity has been notified to Supplier by ABH within 12 (twelve) months after acceptance and assembly of Goods or within 18 (eighteen) months after acceptance of Goods.

For repaired or substituted items a new guarantee period of 12 (twelve) months will be applicable from the date the repair works or replacement of Goods have been completed.

Should Supplier fail to repair, replace or remedy such defect or damage within the reasonable timeframe stipulated by ABH, ABH shall be entitled to assign repair works to the third parties at expense of Supplier after giving Supplier a written notification hereof or to reject Goods or any part thereof.

Should there be urgency in rectifying any such defect or damages, ABH may, by notice to Supplier, take any of the actions required to be taken by Supplier or such other actions as are reasonable in circumstances, without in so doing relieving Supplier of any of its obligations. Supplier shall pay all costs incurred by ABH in so doing, plus a fee of an amount equal to 15% of such costs.

ABH reserves right to take over any part of Goods already produced against proven costs.

4.3 Works and Services: Quality and Guarantee

Supplier shall carry out Works and/or Services with due care, diligence and with the skill to be expected of a reputable contractor experienced in the provision of Works and/or Services of the type in question.

Supplier warrants and guarantees that the result of the Works and/or Services will be free from defects and in accordance with provided specifications and drawings if applicable.

In the event ABH notifies Supplier of any defects in the Works and/or Services within 18 (eighteen)

months after completion of the Works and/or Services Supplier shall carry out at its own risk and expense all works necessary to promptly correct any defects in the Works and/or Services.

For correctional work a new guarantee period of 18 (eighteen) months will be applicable from the date that the repair works have been completed.

If repair works are not promptly commenced by Supplier within the reasonable time frame as specified by ABH or should Supplier fail to correct the shortcoming or defects within a reasonable time stipulated by ABH, ABH shall be entitled to have this done by third parties at the expense of Supplier after giving Supplier a written notification hereof.

5. DELIVERY, INSPECTION & OWNERSHIP

5.1 Goods, Works and/or Services

All Goods that shall be delivered, shall be packed properly in conformity with the relevant (transport) regulations and shall be secured in such a way that Goods reach their destination in good condition.

Supplier shall ensure that the packaging, documenting, transportation and delivery of Goods will take place in conformity with the legal prescriptions and required documentation for customs, if applicable.

In the event of non-compliance with this sub clause, ABH shall have the right to reject the Goods without being considered in default of acceptance of such delivery.

Every delivery of Goods shall be supported by:

- (i) a delivery document and/or certificate of origin,
- (ii) PURCHASE ORDER number,
- (iii) specifications of the Goods and their quantities,
- (iv) ABH contact person, if applicable.

The address where the Goods are to be delivered shall be specified in the PURCHASE ORDER.

5.2 Delay

Supplier acknowledges that time is of the essence in execution of the PURCHASE ORDER. Supplier shall notify ABH forthwith of any delay or expected

delay in the execution of the PURCHASE ORDER.

If Goods, Works & Services or any part thereof are not delivered within the timeframe specified in the PURCHASE ORDER or if it appears to ABH that delivery of Goods, Works & Services will not be made within the time specified in the PURCHASE ORDER, ABH may, at its sole discretion, either:

(i) grant an additional timeframe to deliver the Goods or to perform the Works & Services. ABH reserves the right to demand reduction of the PURCHASE ORDER price by way of compensation for damages sustained as result of such delay;

(ii) if delay shall exceed a period as specified in respective PURCHASE ORDER (Allowable delay') - ABH shall be entitled to refuse acceptance of Goods, Works & Services and shall have the right to terminate the PURCHASE ORDER in accordance with clause 6 below.

If no Allowable Delay period is agreed upon it shall be deemed to be 3 (in words: three) consecutive calendar days after agreed delivery date;

(iii) cause the Supplier to ship any part of Goods already produced by the most expeditious means of transportation to the named place of delivery.

Any extra charges in connection with delay on account of Supplier shall be borne by the Supplier.

5.3 Delivery and Acceptance

Goods, Works and/or Services shall be delivered with all necessary data sheets, technical manuals, diagrams, drawings and/or operating instructions.

In the event that ABH is unable to accept delivery of Goods on the agreed date, ABH shall notify Supplier immediately in writing. Supplier shall hold the Goods in a safe custody and shall make every effort to ensure that the quality of Goods does not deteriorate pending actual delivery to ABH.

Unless agreed otherwise the title and risk of loss of Goods, Works and Services shall be transferred to ABH upon acceptance of Goods and/or Works and Services by means of delivery note executed by authorized officers of ABH and Supplier.

