

Purchase Order Terms and Conditions

Austal Limited, ABN 73 009 250 266,
Austal Ships Pty Ltd, ABN 80 079 160 679,
Austal Service Darwin Pty Ltd, ABN 74 160 267 934
Austal Philippines Pty Ltd, ABN 88 079 160 651,
Austal Holdings Vietnam Pty Ltd, ABN 40 624 726 674,
 each of 100 Clarence Beach Road, Henderson WA 6166, Australia;
Austal Viet Nam Co., Ltd, VAT/Enterprise No. 3502365708,
 of Road No. 12 Dong Xuyen IDZ, Rach Dua ward, Vung Tau City, Ba Ria – Vung Tau Province, Vietnam

1 Interpretations and Definitions

- (a) In these terms and conditions, unless stated otherwise:
- (i) capitalised terms have the meaning ascribed to that term in clause 1(b);
 - (ii) the word ‘includes’ in any form is not a word of limitation;
 - (iii) no third parties shall have the right to enforce any term of a PO.
- (b) Definitions: In these terms and conditions these terms have the following meanings:
- | | |
|-------------------------------|--|
| Goods | Machinery, plant, apparatus, materials, articles, erection works, services and things of all kinds to be supplied or performed under the PO. |
| Personnel | The employees, agents, officers, servants, suppliers, consultants, subcontractors and independent contractors engaged by either party in order to perform duties under the PO for which that party is responsible. |
| Purchase Order or “PO” | Contract between Purchaser and Supplier (bearing an order number); for the provision of Goods, which has been issued by the Purchaser and accepted by the Supplier pursuant to clause 2. |
| Purchaser | The Austal entity set out in a PO as originator. |
| Supplier | Person, company, firm or corporation to which a PO is issued. |
- (c) If there is any ambiguity, inconsistency or conflict between the provisions in these terms and conditions and a PO, then, unless expressly stated otherwise, the PO shall take precedence.
- (d) If there is any ambiguity, inconsistency or conflict between the provisions in these terms and conditions and any document incorporated into a PO by reference, then these terms and conditions shall take precedence.

2 Acceptance of PO

Upon receipt of a PO, Supplier shall check it for discrepancies. Supplier shall acknowledge the PO within two (2) days of receipt. Supplier’s acceptance by acknowledgment or performance of the PO shall constitute the entire contract between Supplier and Purchaser, supersedes all previous communications and negotiations and no representations or statements not expressly stated in the PO shall be binding.

3 Performance of the PO

3.1 Inspection, Expediting and Drawings

- (a) Purchaser may at any time, by giving Supplier reasonable prior notice, inspect Goods. Inspection by Purchaser shall neither relieve Supplier of any of its obligations nor waive any of Purchaser’s rights or remedies.
- (b) Purchaser shall be granted access to any 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.
- (c) If Purchaser supplies manufacturing drawings and/or data to Supplier, Supplier shall ensure that all drawings and/or data used have been certified by Purchaser for construction.

3.2 Certificates

- (a) If test certificates for Goods are required under a PO they shall be provided to Purchaser upon completion of testing.
- (b) If class and/or mill- certificates for Goods are required under a PO, one (1) electronic copy must be provided to the Purchaser upon placement of the PO, and one (1) hard copy shall be provided together with the Goods.

3.3 Shipment

- (a) The Supplier shall give reasonable notice to the Purchaser of dispatch of the Goods including all relevant details such as the expected date and time of arrival at the delivery location.

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- (b) Supplier shall be liable for any damage, loss or destruction to the Goods or any property resulting from improper packaging or handling.
- (c) The shipment shall be accompanied by a delivery docket in accordance with directions by the Purchaser. In the event the delivery docket is not provided, the Purchaser's count upon delivery shall be accepted as final and conclusive.
- (d) Supplier shall ensure proof of delivery (POD) is provided to Purchaser and a POD must as a minimum contain: (1) full address of delivery; (2) printed name and confirmation (signature or electronic) of receiving person; and (3) time and date of delivery.

