

PURCHASE ORDER TERMS AND CONDITIONS

1. INTERPRETATIONS

1.1 Definitions

"Claim" means all claims, demands, proceedings, liabilities, costs, legal costs, charges and expenses of any kind.

"Customer" means the Emerald Grain entity nominated in the Purchase Order, or if no entity is nominated, Emerald Grain Pty Ltd ABN 82 109 203 054.

"day" means a calendar day

"FOT" means, in relation to delivery of the Goods, free on truck (or other transport) and includes the responsibility (and associated costs) for packing, loading, transportation and insurance (for the full replacement value of the Goods) to the nominated delivery point for the Goods.

"Goods" means all goods, equipment, materials, articles, or any other property or parts to be provided to the Customer by the Supplier under the Purchase Order and includes, without limitation, all ancillary activities such as design, manufacture, inspection, testing, expediting, quality assurance and control, painting, packing and delivery as specified or required hereunder.

"Insolvent" means being an insolvent under administration or insolvent or having a controller (each defined in the Corporations Act 2001) appointed, or being in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from creditors under any statute, dissolved (other than to carry out a reconstruction while solvent), bankrupt, or being otherwise unable to pay debts when they fall due or having something with the same or a similar effect happen under the laws of any jurisdiction.

"Purchase Order" means the purchase order (with a unique reference number) issued by the Customer to the Supplier for the supply of Goods and/or Services.

"Services" means the services as set out and further detailed in the Purchase Order.

"Supplier" means the person performing the Services and/or providing the Goods, as identified in the Purchase Order.

"Warranty Period" means:

- (a) in relation to Services, the period commencing on the date of completion of the Services and lasting for a period of two (2) years thereof;
- (b) in relation to Goods, the date of the final supply of the Goods to the nominated delivery point and lasting for a period of two (2) years thereof.

1.2 Interpretations

Words importing the singular are deemed to include the plural and vice versa. Headings and subheadings are inserted for convenience only and must not be used to interpret the text. Words denoting a natural person shall include a corporation and vice versa.

1.3 Order of Precedence

The Purchase Order together with these terms and conditions

form a contract for the provision of Goods or Services between the Supplier and the Customer. In the event of inconsistency, the order of precedence will be as follows:

- i) the Purchase Order including any special conditions;
- iii) these terms and conditions;
- iv) any specification(s) or drawings attached to the Purchase Order.

1.4 Ambiguities

If the Supplier discovers any ambiguity in the Purchase Order it shall immediately notify the Customer in writing. The parties will then take all reasonable steps to resolve the ambiguities, and if necessary, vary the contract in accordance with clause 9.1

2. GOODS AND SERVICES

2.1 The Supplier will supply the Goods and/or perform the Services as set out in the Purchase Order, subject to these terms and conditions. The Supplier is an independent contractor and is not, and must not hold itself out as, an agent or partner of the Customer.

3. DELIVERY OF GOODS

3.1 Unless otherwise specified in the Purchase Order, Goods must be delivered FOT, adequately packaged and protected to ensure safe delivery, to the delivery point and by the delivery date(s) specified in the Purchase Order.

3.2 Time is of the essence and deliveries must be made both in the quantities and at times specified in the Purchase Order. Delivery must be made to the location nominated in the Purchase Order or such other place nominated by the Customer by providing the Supplier at least 12 hours' notice.

3.3 Risk in the goods pass to the Customer at delivery, and title in Goods passes to the Customer at the earlier of delivery or payment.

3.4 The Supplier must take all reasonable steps to minimise or prevent any delay in the performance of the Services or the delivery of the Goods. The Customer may grant an extension of time to the nominated delivery date provided or in the performance of the Services provided:

- i) the delay is caused by any reason completely beyond the control of the Supplier, including any state-wide or national industrial disputes, acts of God, war, riot, fire, storm or flood.
- ii) the Supplier has notified the Customer in writing within seven (7) days of the delay occurring (or such other time as may be specified in the Purchase Order) of its claim for an extension of time. The Customer shall not be liable for any extension of time claim that is not lodged in writing with the Customer within seven (7) days of the delay occurring.