It is herewith expressly agreed that the signature of a delivery note or inspection by or on behalf of ABH shall not relieve Supplier of its responsibility and liability with regard to the warranty obligations in respect the Goods, Works and/or Services.

5.4 Free - issue materials

The PURCHASE ORDER may provide for delivery by ABH of material, components, parts or equipment ('Free-issue materials') to Supplier for the purpose of incorporating them into Goods. Title to such Free-issue materials shall remain with ABH at all times regardless of whether said items are incorporated in Goods or Works and whether said items remain separable or not. Free-issue materials shall be marked as being property of ABH and may at any times be reclaimed by ABH.

Supplier shall not lien, charge or encumber Free-issue materials and waives any retention right it may have over Free-issue materials.

Notwithstanding the above, Supplier shall bear the risk of loss in respect of Goods and Works or Services (including Free-issue materials) until such time as the risk of loss passes to ABH.

6. TERMINATION

If Supplier does not perform, not properly perform or untimely performs its obligations under PURCHASE ORDER, ABH shall be entitled to fully or partially terminate the PURCHASE ORDER, by means of serving the termination notice, without any obligation to compensate Supplier.

In the event ABH terminates the agreement as per above provisions ABH will be entitled:

(i) to return the Goods,

(ii) to reject acceptance Works and/or Services,

(iii) to recover or reclaim (part of) the PURCHASE ORDER price,

(iv) to withhold payments due for all costs and expenses reasonably incurred by ABH in order to replace the Goods, Works and/or Services that were not, not timely or not properly delivered/rendered.

ABH shall have the right to cancel or terminate the PURCHASE ORDER with immediate effect by notice in writing to the Supplier in the event of:

(i) an order having been made or resolution passed for the winding up, dissolution, liquidation or bankruptcy of Supplier or if a receiver is appointed or it commences proceedings under any bankruptcy or insolvency laws to seek protection from its creditors,

(ii) a force majeure event lasts more than 72 (seventy-two) hours, without Supplier being allowed to claim any right on compensation for damages, costs or expenses incurred by Supplier as a consequence thereof.

7. INVOICING & PAYMENT

Supplier will invoice ABH for the Goods supplied or Works and/or Services rendered in conformity with the invoice requirements stipulated in PURCHASE ORDER. The invoices shall be specified and make reference to the PURCHASE ORDER number, date of the order, specification of the Goods, Works and/or Services, pricing and quantity, ABH contact person and discounts or reductions (if any).

ABH shall submit payment of an invoice in conformity with the payment conditions set forth in the PURCHASE ORDER. If no payment term has been agreed upon, a term of 14 (fourteen) days after receipt of the invoice by ABH shall apply.

In the event that ABH disputes an invoice, it shall pay the undisputed portion of the disputed invoice to Supplier and shall notify Supplier of the items in dispute.

8. CONFIDENTIALITY

8.1 Supplier shall treat the content of all documents, drawings, specifications or any other data entrusted to him in strict confidence and shall not copy, disclose or pass them on third parties without the express written permission to do so from ABH. Third parties also include affiliates, parent companies and subsidiaries within the ABH group of companies.

Supplier shall take all necessary and appropriate measures to ensure that its personnel adhere to and comply with the confidential provisions of this article.

In case the Supplier shall breach foregoing non-disclosure obligation ABH shall be entitled to reimbursement of damages equal to the amount of AUS \$ 50.000 (in words: fifty thousand) for each time Supplier breaches such non-disclosure

obligation. These damages are directly due for payment to ABH. In addition to the aforesaid contractual damages, ABH may also claim for damages permitted by law.

This clause shall survive termination, expiry or completion of the order contemplated in the PURCHASE ORDER for a period of 5 (five) years.

8.2 Duplication ban

[applicable only where the Equipment has been designed by ABH]

Supplier shall not duplicate or reproduce similar or equally similar Goods, or significant parts hereof by using same or similar design as assigned under PURCHASE ORDER.

The foregoing ban applies only in case if Works and/or Services are based or developed in accordance with specifications, designs, drawings and technical data provided by ABH. Such technical data must exclusively relate to the (modular) business of ABH.

If Supplier direct or indirect breaches obligation as set out in this sub-clause, ABH is entitled to receive damages equal to AUS\$ 500 000 (in words: five hundred thousand) for each time Supplier breaches this obligation. These damages are directly due for payment to Supplier.

In addition to the aforesaid contractual damages, ABH may also claim for damages permitted by law. Supplier shall furthermore indemnify ABH against any loss, damage, cost, expense or claim incurred by ABH as a result of such infringement of this ban. This clause will survive termination, expiry or completion of the order contemplated in this PURCHASE ORDER.

