

Purchase Order General Terms & Conditions



1. Terms and Conditions

- 1.1. These Terms apply to a contract between the Supplier and PBS in respect of the sale of Products and/or Services (as applicable), as described in the Order.
- 1.2. PBS may raise an Order and the Order is not a separate contract but forms part of and must be read together with these Terms.
- 1.3. These Terms supersede any and all other terms and conditions submitted by the Supplier or discussed or negotiated by the parties prior to the acceptance of the Order. No Supplier terms and conditions form part of these Terms.
- 1.4. The Order may contain Special Conditions which apply in addition to these Terms.
- 1.5. The Supplier is deemed to have accepted these Terms once it:
 - a) tells PBS that it accepts the Order submitted by PBS; and/or
 - b) commences the supply of the Services, the subject of the Order; and/or
 - c) delivers the Products, the subject of the Order, whichever occurs first.

2. Supply of Products and/or Services

- 2.1. The Supplier agrees to supply the Products and/or Services to PBS and PBS agrees to purchase the quantities of Products that PBS orders in accordance with clause 4 and these Terms.
- 2.2. The Supplier acknowledges and agrees that time is of the essence in respect of the Supplier's obligations to supply the Products and/or Services.

3. Supply from other sources

- 3.1. The Supplier is not an exclusive supplier to PBS. Nothing in these Terms prevents PBS from acquiring Products that are similar or identical to the Products and/or receiving Services that are similar or identical to the Services from any other supplier at any time.
- 3.2. The Supplier acknowledges and agrees that PBS:
 - a) is not subject to any obligation to purchase a minimum number of Products with the Supplier; and
 - b) has not made any express or implied representation as to the volume or value of Products that it may purchase from the Supplier.

4. Orders

- 4.1. PBS may place an Order with the Supplier from time to time on these Terms (each an **Order**).
- 4.2. PBS must assign a number to each Order it submits (**Order Number**) and notify those Order Numbers to the Supplier. Each party must use the relevant Order Number in all subsequent correspondence relating to the Order.
- 4.3. PBS may at any time before the Delivery Date amend, vary or cancel an Order by written notice to the Supplier.
- 4.4. If PBS amends, varies or cancels an Order, PBS has no liability to the Supplier for any costs incurred by the Supplier in fulfilling the Order.
- 4.5. Each Order must:
 - a) be given in writing or, if given orally, must be confirmed in writing within two (2) Business Days; and
 - b) specify the type and quantity of Products ordered; and/or
 - c) specify the Services to be provided by the Supplier to PBS; and
 - d) specify the Delivery Date by which the Products specified in the Order must be delivered to PBS; and
 - e) specify the Delivery Location.
- 4.6. Each Order constitutes an offer by PBS to purchase the Products and/or Services specified in the Order on these Terms (to the exclusion of any other terms other than those which apply or cannot be excluded by operation of law).
- 4.7. Once an Order is submitted by PBS, the Supplier has two (2) Business Days to accept or reject the Order and may only reject an Order due to stock and/or material shortages. Once an Order is accepted by the Supplier, the Order must be fulfilled and if the Supplier does not fulfil the Order, the Supplier will be liable for any direct loss or expense incurred by PBS in respect of that Order (including, without limitation, to payment for any Products and/or Services ordered by PBS from another supplier relating to that Order).
- 4.8. The Supplier must use best endeavours to fulfil the Order placed by PBS and accepted by the Supplier.
- 4.9. PBS may direct the Supplier to vary the Products and/or Services. The Supplier shall not vary the Products and/or Services except as directed by PBS.

- 4.10. The Supplier shall immediately notify PBS if the Supplier considers that it is not possible for the Supplier to comply with a variation direction given by PBS and shall provide PBS with written notice, along with reasons, for not being able to do so.
- 4.11. If the Supplier considers that a variation will have an effect on the value of the Products and/or Services, the Delivery Date, or if requested by PBS, the Supplier shall:
 - a) within ten (10) Business Days after a variation is directed, submit a statement to PBS advising whether or not a difference in the Price will arise as a result of the directed variation and shall advise PBS of the approximate value of the price variation (such price must be reasonable). A failure by the Supplier to submit a statement in accordance with clause 4.11(a) will remove the obligation of PBS to pay for the variation and the Supplier will bear the cost of the variation itself.
 - b) within ten (10) Business Days of PBS receiving the statement referred to in clause 4.11(a) from the Supplier, PBS will authorise, respond or reject the Supplier's statement relating to the variation, including the price variation.
- 4.12. The Supplier is not allowed to cease the supply of the Products and/or Services whilst the Supplier is waiting for a response from PBS to the claim for a variation.
- 4.13. The Supplier shall not be entitled to claim any payment for any variation unless PBS has directed the Supplier in writing to proceed with the variation.
- 4.14. If the variation direction results in a reduction or omission of any of the Products and/or Services, PBS may have the reduced or omitted part of the Products and/or Services (as applicable) performed by itself or a third party in its absolute discretion.