3.5 In addition to any other remedies available, if delivery is not made by the date specified in the Purchase Order, or within a reasonable time if no date is specified, the Customer may terminate the Purchase Order in respect of the Goods undelivered or delivered late and of any Goods already delivered under the Purchase Order which cannot be effectively and commercially used by the Customer by

reason of the non-delivery or late delivery of the first mentioned Goods.

3.6 If Supplier considers the Goods cannot be delivered in time in accordance with Purchase Order, Supplier must notify the Customer immediately and give to the Customer an estimate of the period of delay and details of the steps which Supplier proposes to take to minimise the delay. Supplier must comply with the Customer's reasonable instructions.

3.7 The Customer may refuse delivery of Goods not in accordance with the Purchase Order. If the Customer has accepted delivery of Goods not in accordance with the Purchase Order, the Customer may reject those Goods, and Supplier must immediately, at its cost, collect those goods and refund the Customer any amounts paid for the returned Goods plus any transport costs.

3.8 Supplier must not register a financing statement or any other charge or encumbrance in respect of the Goods under the *Personal Property Securities Act 2009* (Cth) without the Customer's prior written consent.

4. PERFORMANCE

4.1 Supplier must:

- (a) perform the Services safely, in accordance with the requirements as to time and at the place and in the manner specified in the Purchase Order, to industry standard or better, and with all necessary care, skill and diligence;
- (b) supply all equipment and materials necessary to complete the Services.
- (c) comply with the Customer's reasonable directions in relation to performance of the Services.

5. INSPECTION

5.1 The Customer may inspect the Goods and/or Services at any time. Where the Goods and Services are not in the control of the Customer, the Supplier must ensure that the Customer has access to the Goods and Services at all times to effect such inspection.

6. INSURANCE

6.1 In relation to the Services, the Supplier shall effect and maintain:

- (i) Public and products liability insurance to the value of \$20 million for any single occurrence;
- (ii) workers compensation insurance as required by law;
- (iii) if a motor vehicle is used in performing the Services, motor vehicle third party damage insurance to the value of \$10 million for any one occurrence;
- (iv) motor vehicle insurance including death or injury cover as required by relevant state legislation; and
- (v) such other insurances required by the Customer or required by law, upon terms acceptable to the Customer.

6.2 In relation to the Goods, the Supplier shall effect and maintain any policies of insurance specified in the Purchase Order or required by law.

7. INDEMNIFICATION, LIABILITY

7.1 The Supplier will indemnify the Customer and keep the Customer indemnified from and against all Claims suffered or incurred by the Company arising directly or indirectly out of or in relation to any breach non-observance or non-performance by the Client of any of its obligations under the Purchase Order except to the extent that any Claim is caused or contributed to by any act, neglect, omission or wilful misconduct of the Customer.

7.2 The maximum sum for which the Customer may be liable

to the Supplier under the Purchase Order, in tort, in equity or otherwise at law is limited to the price stated in the Purchase Order.

8. PERFORMANCE AND QUALITY

8.1 These Terms and Conditions are additional to all guarantees contained in the *Competition and Consumer Act 2010* (Cth) or any other law.