3.4 Work and Services

If work and services ("**Works**") form part of the PO, the following provisions shall apply:

- (a) All invoices shall be accompanied by a schedule of completed work certified by Purchaser.
- (b) Progress payments shall not be made unless provided for in the PO.
- (c) The Supplier will be granted access to the Purchaser's premises as reasonably required to carry out its obligations under a PO.
- (d) The Supplier and its Personnel shall comply with (i) any legal requirements and (ii) the Purchaser's rules, directions and policies, which are intended to be of application to persons at the Purchaser's premises.
- (e) The Supplier warrants that it has fully and properly satisfied itself of all circumstances, conditions and requirements pertaining to or connected with the provision of the Works and all other conditions affecting the Works in order to achieve successful completion.
- (f) The Supplier warrants that its Personnel are suitably qualified, appropriately skilled and experienced and that all Personnel hold appropriate and current authorisations required for the Works.

4 Time and Liquidated Damages

4.1 Time of Delivery

- (a) 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 the cause of delay and earliest possible delivery date. Purchaser may thereupon (without prejudice to any other rights) terminate all or part of the PO.
- (b) If Supplier is delayed in delivery of the Goods by unforeseeable occurrences or causes such as acts of god; fire, state or nationwide strikes (but only to the extent such strikes are not limited to the Supplier's workforce or parts thereof), epidemics, mandatory government or regulatory intervention 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.
- (c) 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.

4.2 Liquidated Damages (general)

- (a) The parties acknowledge that if the Supplier does not meet an obligation in respect of which liquidated damages ("**LDs**") are expressed to apply ("**LD Event**"), the Purchaser will suffer loss and damage. Therefore, the parties agree that any amount of LDs is not a penalty but a genuine pre-estimate of such loss and damage.
- (b) In case of an LD Event the Purchaser shall be entitled to claim from the Supplier LDs and the PO price shall be reduced by the amount of such LDs.

4.3 Liquidated Damages for Delay and other LD Events

- (a) In case Supplier is delayed in delivery of the Goods and no extension of time has been granted in accordance with clause 4.1 or otherwise in writing, then the Purchaser shall be entitled to claim LDs as set out in a PO and in accordance with these terms and conditions.
- (b) The parties may agree on other LD Events and specify those in a PO.

5 Payment and Title

5.1 Price

Unless stated otherwise in a PO, the total PO price is in Australian currency; excluding GST / VAT; fixed and firm; not subject to escalation; and includes all packing, testing, documentation costs and delivery free into store ("**FIS**") to the delivery point set out in a PO.

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5.2 Payment

- (a) Unless stated otherwise in a PO, payment of an invoice received from the Supplier shall be made by the Purchaser within forty five (45) days from the end of the month in which Purchaser has received a correct and valid invoice and required supporting documentation following delivery of Goods to the delivery point stated in the PO.
- (b) The Supplier shall set out the PO No in the delivery receipt and invoice and – if applicable – the Supplier shall provide the original equipment manufacturer (“**OEM/MFR**”) and the manufacturer’s part number (“**MPN**”) for all the Goods.

5.3 Taxes and Duties

- (a) The Supplier shall comply with any legal requirements relating to all taxes, duties and government charges imposed or levied by any governmental authority and agrees that any taxes, duties or charges are included within the PO price, unless stated otherwise in the PO.
- (b) In the event Purchaser is entitled to VAT zero rating, the Supplier shall issue a value-added-tax official receipt with the term “zero-rated sale” written or printed prominently on the invoice and official receipt.
- (c) The Supplier shall indemnify and hold harmless the Purchaser in respect of all claims and costs (including legal costs) arising as a result of or in connection with any failure by Supplier to comply with this clause 5.3.

5.4 Title and Risk

Unless stated otherwise in a PO (i) 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; and (ii) risk in the Goods shall remain with Supplier until delivery has been effected to the delivery point set out in the PO.