5. Warranties and Quality of Products

- 5.1. The Products and/or Services supplied by the Supplier to PBS under these Terms must:
 - a) match the description in the Order;
 - b) conform to the Specifications;
 - c) be new and unused;
 - d) be of merchantable quality and fit for purpose held out by the Supplier;
 - e) be free from Defects in design, material and workmanship and remain so for the Warranty Period;
 - f) be supplied with all manufacturing data records as prescribed by PBS or at least to industry standard requirements (including Australian Standards);
 - g) comply with all applicable statutory and regulatory requirements (including Australian Standards);
 - h) and
 - i) be provided to PBS with full unencumbered title to the Products (including any materials) and must be supplied free of liens, charges or other encumbrances.
- 5.2. The Supplier warrants and represents to PBS that the Supplier is suitably qualified and experienced and will at all times exercise the degree of skill, care, diligence and expertise expected of a competent supplier of the Products and/or Services.
- 5.3. The Supplier must comply with all applicable laws, enactments, orders, regulations and other instruments relating to the manufacturing, supplying, packing, packaging, marking, storing, handling and delivery of the Products and/or Services.
- 5.4. The Supplier must manufacture, pack and supply the Products and/or Services in accordance with all generally accepted industry standards and practices that are applicable.
- 5.5. The Supplier must obtain and maintain all licences, permissions, authorisations, consents and permits needed to manufacture and supply the Products and/or Services in accordance with these Terms.
- 5.6. The Supplier will comply with all directions of PBS and the timetable of PBS for the supply of the Products and/or Services.
- 5.7. PBS will have the benefit of all manufacturer's warranties applicable to the Products and/or Services on Delivery.
- 5.8. If PBS gives reasonable notice of any Defect or omission discovered in the Products and/or Services during the Warranty Period, the Supplier must correct that Defect or omission without delay and at no cost to PBS. If the Supplier is required to make good any defect or omission in the Products and/or Services, then the Warranty Period shall be extended for a further twelve (12) months in relation to the affected Products and/or Services.

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6. Delivery

- 6.1. The Supplier must deliver each Order:
 - a) to the Delivery Location;
 - b) on the Delivery Date;
 - c) between 7:00am and 5:00pm on a Business Day unless specified otherwise by PBS.
- 6.2. PBS may direct the Supplier to deliver the Products and/or Services on a different Delivery Date or to a different Delivery Location and if the Supplier can reasonably comply, it will do so at its expense. If the Supplier cannot reasonably comply, it will immediately notify PBS in writing with reasons.
- 6.3. Unless otherwise agreed in writing, the Supplier will arrange for the freight of the Products to the Delivery Address and the cost of delivery, including the cost of insurance during freight, is included in the Price.
- 6.4. PBS may direct the Supplier to use its preferred carrier for delivery of the Products. A failure to comply with the transport mode as advised by PBS in the Order may render a cost variation, at the Supplier's expense.
- 6.5. Delivery is completed when the Order is deemed to have been accepted by PBS under clause 7.
- 6.6. The Supplier may deliver Orders by instalments and invoice PBS separately for each instalment.
- 6.7. If an Order is not delivered on the specified Delivery Date, without limiting any other right or remedy PBS may have, PBS may:
 - a) refuse to take any subsequent attempted delivery of the Order;
 - b) terminate these Terms with immediate effect; and
 - c) subject to clause 6.8, recover from the Supplier any costs, expenses or losses resulting from the Supplier's failure to deliver the Order on the Delivery Date.
- 6.8. PBS will not be obliged to accept and pay for any Products and/or Services delivered later than the Delivery Date.
- 6.9. The Supplier must, in respect of each Order, provide a delivery note, packing note or invoice that shows the:
 - a) Order Number;
 - b) date of the Order;
 - c) type and quantity of Products included in the Order;
 - d) a description of the Services to be provided pursuant to the Order;
 - e) a description of the supplies and consignment details;
 - f) in the case of an Order being delivered by instalments, the outstanding balance of Products and/or Services remaining to be delivered.
- 6.10. The Supplier must ensure that the Products are properly packed and secured in a manner to avoid damage in transit and to enable them to reach their destination in good condition. If requested by PBS, environmentally friendly packaging material shall be used where practicable.
- 6.11. Packaging materials become the property of PBS at the same time as the Products.
- 6.12. If the Supplier is or will be delayed in supplying the Products and/or Services by the Delivery Date, the Supplier must immediately notify PBS in writing and provide details.
- 6.13. If the Supplier's delay is caused by an event outside of its reasonable control, PBS shall provide a reasonable extension of time to the relevant Delivery Date.
- 6.14. The Supplier shall be liable to PBS for any loss, damage, cost, expense or other liability suffered or incurred by PBS resulting from the Supplier's failure to supply the Products and/or Services within the timeframe required by this Agreement (as adjusted in accordance with clause 6.13).

