

SC107 – Purchase Order Terms & Conditions (Austal Ships Pty Ltd)

DEFINITIONS:

Purchaser: AUSTAL SHIPS and affiliated Companies and includes its duly appointed representatives nominated from time to time.

Supplier Person, firm or corporation to which the Order is issued.

Order: Contract between Purchaser and Supplier bearing an order number; accepted by Purchaser as sole authority for charging Goods to its account; supersedes all previous communications and negotiations.

Goods: Machinery, plant, apparatus, materials, articles, erection works, services and things of all kinds to be supplied or performed under the order.

2. **ACCEPTANCE OF ORDER:** Upon receipt of Order, Supplier shall check it for discrepancies. Supplier shall acknowledge the Order within two (2) days of receipt. Supplier's acceptance by acknowledgment or performance of the Order shall constitute the entire contract between Supplier and Purchaser and no representative or statements by any employee or agent not expressly stated in the Order shall be binding upon the Purchaser.
3. **TITLE AND RISK:** Except as otherwise provided herein, title to and property in the Goods shall pass immediately to Purchaser upon full payment and the Goods shall be appropriately marked and identified as the property of Purchaser. Risk in the Goods shall remain with Supplier until delivery to Purchaser.
4. **PRICE:** Unless otherwise stated, the total Order price is in Australian currency excluding GST fixed and firm, not subject to escalation for the duration of the Order; and include all packing, testing, documentation costs and delivery FIS to Purchaser.
5. **PAYMENT:** Payment shall be 100% forty five (45) days from end of month and receipt by Purchaser of correct and proper invoice and required supporting documentation following delivery of Goods to the delivery point stated in the Order.
6. **INSURANCE:** Supplier shall, at its cost, effect and maintain adequate material loss or damage insurance; where Incoterms 2010 Edition require, adequate transit insurance; any insurance required by law; at least to the extent of the full replacement value.
- If the Supplier, either as principal or by agent or employee, enters upon the property of Austal Limited in order to provide or install Goods, the Supplier agrees to hold and maintain the following types of insurance cover: (a) Worker's Compensation to satisfy the laws of the state in which the Supplier will perform the works under the Purchase Order; (b) Public and Product Liability for personal injury and property damage, including contractual liability insurance, with combined limited of not less than \$10,000,000 per occurrence.
7. **DRAWINGS:** Supplier shall ensure that all drawings and data used have been certified for construction and that Goods are manufactured according to such drawings and data or any subsequent revisions thereof.
8. **WARRANTY** Supplier warrants that Goods supplied shall be of merchantable quality, fit for the purpose intended and free of defects in materials, workmanship and design. If Purchaser supplies manufacturing drawings to Supplier, Supplier warrants that the Goods are manufactured and supplied strictly in accordance with such drawings.
- Supplier shall (at the option of Purchaser) either replace or repair and make good any Goods or parts of Goods supplied by it found to be defective or in any way unsuitable for the purpose intended for a period of twenty four (24) months from date of delivery of the Goods. If Supplier repairs or replaces Goods during the warranty period then a new warranty shall apply to those Goods for a period of twenty four (24) months from the date such repairs or replacements were completed.
- Supplier shall indemnify Purchaser against all claims by any person for loss or damage, direct or indirect caused by Goods supplied under the Order by Supplier and being Goods which are defective or otherwise not of merchantable quality.
9. **PATENTS:** Supplier warrants that Goods supplied other than Goods supplied in accordance with technical plans or drawings provided to Supplier by Purchaser do not infringe any patent, copyright, design or trademark (whether foreign or domestic) which any person may in any way be entitled to and shall save harmless and indemnify Purchaser from and against all claims and proceedings for or on account of such infringements in respect of Goods supplied by Supplier and from and against all related claims, demands, proceedings, damages, costs, charges and expenses.