6 Indemnity and Insurance

6.1 Indemnity

Supplier shall indemnify and make good the Purchaser against all claims, liens, costs (including legal costs) and expenses whatsoever relating to or arising as a result of

- (a) any act, omission or negligence of Supplier or its Personnel in connection with the performance of the PO or by failure of Supplier to perform any of its obligations under or to comply with requirements of the PO;
- (b) personal injury, including death and disease;
- (c) damage to or loss of property caused or contributed to by any act, omission or negligence of Supplier or its Personnel in the performance or non-performance under the PO;
- (d) damage to or loss of any item to be provided as part of the PO until the risk of such item has been transferred to Purchaser in accordance with the PO;

except to the extent that any such liability, loss or damage is solely and directly caused by the Purchaser’s gross negligent act or omission.

6.2 Consequential Loss

Neither party shall be liable for any indirect or consequential losses or damages including, but not limited to; loss of opportunity, loss of revenue, loss of use, loss of production, loss of contract, loss of goodwill, loss of reputation, loss of profits or business interruptions. Each party shall defend, indemnify and hold the other harmless for all claims for indirect or consequential losses or damages.

6.3 Insurance

- (a) Supplier shall, at its cost, effect and maintain (and upon request provide the Purchaser with evidence thereof)
 - (i) adequate material loss or damage insurance at least to the extent of the full replacement value of the property;
 - (ii) where required under the applicable delivery terms, adequate transit insurance;
 - (iii) if Works form Part of the PO, the following types of insurance cover:
 - (A) worker’s compensation insurance to satisfy the applicable State or Territory legislation including cross border legislation;
 - (B) public and product liability insurance for personal injury and property damage, including contractual liability extension and a cross liability clause, with limit of not less than AUD\$10,000,000 per occurrence in respect to public liability and AUD\$10,000,000 in the annual aggregate in respect to products liability;

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- (C) where applicable, motor vehicle third party property damage insurance with a limit of not less than \$30,000,000 any one event and as per the applicable law, insurance for third party physical injury;
- (iv) such other insurances as may be necessary from time to time as notified to the Supplier by the Purchaser.
- (b) Notwithstanding any other provision to the contrary, Supplier's insurances pursuant to clause 6.3(a), but not in respect to clause 6.3(a)(iii)(A) (worker's compensation insurance) and where permitted at law, shall note the Purchaser as an additional insured and shall provide for the insurer to waive all rights of subrogation against the Purchaser.
- (c) In respect to clause 6.3(a)(iii)(A) (worker's compensation insurance), where permitted at law, the policy is to be endorsed to include a principal's indemnity extension for act benefits and at Common Law in favour of the Purchaser with a waiver of subrogation in favour of the Purchaser.
- (d) All insurances provided by the Supplier shall be primary and Supplier's insurer shall not seek to include any insurances, which the Purchaser may procure to contribute to any loss, damage or injury.

7 Warranty

- (a) 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 and/or data to Supplier, Supplier warrants that the Goods are manufactured and supplied strictly in accordance with such drawings and/or data or any subsequent revisions thereof.
- (b) Supplier shall (at the option of Purchaser), unless stated otherwise in a PO, either replace or repair and make good any Goods or parts of Goods supplied by it, which have found to be defective or in any way unsuitable for the purpose intended for a period of twenty four (24) months from date of acceptance by the Purchaser's customer of the product in respect of which the Goods were provided.
- (c) If Supplier repairs or replaces Goods during the warranty period then, unless stated otherwise in a PO, a new warranty shall apply to those Goods for a period of the greater of (i) the remaining period set out under clause 7(b); and (ii) twelve (12) months from the date such repairs or replacements were completed.
- (d) All costs in attending to warranty repairs including all shipping and associated costs associated with the return of defective Goods to the Supplier for repair and the return of repaired/replaced Goods to the Purchaser, travelling and accommodation costs (for Supplier's personnel only) as well as assembly and disassembly costs shall be for the account of the Supplier.
- (e) The warranty provisions under this clause shall not extend to defects resulting from or caused by (i) normal wear and tear; (ii) gross negligent or deliberate acts or omissions of the Purchaser or the Purchaser's customer of the product in respect of which the Goods were provided.
- (f) Supplier shall indemnify Purchaser against all claims by any person for loss or damage, direct or indirect caused by Goods supplied under the PO by Supplier and being Goods which are defective or otherwise not of merchantable quality.