7. Acceptance and Defective Products and/or Services

- 7.1. Acceptance of the Products and/or Services are subject to them passing all testing and inspections required by PBS after Delivery. For the avoidance of doubt, payment shall not constitute acceptance of the Products and/or Services.
- 7.2. If any Products and/or Services delivered to PBS do not comply with clause 5.1 or any other term of these Terms, without limiting any right or remedy that PBS may have, PBS may:
 - a) reject the Products and/or Services as Defective;
 - b) elect for the Supplier to, within the time requested by PBS:

- i) replace the rejected Products and/or Services or supply equivalent Products and/or Services;
 - ii) repair the rejected Products and/or Services;
 - iii) reimburse PBS for the cost of replacing the rejected Products and/or Services or of acquiring equivalent Products and/or Services; or
 - iv) reimburse PBS for the cost of repairing the rejected Products and/or Services; and
- c) claim damages for any other costs, expenses or losses resulting from the Supplier's delivery of Products and/or Services that do not conform with these Terms.

- 7.3. PBS may at any time prior to the expiration of the Warranty Period reject the Products and/or Services if PBS is of the view that the Products and/or Services are Defective or do not meet the requirements as set out in the Order.
- 7.4. The rights and remedies of PBS under this clause 7 are in addition to the rights and remedies available to it in respect of the statutory conditions implied by the *Sale of Products Act 1923* (NSW) and/or the *Competition and Consumer Act 2010* (Cth).
- 7.5. These Terms apply to any repaired or replacement Products and/or Services supplied by the Supplier.

8. Title and Risk

- 8.1. Subject to clause 6.5, risk in the Products, including the risk of loss or damage to the Products, shall remain with the Supplier and will only pass to PBS on Delivery to PBS or its nominated agent.
- 8.2. Title to the Products passes to PBS on the earlier of Delivery of the Products or payment being made to the Supplier for the Products. The Supplier must not claim or register any interest (including any Security Interest) in the Products.

9. Pricing

- 9.1. Prices will be as per the Supplier's price list or as quoted by the Supplier. The Price must be approved in writing by PBS before acceptance of the Order by PBS and before the dispatch of the Order or the commencement of the supply of the Services. PBS will not be liable for any costs associated with the Products and/or Services which have not been approved in writing.
- 9.2. Unless otherwise agreed in writing between the parties, the Price is inclusive of the costs of packing, insurance and delivery of the Products, which must be paid by PBS.
- 9.3. If requested by the Supplier and agreed by PBS, a Deposit may be required to be paid by PBS to the Supplier for the Order.
- 9.4. If a Deposit is payable by PBS to the Supplier pursuant to clause 9.3, the Deposit will be held by the Supplier until PBS accepts the Products in accordance with clause 7 and the Supplier will apply the Deposit to any undisputed amounts owing by PBS to the Supplier.

10. GST

- 10.1. Words and phrases used in this clause 10 that have defined meanings in the GST Law have the same meaning as in the GST Law, unless the context indicates otherwise.
- 10.2. Unless expressly stated otherwise, the consideration for any supply under or in connection with these Terms is exclusive of GST.
- 10.3. If a supply made under these Terms is a taxable supply, the recipient of that taxable supply (**Recipient**) must, in addition to any other consideration, pay to the party making the taxable supply (**Taxable Supplier**) the amount of GST in respect of the supply. The Recipient will only be required to pay an amount of GST to the Taxable Supplier if and when the Taxable Supplier provides a valid tax invoice to the Recipient in respect of the taxable supply. If there is an adjustment to a taxable supply made under these Terms, then the Taxable Supplier must provide an adjustment note to the Recipient.

11. Payment Terms

- 11.1. If the applicable Australian security of payment legislation (**SOPA**) does not apply with respect to the supply of Products and/or Services, then clauses 11.2 to 11.5 will apply. If SOPA applies with respect to the supply of the Products and/or Services, then clauses 11.6 and 11.7 will apply.