10. **INSPECTION:** Purchaser may at any time during the course of manufacture or otherwise inspect Goods to be supplied (subject to Purchaser first giving Supplier reasonable notice of such inspection). Inspection by Purchaser shall neither relieve Supplier of its obligations under the Order nor waive Purchaser's rights or remedies herein provided.
11. **PACKING:** Supplier shall be liable for all or any damage, loss or destruction to any Goods or property resulting from improper packaging or handling by Supplier.
12. **TEST CERTIFICATES:** If Test Certificates for Goods are required by the Order they shall be forwarded to Purchaser upon completion of testing.
13. **ERECTION WORK & SERVICES:** When erection work and services (Works) form part of the Order, the following provisions shall apply: (a) All invoices shall be accompanied by a schedule certified by Purchaser of work completed on site. (b) Progress payments shall not be made unless stated in the Order. (c) Supplier shall obtain within ten (10) days of receipt of order and keep in effect during the currency of the Order such insurance as necessary to adequately protect Supplier and Purchaser in respect of liability for payment of compensation to any employee of Supplier or sub-Supplier under law and shall lodge certificates of currency with Purchaser.
14. **ASSIGNMENT:** Supplier shall make all terms and conditions of the Order, provisions of any related sub-order. The Order shall be binding upon and inure to the benefit of the parties hereto and (unless such interpretation shall be repugnant to the sense or context) their respective executors, administrators, personal representatives successors and assigns but shall not be assignable by Supplier without the consent of Purchaser.
15. **WAIVER & AMENDMENT:** No waiver of any provision of the Order nor consent to any departure therefrom shall be effective unless in writing from Purchaser.
16. **CANCELLATION:** Purchaser may at its option cancel the Order or any part thereof at any time. Purchaser's liability will be to pay for materials manufactured and supplied in accordance with the Order at the date of cancellation and for costs of materials and other items ordered for which Supplier is legally bound to pay. Upon such payment, title to and property in all those materials and other items shall pass to Purchaser.
17. **TERMINATION FOR DEFAULT:** If Supplier fails to make delivery; fails to perform within the time specified on the Order; delivers non-conforming Goods; fails to make progress so as to endanger performance of the Order; then in any case Purchaser may cancel the Order or part thereof and Supplier shall be liable for all costs incurred by Purchaser in purchasing similar Goods elsewhere.
18. **INDEMNITY:** Supplier shall indemnify and hold Purchaser harmless against all claims, liens, costs (including legal costs) and expenses whatsoever resulting from or caused by any act, omission or negligence of Supplier and its sub-Suppliers in connection with the performance of the Order or by failure of Supplier to perform any of its obligations under or to comply with requirements of the Order.
- Supplier shall indemnify and hold Purchaser harmless against all claims, liens, costs (including legal costs) and expenses whatsoever resulting from personal injury, including death and disease or loss of or damage to property to the extent caused directly or indirectly by any intentional or negligent act or omission of Supplier and its sub-Suppliers in the performance or non-performance of any services required herein.
19. **TIME:** If at any time Supplier discovers that the time of delivery will not be met, it shall notify Purchaser within two (2) working days of discovery stating cause of delay and earliest possible delivery date. Purchaser may thereupon (without prejudice to any other rights) terminate all or part of the Order.
- If Supplier is delayed in delivery of the Goods by unforeseeable occurrences or causes such as Acts of God, state or nationwide strikes, fire or other causes of a similar nature beyond Supplier's reasonable control, Supplier shall notify Purchaser within two (2) days of the commencement of each such occurrence or cause and request an extension of time. If approved by Purchaser, any extension of time shall be granted in writing.
- Supplier shall not be entitled to and hereby waives any and all claims to increased compensation for/or damages which it may suffer from any such causes.
20. **EXPEDITING** Purchaser shall be granted access to any and all parts of Supplier's works and those of its sub-Suppliers. Supplier shall expedite all sub-ordered Goods on a regular basis and visit sub-Supplier's works when necessary.
21. **CONSEQUENTIAL** Neither Purchaser nor Supplier shall be liable to the other for any consequential loss or loss of

LOSS: anticipated profits sustained by the other party.

22. APPLICABLE LAW: The Order and the rights and obligations of the parties hereto shall be construed in accordance with and be governed by the laws applicable in the State of Western Australia. Each of the parties hereto hereby agrees that any legal action or proceedings with respect to its obligations hereunder shall be brought in the State of Western Australia and each of the parties hereto hereby submits to such jurisdiction.

23 ANTI-BRIBERY AND CORRUPTION Supplier represents and warrants that other than as set out in the Order or as otherwise advised to Purchaser in writing it, and each of its officers, directors, employees, consultants, agents and any other third parties acting on its behalf shall not, directly or indirectly, either by itself or through any third party or person, (i) pay, (ii) offer to pay, (iii) promise to pay, or (iv) authorize the payment, of any moneys, or otherwise provide or offer to provide anything of value, to any employee, contractor, consultant or representative of Purchaser, its customer or any government or regulatory body for the purpose of improperly influencing or inducing or rewarding any favourable treatment, or obtaining any advantage, in connection with the Order.

In the event of any breach of this condition by the Supplier, Purchaser may terminate the Order immediately and from the date of termination the Order shall be void and of no effect. Any payments made by Purchaser to Supplier before or after the date of termination under this clause 23 shall be refunded by the Supplier to Purchaser on demand.

