

Terms & Conditions of Purchase Order

1. Basis of Purchase Order

These Terms of Purchase shall be deemed to be accepted by the Supplier for the supply of the Goods and/or Services identified in the Purchase Order from the earlier of:

- The Supplier signing and returning a copy of the Purchase Order to RMS; or
- The Supplier's commencement of work relevant to the supply of the Goods and/or Services after receipt of the Purchase Order.

The acceptance of the Purchase Order by the Supplier is on the basis that:

- These Terms of Purchase are the sole basis of the sale of the Goods and/or Services to the exclusion of any other conditions of sale appearing on any document of the Supplier; and
- Modification of these Terms of Purchase expressed in any document of the Supplier does not apply to the Purchase Order unless expressly accepted in writing by RMS.

2. Goods & Services

The Goods and/or Services to be supplied by the Supplier are described in the Purchase Order and together with these Terms of Purchase contains the entire agreement between the parties.

The Supplier warrants that the Goods and/or Services shall:

- Comply with any drawings, specifications and/or any other technical documents included with and/or identified in the Purchase Order or otherwise provided by RMS, including details defined in associated quotations or tenders and/or agreements in relation thereto;
- Comply with all relevant standards and statutory requirements;
- Be new (unless stated otherwise), of good merchantable quality, free of defects and fit for their intended purpose;
- Upon delivery to RMS, be free of all liens, charges and other encumbrances; and
- Be supplied to RMS strictly in accordance with the terms of the Purchase Order except to the extent that RMS may agree or direct otherwise in writing.

The Supplier shall allow RMS and other persons authorised by RMS access at all reasonable times to:

- Any place where the Goods or Services are being manufactured, stored or prepared; and/or
- Any quality assurance records or technical documentation relevant to the Goods or Services.

The Supplier indemnifies RMS and where relevant the Principal against any action, suit, claim, demand, cost, loss, expense or damage arising out of or in any way connected with:

- the infringement of any intellectual property rights relevant to or in any way connected with the Goods and/or Services including the use of those Goods and/or Services;
- any false, misleading, deceptive or misdescriptive representation or statement made by the Supplier to RMS for or in respect of the Goods and/or Services.

The Supplier shall be responsible for the care of the Goods and/or Services until their delivery to and acceptance by RMS. If loss or damage occurs to the Goods and/or Services while the Supplier is responsible for their care, the Supplier shall promptly make good the loss or damage.

The Supplier warrants that during the delivery of the Goods and/or the performance of the Services to be supplied against the Purchase Order the Supplier and its employees, sub-contractors and agents will comply with all requirements of the RMS project management plan, including the site specific safety plan, environmental management plan and traffic management plans.

The Supplier shall ensure that it complies with the right of entry provisions of relevant legislation, including the Workplace Health and Safety Act 1995 (Queensland), in the event that any union representative approaches it to gain entry to the Project site. The Supplier shall immediately notify RMS of any such approach.

3. Delivery

The Date for Delivery shall be the date stated in the Purchase Order as may be extended by RMS pursuant to clause 4.

The Supplier shall liaise with RMS prior to the Date for Delivery to confirm the arrangements for the delivery of the Goods and/or Services and at the Supplier's cost:

- Label the Goods and/or Services as directed by RMS;
- Store the Goods and/or Services until the date and time arranged with RMS for the delivery of the Goods and/or Services;
- Deliver the Goods and/or Services packaged as reasonably required by RMS; and
- Deliver the Goods and/or Services to the Delivery Address on the date and at the time arranged with RMS.

Unless agreed otherwise in writing by RMS, ownership of the Goods and/or Services shall pass to RMS upon their delivery to and acceptance by RMS.

At the time of delivery the Supplier shall provide RMS with a delivery docket in duplicate setting out the details of the Goods and/or Services delivered and accepted by RMS, for signature by RMS and the Supplier shall retain one copy so signed.

Delivery and acceptance of Goods or Services by RMS does not constitute approval of the Goods or Services.

4. Delay

The Supplier shall give immediate notice to RMS upon becoming aware of any event or circumstance likely to delay delivery of the Goods and/or Services by the Date for Delivery.

RMS:

- Shall be entitled at any time to grant an extension of time to the Date for Delivery; but
- Shall not be obliged to grant an extension of time to the Date for Delivery except to the extent that a delay to the Date for Delivery is caused by an act, default or omission by RMS.

The Supplier shall:

- Take all practical steps to avoid or minimise delay to the Date for Delivery; and
- Where a delay does not cause the Date for Delivery to be extended, take whatever action is necessary to deliver the Goods and/or Services by the Date for Delivery.