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- 11.2. The Supplier may give PBS an Invoice for each Order on or at any time after Delivery.
- 11.3. With respect to each Invoice given under clause 11.2, the Supplier must:
- quote the relevant Order Number;
 - the amount claimed by the Supplier; and
 - a detailed description of the Products and/or Services, including the Delivery Date and the relevant quantity of the Products.
- 11.4. If PBS requests, the Supplier must provide PBS with all relevant records to calculate and verify the amount set out in any Invoice provided by the Supplier under clause 11.2.
- 11.5. PBS will pay any undisputed portion of the Invoice issued under clause 11.2 within thirty (30) days from the end of the month in which an Invoice is received by PBS.
- 11.6. If SOPA applies with respect to the Products and/or Services and unless otherwise agreed between the parties:
- the Supplier must, upon Delivery of the Products and/or Services (unless otherwise agreed between the parties), submit a payment claim which complies with the requirements of SOPA; and
 - PBS will assess the payment claim within the time period required by SOPA and pay the Supplier the amount assessed by PBS within the time period required by SOPA.
- 11.7. PBS may withhold from payment to the Supplier any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on PBS pursuant to SOPA.
- 11.8. Payment must be made to the bank account nominated in writing by the Supplier.
- 11.9. Any undisputed amounts owed by PBS to the Supplier under these Terms become due and payable within thirty (30) days of termination of these Terms for any reason.

12. Set-off

- 12.1. Despite anything else to the contrary in these Terms, PBS is authorised to deduct any amount due and payable by the Supplier from amounts otherwise due and payable by PBS under or in connection with these Terms.
- 12.2. Any exercise by PBS of its rights under clause 12.1 does not limit or affect any other rights or remedies available to it under these Terms or otherwise.

13. Insurance

- 13.1. The Supplier must, prior to providing the Products and/or Services, take out and maintain, at its own expense, the following insurance policies with reputable insurance companies:
- products insurance covering the Products for their full replacement value against loss or damage, including loss or damage in transit to the Delivery Location, and unloading the Products;
 - if the Services include any design or consulting, a professional indemnity insurance policy for an amount not less than \$10 million per occurrence, to be maintained for such time period as requested by PBS;
 - public liability insurance (which includes coverage for liability to third parties for death, injury or damage) with a limit of at least \$20 million per occurrence;
 - workers' compensation and employer's liability insurance, covering all claims and liabilities for the death, injury or illness of or to any person employed by (or deemed to be employed by, the Supplier; and
 - any other insurance required by law or which is required by PBS, acting reasonably.
- 13.2. All insurances required under clause 13.1, with the exception of the insurance required at clause 13.1(d), shall be maintained until the later of:
- the Products and/or Services being accepted by PBS; or
 - the expiration of the Warranty Period.
- 13.3. The insurance required under clause 13.1(d) shall be maintained for so long as the Supplier's Personnel or those for whom the Supplier is responsible for are located at the Delivery Location.
- 13.4. On taking out and on renewing each insurance policy referred to in clause 13.1, the Supplier must promptly send to PBS in respect of each policy:
- a copy of the certificate of currency;
 - details of the cover provided; and

- evidence of payment of the premium.
- 13.5. The Supplier must:
- not do anything to invalidate any insurance policy or to prejudice PBS' entitlement under it; and
 - notify PBS if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.
- 13.6. If the Supplier fails or is unable to maintain insurance in accordance with clause 13.1, or fails to provide evidence that it has paid the current year's premiums in accordance with clause 13.4, PBS may, so far as it is able, purchase such alternative insurance cover as it deems to be reasonably necessary and is entitled to recover all reasonable costs and expenses it incurs in doing so from the Supplier.

14. Compliance with laws and policies

- 14.1. In performing its obligations under these Terms, the Supplier must comply with all applicable laws, statutes, regulations, regulatory policies, guidelines or industry codes from time to time in force.

15. Work Health and Safety

- 15.1. This clause 15 will apply if the Supplier's Personnel are required to be on or near the Site for the purposes of the supply of Products and/or Services.
- 15.2. The Supplier shall promptly comply, and shall at all times during the supply of the Products and/or Services under the Order, take all measures and precautions necessary to ensure all Products and/or Services are in accordance with the Order and the Supplier's Personnel comply with all work health and safety legislation, regulations, codes of practice and Site Procedures which apply.
- 15.3. The Supplier acknowledges and agrees that the Supplier has complete control of and responsibility for the manner in which the Products and/or Services are supplied and all matters arising out of or as a consequence of the supply of Products and/or Services.
- 15.4. Without limiting the Supplier's obligations under any provisions of these Terms, where PBS is or has engaged another entity as principal contractor under the *Work Health and Safety Regulation 2017* (NSW), the Supplier must comply with any directions given by the principal contractor exercising its lawful authority as principal contractor.
- 15.5. The Supplier must comply with all Site Procedures advised to it by PBS and will promptly notify PBS of any accident, injury or property damage which occurs at the Site whilst delivering the Products and/or Services.
- 15.6. In supplying the Products and/or Services, the safety of the Supplier's Personnel whilst on the Site shall be the responsibility of the Supplier and the Supplier indemnifies PBS, its officers, employees and agents from any death, injury, damage, expense, cost, charge, loss or liability arising from the Supplier's non-observance of any requirements under this clause 15.
- 15.7. The Supplier warrants it will do all things necessary to ensure the health, safety and welfare of the Supplier's Personnel.