8.2 The Supplier agrees and warrants that:

- (a) Goods supplied will meet the standards set out in the Purchase Order, specifications and all applicable Australian standards and/or other referenced codes, the requirements of the relevant statutory authorities and all applicable laws, including without limitation all statutory obligations in relation to occupational health and safety. If no standards are specified, the Supplier must comply with the best practice industry standards applicable to the Services and/or Goods concerned;
- (b) the Goods are free from liens, charges, encumbrances, mortgages or other defects in title;
- (c) the Services will be carried out in accordance with good engineering practice and comply with all applicable Australian standards and/or other referenced codes, the requirements of the relevant statutory authorities and all applicable laws, including without limitation all statutory obligations in relation to occupational health and safety;
- (d) all Services and/or Goods are suitable for the purpose for which they are required and it will use new and undamaged materials, unless otherwise specified in the Purchase Order and the workmanship must be of a high quality and standard;
- (e) it holds good title to any Intellectual Property Rights in or associated with the Goods and Services.
- (f) it has the necessary skills, resources and experience to successfully perform the Services and/or supply the Goods in accordance with the requirements of the Purchase Order.

8.3 During the Warranty Period, the Customer may give written notice to the Supplier of any failure or defect in the Goods and/or Services. The Supplier must without delay and at no cost to the Customer:

- (a) correct any defect in the Services covered by the warranty, by way of re-performance of the Services in a manner acceptable to the Customer; or
- (b) correct any defect or failure in the Goods covered by the warranty, by way of repair, replacement, modification or other means acceptable to the Customer, at the Customer's sole election.

If the Supplier fails to correct any defects and failures, of which it has been notified by the Customer, within the time specified in the notice (which must not be unreasonable), the Customer will have the right to rectify the Services and/or Goods itself or have the rectification undertaken by a third party. All costs so incurred will be a debt due and payable by the Supplier to the Customer, which the Customer may elect be deducted from moneys otherwise owing to the Supplier by the Customer.

8.4 Any Services re-performed or rectified and/or any Goods repaired under warranty may be subject to a further full Warranty Period, if required by the Customer, commencing on the date of completion of any such re-performance, rectification or repair.

8.5 Supplier assigns to the Customer all warranties by manufacturers and vendors of the Goods or their components.

8.6 It is a material term of this contract that the Supplier comply with its obligations under the *Heavy Vehicle National Law* in respect of the Goods and/or Services, and the Supplier must comply with all reasonable directions given by the Customer in this respect.

8.7 If the Supplier delivers the Goods and/or performs Services at any of the Customer's sites, the Supplier and its agents will comply with the work, health and safety rules and directions of the relevant site.

9. VARIATIONS

9.1 The Purchase Order can only be varied by in writing and agreed between the parties.

9.2 The Supplier must not vary the work under the Purchase Order or any condition thereof, except as directed and approved by the Customer in writing. No variation will invalidate the Purchase Order.

10. SUSPENSION/TERMINATION

10.1 Suspension

The Customer may, at any time by written notice to the Supplier, suspend all or part of the Purchase Order at any time if it considers suspension reasonably necessary. Upon receipt of a notice of suspension, the Supplier will cease work in accordance with the directions of the notice. The Supplier must recommence the work under the Purchase Order within forty eight (48) hours of being directed to do so by the Customer. A Purchase Order may only be suspended for a maximum period of 90 days, unless otherwise agreed by the parties in writing.

10.2 Termination by Default

Without limiting any other right of termination at law or otherwise, a non-defaulting party may, by notice, immediately terminate a Purchase Order in whole or part:

- (a) if the defaulting party breaches a material term of this contract and does not cure such breach within 30 days of the date on which the non-defaulting party provides the defaulting party with written notice identifying the breach and requesting that it be cured; or
- (b) if the defaulting party breaches this contract and such breach cannot be cured.

10.3 For the purpose of clause 10.2, the following clauses are a material term: 2, 3, 4, 8.2, 8.3, 8.6 and 11.

10.4 Termination for Insolvency

The Customer may, by notice, immediately terminate a Purchase Order at any time if the Supplier becomes Insolvent.

10.5 Termination at Customer's Option

The Customer may terminate a Purchaser Order or any part of it at any time by giving the Supplier not less than 14 days' notice of its intention to do so.