For the avoidance of doubt if Supplier shall receive an enquiry for the production of equipment similar to Works as set out above, Supplier undertakes to disclose the details of such enquiry to ABH so that ABH concurs that the design of such enquiry is not in conflict with ABH design.

9. INDEMNITIES

Supplier shall defend, indemnify and hold harmless ABH for, from and against all losses, damages, costs, liabilities, claims, suits, actions whatsoever sustained, suffered or incurred in connection with: (i) any negligent act or omission of the Supplier in connection with the performance

of the Works/Services or supply of Goods; (ii) the breach by Supplier of any obligation, covenant or warranty hereunder; (iii) bodily injury, sickness or death of Supplier employees or subcontractors, or damages/loss of their property; (iv) any third party claims.

Neither party hereto shall be liable to the other for, and each party hereby agrees to protect and indemnify the other against consequential damages arising out of or in connection with the performance or non-performance under a PURCHASE ORDER, including but not limited to loss of use, loss of profits or loss of production, whether foreseeable or not.

10. INTELLECTUAL PROPERTY

10.1 Neither ABH nor Supplier shall have the right of use, other than for the purposes of the PURCHASE ORDER, whether directly or indirectly, of any patent, copyright, proprietary right or confidential know how, trademark or process provided by the other party and the intellectual property rights in such shall remain with the party providing such patent, copyright, proprietary right or confidential know how, trademark or process.

Where any potential patent or (registered) intellectual property right in any country in the world results from:

(i) developments provided by ABH which are based on data, equipment, processes and substances in the possession of ABH at the effective date of the PURCHASE ORDER or,

(ii) enhancements of the existing intellectual property rights of ABH - such rights shall vest in ABH.

Where any potential patent or (registered) right in any country in the world arises out of the Work and/or Services and is invented during the term of the PURCHASE ORDER-such rights shall vest in ABH unless agreed otherwise in PURCHASE ORDER.

10.2 Indemnifications

Supplier shall save, indemnify, defend and hold harmless ABH from all claims, losses, damages, costs (including legal costs), expenses and liabilities of every kind and nature for, or arising out of, any alleged

infringement of any patent or proprietary or protected right arising out of or in connection with the performance of the obligations of the Supplier under the PURCHASE ORDER except where such infringement necessarily arises from instructions provided by ABH.

11. FORCE MAJEURE

A breach or failure in the performance of the PURCHASE ORDER shall not be attributable to the respective party, if such a breach is the result of fire, strike (outside the party's control and excluding strikes of party's personnel), riot, war, Acts of Gods, governmental order or regulation and any other contingency beyond the reasonable control of the respective party.

In case of Force Majeure the respective party shall notify the other party in writing within 3 (three) working days and furnish the other party with all relevant information thereto.

If a Force Majeure event lasts more than 72 (seventy two) hours commencing notification date either party hereto shall be entitled to terminate the PURCHASE ORDER.

12. ASSIGNMENT AND SUBCONTRACTING

ABH is entitled to assign the PURCHASE ORDER to any affiliate or subsidiary of ABH.

In addition, ABH may make any such assignment to any third party but only with the prior written approval of Supplier which shall not unreasonably be withheld or delayed.

Supplier shall not assign the PURCHASE ORDER or part thereof without the prior approval of ABH which shall not unreasonably be withheld or delayed.

Supplier shall obtain ABH's approval in writing before subcontracting any part of the PURCHASE ORDER to a third party and Supplier warrants that all subcontracts in respect of PURCHASE ORDER shall be subject to these TERMS & CONDITIONS.

13. VARIATION

No variation or amendment to a PURCHASE ORDER shall be effective unless in writing and signed by an authorized representative of each of the parties.

14. INSURANCE

Up to the point at which the legal title and risk of loss passes from Supplier to ABH – the Supplier shall maintain and pay the insurance coverages as necessary to protect: (i) its property, including materials and fabrications, (ii) its personnel, (iii) coverage as necessary to protect the Goods, Works and Services against damages, total loss and third parties liabilities.

The insurance requirements herein shall not limit any insurance required by applicable laws.

15. COMPLIANCE WITH LAWS

Supplier warrants that in performing the PURCHASE ORDER it shall comply with all applicable statutes, laws, regulations, safety, health and environmental restrictions whether local, national or international.

16. GOVERNING LAW

These TERMS AND CONDITIONS are subject to the laws of New South Wales, Australia with disputes to be settled exclusively by the Courts of New South Wales and courts empowered to hear appeals from them.