16. Indemnity

- 16.1. The Supplier indemnifies PBS, its officers, employees, representatives and agents, against any losses, liabilities, costs, charges or expenses and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses suffered or incurred by PBS arising (whether directly or indirectly) out of or in connection with:
- any breach of any warranty of the Order by the Supplier and/or the Supplier's Personnel;
 - any failure by the Supplier and/or the Supplier's Personnel to deliver the Products and/or Services in accordance with the terms of the Order and these Terms;
 - the Supplier's breach or negligent performance or failure or delay in performance of these Terms;
 - damage to or destruction of any property belonging to PBS or any other person; and
 - any claim made against PBS by a third party:
 - for actual or alleged infringement of a third party's Intellectual Property Rights arising out of the

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- supply of the Products and/or Services and/or use of the Products;
- ii) for death, personal injury or damage to property resulting from Defective Products and/or Services; or
- iii) to the extent that the claim results from the breach, negligent performance or failure or delay in performance of these Terms by the Supplier.
- f) injury to or death of any person caused or contributed to by the Supplier and/or the Supplier's Personnel.

16.2. The indemnity in this clause 16 will apply whether or not PBS has been negligent or at fault.

17. Confidentiality

17.1. Each party (**Recipient**) must keep secret and confidential and not disclose any information relating to another party or its business (which is or has been disclosed to the Recipient by the other party, its representatives or advisers), these Terms (**Confidential Information**), except:

- a) where the information is in the public domain as at the date of these Terms (or subsequently becomes in the public domain other than by breach of any obligation of confidentiality binding on the Recipient);
- b) if the Recipient is required to disclose the information by applicable law or the rules of any recognised stock exchange or other document with statutory content requirements, provided that the Recipient has to the extent practicable having regard to those obligations and the required timing of the disclosure consulted with the provider of the information as to the form and content of the disclosure;
- c) where the disclosure is expressly permitted under these Terms;
- d) if disclosure is made to its officers, employees and professional advisers to the extent necessary to enable the Recipient to properly perform its obligations under these Terms, in which case the Recipient must ensure that such persons keep the information secret and confidential and do not disclose the information to any other person;
- e) where the disclosure is required for use in legal proceedings regarding these Terms; or
- f) if the party to whom the information relates has consented in writing before the disclosure.

17.2. Each Recipient must ensure that its directors, officers, employees, agents, representatives and Related Bodies Corporate comply in all respects with the Recipient's obligations under this clause 17.

18. Force majeure

18.1. In these Terms, Force Majeure Event means any circumstance not in a party's reasonable control including, without limitation:

- a) acts of God, flood, drought, earthquake or other natural disaster;
- b) epidemic or pandemic;
- c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo or breaking off of diplomatic relations;
- d) nuclear, chemical or biological contamination, or sonic boom;
- e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
- f) collapse of buildings, fire, explosion or accident;
- g) any labour or trade dispute, strikes, industrial action or lockouts; and
- h) interruption or failure of utility service.

18.2. A party that is prevented, hindered or delayed in or from performing any of its obligations under these Terms by a Force Majeure Event (**Affected Party**) must:

- a) as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and

- b) use reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

18.3. Provided it has complied with clause 18.2, the Affected Party is not in breach of these Terms or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations is extended accordingly.

18.4. The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

18.5. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than two (2) months the party not affected by the Force Majeure Event may terminate these Terms by giving one (1) weeks' written notice to the Affected Party.

19. Default and Termination

19.1. If the Supplier commits a substantial breach of the Order or these Terms, PBS may issue it with a written notice to show cause which states:

- a) the alleged substantial breach;
- b) that the Supplier is required to rectify it; and
- c) the time by which the Supplier must do so.

19.2. If the Supplier fails to rectify a default to the satisfaction of PBS by the required time, PBS may immediately terminate the Order and these Terms by written notice to the Supplier.

19.3. Notwithstanding the remainder of this clause 19, if the Supplier commits a substantial breach of the Order and these Terms that is incapable of remedy or the Supplier suffers an Insolvency Event, PBS may immediately terminate the Order and these Terms by written notice to the Supplier.