5. Cancellation of Order

RMS reserves the right to cancel the Purchase Order if the Goods and/or Services ordered are not delivered to the destination specified in the Purchase order by the Date for Delivery. If RMS does cancel the Purchase Order, the Supplier does not have and may not prosecute any claim whatsoever at law or in equity against RMS for its cancellation of the Purchase Order.

6. Payment

The rates stated in the Purchase Order are deemed to include for everything necessary (including labour, plant, equipment, delivery to the destination stated in the Purchase Order and the offloading of the Goods by the Supplier at the point of destination and execution of the works) for the Supplier to supply the Goods and/or Services and to fulfil all of its obligations under the Purchase Order. Accordingly, the value of the Goods and/or Services delivered to and accepted by RMS shall be:

- An amount calculated by multiplying the relevant quantity and rate for the Goods and/or

Services stated in the Purchase Order; less

- The reasonable costs incurred by RMS in remedying any default by the Supplier of its obligations under the Purchase Order; and/or less
- The amount of any costs, losses or damage suffered by RMS if the Supplier does not fulfil its obligations under the Purchase Order or otherwise.

Unless stated or agreed otherwise by RMS, payment for the Goods and/or Services shall only be made for those Goods and/or Services delivered to and accepted by RMS and for which the Supplier has submitted a payment claim setting out the value of those Goods and/or Services as described in clause 6.1.

Subject to clauses 6, 7, 8 and 9, unless stated otherwise, payment shall be made no later than 30 days from the end of the month quoted in the Supplier's payment claim provided that the Goods and/or Services detailed in that payment claim satisfy all requirements for those Goods and/or Services defined in the Purchase Order.

At RMS's discretion, payment shall be made by electronic funds transfer or by cheque. The date of payment shall be regarded as the date on which the funds are cleared by RMS for payment, the funds being available to the Supplier within 2 business days thereafter.

7. Goods & Services Tax (GST)

Each claim for payment for the Goods and/or Services under the Purchase Order shall be a tax invoice that complies with the requirements of the relevant GST legislation.

The aggregate amount of all amounts paid and due under the Purchase Order must be covered by one or more tax invoices prepared in compliance with the relevant GST legislation.

8. Default

Without limiting RMS's rights under clause 9, if the Supplier fails:

- To supply the Goods and/or Services to meet the requirements of the Purchase Order;
- To supply Goods and/or Services within the time required by the Purchase Order;
- To remove rubbish or other items belonging to the Supplier; and/or
- To comply with any other obligation it has under the Purchase Order; then:
 - RMS may, at its discretion, and without obligation, remedy that failure on behalf of the Supplier and the cost of so doing shall be valued under clause 6.1(b); and
 - Any cost, loss and/or damage that RMS has incurred or is likely to incur as result of the Supplier's default shall be valued under clause 6.1(c).

9. Termination

In the event that:

- The Supplier fails to comply with its obligations under the Purchase Order (including, without limitation, failure to comply with its obligations in a timely manner);
- The Supplier is insolvent or bankrupt; and/or
- The Supplier dies, then RMS, may at its sole discretion, terminate the Purchase Order.

Upon termination under clause 9.1:

- RMS shall be liable only for those amounts which become payable for the Goods and/or Services delivered to and accepted by RMS as at the date of termination; and
- Any cost, loss and/or damage that RMS has incurred or is likely to incur as result of the Supplier's default shall be valued under clause 5.1(c).

10. General

The Supplier shall not assign, novate nor subcontract any of its rights or obligations under the Purchase Order without RMS's prior written approval.

Unless stated otherwise, the Purchase Order shall be governed by the laws of Queensland.

The failure by RMS to enforce the provisions of the Purchase Order or to exercise any rights expressed in the Purchase Order is not a waiver of such provisions or rights and does not affect the enforcement of the Purchase Order.

11. Other Terms and Special Conditions

In the event that the terms in clauses 1 to 10 above conflict with any other terms stated in the Purchase Order including any Special Conditions then such other terms or Special Conditions shall take precedence to the extent of the conflict.

12. Definitions

Date for Delivery means the Date for Delivery specified as the date required in the Purchase Order.

RMS means the entity within the RMS group of companies listed below that is identified on the Purchase Order and includes its successors and assigns – RMS Engineering & Construction Pty Ltd ABN 74 128 352 250

Purchase Order means the Purchase Order issued by RMS and which defines the goods and/or services to be provided by the Supplier

Supplier means the Supplier named as the creditor on the Purchase Order.

Terms of Purchase means the Terms of Purchase set out in clauses 1-11 (inclusive).