10.6 Supplier's Rights and Obligations on Suspension/Termination

(a) Following suspension or termination of a Purchase Order by the Customer pursuant to clauses 10.1 and 10.5, the Supplier is entitled to recover from the Customer reasonable out-of-pocket expenses which it has incurred or will incur solely as a result of the suspension or termination of the Purchase Order and which it is unable to otherwise recover or mitigate, except to the extent the suspension or termination was caused or contributed to by an act or omission of the Supplier.

(b) The amounts outlined in this clause 10.6 represent the only amounts or Claims recoverable by the Supplier from the Customer following a termination of a Purchase Order by the Customer in accordance with clauses 10.1 and 10.5.

10.7 Termination of a Purchase Order in whole or part does not affect:

- (a) any liabilities or obligations of either party arising:
 - (i) before such termination; or
 - (ii) out of the events causing such termination; or
- (b) any damages or other remedies to which a Party may be entitled under the Purchase Order, at law, in equity or otherwise.

11. PRICE AND PAYMENT

11.1 Unless otherwise stated in the Purchase Order, prices shall be fixed and not subject to any increase, including but not limited to variations in the cost of labour, material or exchange rates.

11.2 The Supplier shall be responsible for the payment of all relevant Australian (Federal, State and Local Government) and overseas taxes, goods and services taxes, PAYG taxes, duties and charges payable with respect to the Goods and/or Services. The Purchase Order price will be deemed to be inclusive of all such taxes, duties and charges.

11.3 Unless otherwise specified in the Purchase Order, invoices for payment must be submitted to the Customer for payment following delivery of the Goods or following performance of the Services, and payment of the approved amount will be made by the Customer no later than thirty (30) days from the first day of the month after the month in which the invoice was received. It is a pre-condition for payment that the Purchase Order reference number must be quoted on all invoices. Invoices that do not quote a Purchase Order reference number will be returned to the Supplier for rectification and resubmission.

11.4 GST

(a) To the extent that any Taxable Supply occurs under the Purchase Order and the Purchase Order does not include tax then:

- (i) the Supplier will, be entitled to increase the consideration for the Taxable Supply identified in the Purchase Order ("net consideration") by the amount of any applicable GST calculated in accordance with the Act; and
- (ii) the recipient shall pay such increased consideration.

(b) The Supplier must in any such case issue to the recipient at the time of claiming payment a valid tax invoice (in accordance with Act) for the purpose of obtaining an input tax credit for any GST so paid.

(c) In clauses 11.4(a) and (b), "**Act**" means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and its associated legislation and regulations, "**GST**" means the goods and services tax imposed by the Act and "**Taxable Supply**" means a taxable supply under the Act.

11.5 Supplier Statement

(a) In relation to a Supplier providing Services, the Supplier must include with each invoice required in clause 11.3, a statement that all remuneration or other amounts payable by the Supplier to any of its employees, consultants or subcontractors have been paid by law or under any industrial instrument in respect of the Services.

(b) The Customer may withhold any payment due to the

Supplier until it receives from the Supplier the relevant statement required by clause 11.5(a).

12. RELATIONSHIP

In relation to the performance of Services, the Supplier will provide the Services as an independent contractor and nothing in the Purchase Order will be construed so as to constitute the Supplier as an employee of the Customer or constitute a partnership between the parties or so as to constitute either party as the agent or legal representative of the other party.

13. INTELLECTUAL PROPERTY

Any intellectual property in any sketches, plans, drawings, designs, reports or documents prepared by the Supplier in the provision of the Services under the Purchase Order, will upon its creation vest in the Customer. Any intellectual property owned by the Supplier prior to the execution of the Services under the Purchase Order will remain the property of the Supplier, although such intellectual property may be used by the Customer pursuant to a royalty-free license.

14. DISPUTES

14.1 Disputes or differences arising between the Customer and the Supplier must be settled quickly and by negotiation.

14.2 In the event of any unresolved dispute between the Customer and the Supplier, the Supplier must ensure that the progress of the work under the Purchase Order is continued without any effect on the specified delivery date.