19.4. PBS may:

- a) at any time, for its convenience and by written notice to the Supplier, terminate the Order and these Terms effective from the time stated in the notice; and
- b) thereafter procure some or all undelivered Products and/or Services from others.

19.5. If PBS terminates the Order and Terms under clause 19.4, it must pay the Supplier the applicable portion of the Price for the Products and/or Services delivered and accepted by PBS up to the date of termination and the Supplier is not entitled to any other compensation in respect of the termination.

19.6. The following clauses survive termination or expiry of these Terms together with any other term which by its nature is intended to do so:

- a) clause 13 (Insurance);
- b) clause 15 (Work Health and Safety);
- c) clause 16 (Indemnity);
- d) clause 17 (Confidentiality);
- e) clause 19 (Default and Termination);
- f) clause 20 (Personal Properties & Securities Act);
- g) clause 21 (Dispute resolution); and
- h) **Error! Bookmark not defined.**22.11 (Governing law and jurisdiction).

19.7. Termination of the Order and these Terms does not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right of PBS to claim damages for any breach of the Order and these Terms that existed at or before the date of termination.

20. Personal Properties & Securities Act

20.1. This clause applies if PBS makes payment for the Products and/or Services in advance, in full or in part, before delivery of the Products and/or Services by the Supplier (**Payment in Advance**).

20.2. The Supplier must keep the Products and/or Services paid for in advance separately stored and marked as the property of PBS.

20.3. The Supplier must not do any of the following in relation to any of the Products and/or Services paid for in advance by PBS except where expressly permitted by this Agreement:

- a) create or allow any interest in, or dispose or part with possession of, the Products and/or Services paid for in advance by PBS;
- b) allow the Products and/or Services paid for in advance by PBS to be taken outside Australia; or

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- c) allow the Products and/or Services paid for in advance by PBS to become an accession to or commingled with any other property.
- 20.4. If the Supplier sells or disposes of any Products and/or Services paid for in advance by PBS, the Customer will hold the proceeds of sale or disposal on trust for PBS to secure repayment of the Payment in Advance and/or delivery of the Products and/or Services. The Supplier must pay all monetary proceeds, up to the amount owed, into a separate account until they are paid over to PBS and must not mix them with any other amount or use them to pay a debt.
- 20.5. The Supplier grants PBS and its representatives an irrevocable licence to enter any land or premises for the purpose of inspecting, seizing or otherwise enforcing PBS' rights in respect of the Products and/or Services under this Agreement and indemnifies PBS for any claims for damage to property or personal injury as a result of exercising those rights. If PBS seizes or retakes possession of any Products and/or Services, it may deal with them as it thinks fit.
- 20.6. A term defined in the PPSA has the same meaning when used in this clause 20.
- 20.7. This Agreement is a security agreement for the purposes of the PPSA. The Supplier acknowledges that it has granted PBS a Security Interest in the cash comprised in the Payment in Advance and the Products and/or Services being purchased by PBS and their proceeds, which is a purchase money security interest, to the extent that it secures the return of the cash which comprises the Payment in Advance and/or delivery of the Products and/or Services purchased by PBS.
- 20.8. The Supplier also grants PBS a Security Interest in all of the Supplier's present and after acquired property and any proceeds as security for performance of the Supplier's obligations under this Agreement until:
 - d) PBS receives repayment of the cash comprising the Payment in Advance; or
 - e) the Products and/or Services ordered by PBS have been delivered to PBS and accepted by PBS in accordance with clause 7.
- 20.9. The Supplier acknowledges that PBS may do anything reasonably necessary, including but not limited to, registering its Security Interest on the PPSR established under the PPSA in order to perfect this Security Interest and comply with the requirements of the PPSA. The Customer agrees to do all things reasonably necessary to assist the Company to achieve perfection of this Security Interest under the PPSA.
- 20.10. The Supplier waives its right to receive any notice (including notice of a verification statement) that is required by the PPSA unless the notice is required by the PPSA and cannot be excluded.
- 20.11. The Supplier agrees not to exercise its rights to make any request of PBS under section 275 of the PPSA. This does not limit the Supplier's rights to request information other than under section 275 of the PPSA. Neither the Supplier nor PBS will disclose any information of the kind mentioned in section 275(1) of the PPSA unless section 275(7) of the PPSA applies.
- 20.12. To the extent permitted by law, the parties contract out of and the Supplier waives its rights under the following provisions of Chapter 4 of the PPSA:
 - a) section 95 (notice of removal of accession), to the extent that it requires PBS to give a notice to the Supplier;
 - b) section 96 (when a person with an interest in the whole may retain an accession)
 - c) section 121(4) (enforcement of liquid assets - notice to grantor);
 - d) section 125 (obligation to dispose of or retain collateral);
 - e) section 130 (notice of disposal), to the extent that it requires PBS to give a notice to the Supplier;
 - f) section 132(3)(d) (contents of statement of account after disposal);
 - g) section 132(4) (statement of account if no disposal);
 - h) section 142 (redemption of collateral); and
 - i) section 143 (reinstatement of security agreement).

21. Dispute resolution

- 21.1. Except for a payment dispute in relation to clause 11.6 and 11.7, if a dispute arises out of or in connection with the Order and/or these Terms, or the performance, validity or enforceability of it

(Dispute) then except as expressly provided for in these Terms, the parties must comply with the procedure set out in this clause 21.

- 21.2. Either party may give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents.
- 21.3. On receipt of a Dispute Notice:
 - a) the Supplier and PBS must attempt in good faith to resolve the Dispute;
 - b) if the Supplier and PBS are for any reason unable to resolve the Dispute within fourteen (14) days, the parties agree to endeavour in good faith to settle the Dispute by mediation administered by the Australian Commercial Disputes Centre. To initiate the mediation, a party must serve notice in writing (**Mediation Notice**) to the other party to the Dispute, requesting a mediation. The mediation will start not later than fourteen (14) days after the date of the Mediation Notice.
- 21.4. Subject to clause 21.5, no party may commence any court proceedings in relation to the whole or part of the Dispute until fourteen (14) days after service of the Mediation Notice, provided that the right to issue proceedings is not prejudiced by a delay.
- 21.5. This clause 21 is not intended to prevent any party from seeking urgent injunctive or similar relief.

22. General

- 22.1. The Order and these Terms constitutes the entire understanding between the parties and supersedes all prior agreements, understandings and communications, whether written or oral.
- 22.2. The Agreement operates as a 'standing agreement' and each Order shall constitute a separate contract for supply of the Products and/or Services between the parties and PBS may enforce its rights under this Agreement, against an Order, multiple Orders or the Agreement as a whole.
- 22.3. Unless the parties enter into a new agreement, this Agreement will govern the future supply of Products and/or Services to PBS and each Order constitutes a separate contract for the supply of the Products and/or Services and the breach of any one such contract will be deemed a breach of the Agreement as a whole, and may be enforced jointly or severally at the sole discretion of PBS.
- 22.4. Any variation of the Order and these Terms only has effect if it has been agreed between the parties in writing.
- 22.5. All waivers must be in writing. A single or partial exercise or waiver by a party of a right relating to these Terms does not prevent any other exercise of that right or the exercise of any other right.
- 22.6. PBS may assign or transfer its rights and obligations under these Terms to another entity but will always notify the Supplier. The Supplier may only assign or transfer their rights or obligations under these Terms to another entity or person if PBS agrees in writing. A breach of this clause entitles PBS to terminate the Order and these Terms.
- 22.7. If any provision of these Terms is illegal or unenforceable in any relevant jurisdiction, it must be enforced to the maximum extent possible, and if unenforceable may be severed for the purposes of that jurisdiction, without affecting its enforceability in any other jurisdiction or the enforceability of any other part of these Terms.
- 22.8. The Supplier must not, without the prior written consent of PBS, subcontract the whole or any part of its obligations under the Order or these Terms.
- 22.9. The Order and these Terms does not create a relationship of employment, agency or partnership between the Supplier and PBS.
- 22.10. Time is of the essence in respect of all amounts payable pursuant to these Terms.
- 22.11. These Terms are governed by and is to be construed in accordance with the laws applicable in New South Wales, Australia.

23. Definitions and interpretation

- 23.1. Capitalised terms or expressions used in these Terms have the meanings set out in this clause:

Affected Party: has the meaning given in clause 18.2.
Agreement: means:

Purchase Order General Terms & Conditions



- a) any Special Conditions;
- b) the Order; and
- c) these Terms.

Approvals: means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by these Terms.

Authority: means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person.

Business Day: a day on which banks are open for business in Sydney, other than a Saturday, Sunday or public holiday in that city.

Confidential Information: has the meaning given in clause 17.1.

Corporations Act: the *Corporations Act 2001* (Cth).

Defect/Defective: means Products and/or Services (or any aspect of them) which are not in accordance with an Order or which are damaged, deficient, faulty, inadequate or incomplete, in the sole opinion of PBS.

Delivery: completion of delivery of a Purchase Order in accordance with 6.5.

Delivery Date: the date specified for delivery of an Order in accordance with clause 4.5(d) or as otherwise agreed between the parties in writing.

Delivery Location: the location specified for delivery of an Order in accordance with 4.5(e) or as otherwise agreed between the parties in writing.