14.3 A party believing there to be a dispute must provide full particulars of that dispute by written notice to the other party following which senior management representatives of each party will meet within 21 days and use best endeavours to resolve the dispute in good faith.

14.4 If the parties cannot resolve a dispute within 21 days, or such other period as is agreed, either party may issue legal proceedings.

15. APPLICABLE LAW

The Purchase Order and these terms and conditions will be governed and construed in accordance with the laws of Victoria and the Customer and the Supplier submit to the non-exclusive jurisdiction of the courts of Victoria.

16. GENERAL

16.1 Supplier to Inform Itself

The Supplier shall be deemed to have carefully examined all documents furnished by the Customer and fully satisfied itself regarding all the conditions, risks, contingencies and other circumstances which might affect the performance of the Services and/or the supply of the Goods. No increase in the Purchase Order price will be allowed for the Supplier's failure to ensure that it is fully informed regarding all the circumstances relating to the Purchase Order.

16.2 Use of Documentation

Documents prepared in relation to, or ancillary to the Purchase Order, must not be copied or used for any other purpose than the performance of the Services and/or supply of the Goods by the Supplier to the Customer, without the prior written approval of the Customer.

16.3 Confidentiality

Any information provided by the Customer to the Supplier, which is noted as, or which is by its nature, confidential, must not be disclosed to any third party without the prior written consent of the Customer. The obligations under this Clause shall be continuing obligations and shall

survive the completion or termination of the Purchase Order for a period of 2 years from the completion or termination of the Purchase Order.

The Supplier must not issue any information which includes details about the Services and/or the Goods and/or the Purchase Order, for publication in any news or communication media, without the prior written approval of the Customer.

16.4 Waiver

No failure or delay on the part of the Customer in exercising any of its rights under the Purchase Order shall be construed as constituting a waiver of any such rights.

16.5 Subcontracting and Assignment

The Supplier must not subcontract nor assign all or any part of the Purchase Order without the prior written approval of the Customer. The Supplier must provide for the approval of the Customer full particulars of any work to be subcontracted together with details of the proposed subcontractor prior to entering into any subcontract.

Approval of the Customer to any subcontract will in no way relieve the Supplier of any of its obligations under the Purchase Order.

16.6 Entire Agreement

The Purchase Order and these terms and conditions constitute the entire agreement between the Customer and the Supplier. The parties shall not be bound by or liable for any statement, representation, promise or understanding not set forth herein. Nothing contained in proposals, correspondence, discussions or negotiations prior to the date of the Purchase Order has any effect on the Purchase Order unless specifically incorporated herein.

16.7 Communications

Any notice or other communication required under the Purchase Order shall be delivered in writing and shall be in a form which can be read, copied and recorded conveniently. Verbal instructions or directions from the Customer shall be confirmed in writing to the Supplier within a reasonable time. The notice shall take effect from the time when it is delivered to or received at the nominated address of the parties.

16.8 Licences and Laws

The Supplier shall comply with all applicable laws, by-laws, ordinances, regulations, proclamations, orders and rules and with the lawful requirements of public authorities and other authorities in any way related to the supply of the Goods and/or the performance of Services, including without limitation all occupational health and safety laws.

16.9 Survival

Clauses 3.7, 3.8, 7, 8, 11, 13, 14 and 16.3 shall survive termination of this contract.

16.10 No contra proferentum

In the interpretation of this contract, no rule of construction will apply to disadvantage a party because that party proposes a provision of this Deed or the Deed itself.

16.11 Severability

If any provision of this contract is or at any time becomes illegal, prohibited, void or unenforceable for any reason in any jurisdiction then, that provision is severed from this contract and the remaining provisions continue to be enforceable; and are to be construed with such additions, deletions and modifications of language as are necessary to give effect to the remaining provisions of this contract.