Deposit: means the amount agreed between the Supplier and PBS (if any) which is stated in an Order or any other document which is required to be paid by PBS at the time the Order is placed by PBS or accepted by the Supplier.

Dispute: has the meaning given in clause 21.1.

Dispute Notice: has the meaning given in clause 21.2.

Force Majeure Event: has the meaning given in clause 18.1.

Government Agency: any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.

GST: has the same meaning given in GST Law.

GST Law: has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means the happening of any one of the following events in relation to the Supplier:

- a) the Supplier voluntarily or involuntarily suspends the payment of its debts;
- b) where the Supplier is a body corporate, it becomes an externally administered body corporate under the Corporations Act or steps are taken towards it becoming an externally administered body corporate which are not withdrawn or dismissed within fourteen (14) days, or a controller (as that expression is defined by the Corporations Act) is appointed to the Supplier or steps are taken for the appointment of a controller which are not reversed or abandoned within fourteen (14) days, or the Supplier is taken to have failed to comply with the statutory demand within the meaning of section 459F of the Corporations Act;
- c) where the Supplier is a natural person, the Supplier commits an 'act of bankruptcy' as the expression is defined in the *Bankruptcy Act 1966* (Cth).

Intellectual Property Rights: all intellectual property rights of any kind, in any jurisdiction, subsisting now or in the future (including, without limitation, business, company or trade names, domain names, patents, inventions, copyright, design rights, know-how, trade marks, the right to sue for passing off and rights to use, and protect the confidentiality of, confidential information), whether registered or unregistered, and including the rights to apply for or renew the registration of any such rights and any rights the subject of any lapsed application or registration.

Invoice: means a valid invoice issued by the Supplier to PBS with respect to an Order.

Mediation Notice: has the meaning given in clause 21.3(b).

Order: each written purchase order for Products and/or Services submitted by PBS and accepted by the Supplier in accordance with clause 4.

Order Number: the reference number to be applied to each Order by the Supplier in accordance with clause 4.2.

PBS: means Protector Building Systems Pty. Limited (ACN 003 633 314).

PPSA: means the *Personal Properties Security Act 2009* (Cth); and

PPSR: means the Personal Properties Security Register.

Price: the price shown on the Order, Invoice or any other document which is payable by PBS to the Supplier for the Products and/or Services, including any costs of packing, insurance and delivery of the Products and/or Services (unless otherwise agreed between the parties).

Products: the goods and other associated materials supplied or to be supplied by the Supplier under this Agreement including product which is the output of any Services to be provided by the Supplier.

Project: means the project set out in the Order or any other document presented by PBS to the Supplier.

Recipient: has the meaning given in clause 17.1.

Related Bodies Corporate: has the same meaning as set out in section 50 of the Corporations Act.

Security Interest: has the meaning given in the PPSA.

Services: means the services provided or to be provided by the Supplier under this Agreement.

Site: means a site specified by PBS in writing and approved by PBS from which it will use or store the Products or where any Project of PBS is being performed.

Site Procedures: means the Approvals, policies and procedures with respect to the Site.

Special Conditions: means any special conditions set out in an Order.

Specification: the specification of the Products and/or Services set out in any Purchase Order.

Supplier: means the supplier of the Products and/or Services as specified in the Order or any other document.

Supplier's Personnel: means the Supplier and any of its employees, subcontractors, contractors, agents and representatives involved in the provision of the Products and/or Services.

Terms: means these Terms and Conditions and any Special Conditions or any other terms set out in an Order.

Warranty Period: means the period thirty-six (36) months after the Products and/or Services have been delivered to PBS or twelve (12) months from the date which PBS accepts the Products and/or Services, whichever is longer.

23.2. In these Terms, the following rules of interpretation apply, unless the contrary intention appears, or the context otherwise requires:

- a) a reference to the singular includes the plural and vice versa;
- b) a reference to a given gender includes all other genders;
- c) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- d) use of the word including and similar expressions are not, nor are they to be interpreted as, words of limitation;
- e) a reference to a person includes a natural person, a company or other entities recognised by law;
- f) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- g) all references to parties are to the parties to these Terms;
- h) a reference to a party includes the party's executors, administrators, successors and permitted assigns;
- i) where any obligation is imposed on, or any benefit takes effect for, two or more persons, the obligation binds, or takes effect for the benefit of (as the case may be) those persons jointly and each of them severally;
- j) any word not defined in these Terms will be given its meaning set out in other components of these Terms or, if not otherwise define, its ordinary and natural meaning;
- k) the headings are for ease of reference only and do not affect the interpretation of these Terms; and
- l) in the event of inconsistency, the following order of priority should apply to the agreement between the Supplier and PBS:
 - i. the Special Conditions;
 - ii. the Purchase Order;
 - iii. these Terms.