8 Cancellation, Termination and Suspension

8.1 Cancellation

- (a) Purchaser may at its option cancel the PO or any part thereof at any time. Purchaser shall then only be liable for costs incurred by the Supplier that are directly attributable to the cancellation, such as costs for materials manufactured and supplied in accordance with the PO prior to the date of cancellation and costs for materials and other items ordered by the Supplier for which Supplier is legally bound to pay, but only to the extent that such costs arise directly as a result of Purchaser's cancellation and provided that the Supplier substantiates such amounts to the satisfaction of the Purchaser.
- (b) To the extent the Purchaser reimburses Supplier pursuant to clause 8.1(a), title to and property in all those materials and other items shall pass to Purchaser.

8.2 Termination for Supplier's Default

If Supplier (i) fails to make delivery; (ii) fails to perform within the time specified on the PO; (iii) delivers non-conforming Goods; (iv) fails to make progress so as to endanger performance of the PO; (v) is otherwise in breach of a provision of the PO, then in any case Purchaser may cancel the PO or part thereof and Supplier shall be liable for all costs incurred by Purchaser in purchasing similar Goods elsewhere.

8.3 Reciprocal Termination Rights

Either party may terminate a PO where the other party is (i) entering into an arrangement or order being made for winding up of the other party; or (ii) insolvent or has an administrator or a receiver and manager appointed.

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8.4 General Termination Provisions

If a PO is terminated,

- (a) the parties shall, (i) subject to clause 9.3(d), be relieved from future performance, without prejudice to any right of action that has accrued at the date of termination (rights to recover damages shall not be affected).
- (b) the Supplier shall (i) stop any activities in accordance with the termination; and (ii) comply with any directions given by the Purchaser; and (iii) mitigate all loss, costs and expenses in connection with the termination; and (iv) not be entitled to profit anticipated on any terminated part of the PO.

8.5 Suspension

In addition to any of its other rights, the Purchaser may at any time direct the Supplier in writing to suspend any activities under a PO or parts thereof. In the event of such suspension the parties agree that no party shall be entitled to seek reimbursement or compensation from the other party for any costs incurred, caused or contributed to by such suspension, unless both parties expressly agree otherwise in writing prior to the suspension coming into effect. By giving the Supplier written notice, the Purchaser may direct the Supplier to resume activities under a PO or parts thereof within reasonable period of time.

9 PO Management, Policy and Law

9.1 Applicable Law and Dispute Resolution

- (a) To the extent permitted under the legislation at the place where Supplier has to fulfil its obligations under the PO, the laws of the State of Western Australia shall apply to the PO and the courts of the State of Western Australia shall have non-exclusive jurisdiction to decide any matter arising out of the PO.
- (b) If a dispute arises and cannot be settled by negotiation within thirty (30) days of written notice, the dispute shall be referred to and finally resolved by arbitration in accordance with the Australian Centre for International Commercial Arbitration (“ACICA”) Arbitration Rules with the seat of arbitration being Perth, Western Australia and the number of arbitrators to be one (1). Each party shall pay their own costs of the arbitration and the costs of the arbitrator shall be shared equally between the parties. The parties shall at all times during the dispute continue to fulfil their obligations under a PO.

9.2 Assignment and Subcontracting

- (a) The Supplier must not, without Purchaser’s prior written consent, assign or deal with any right under the PO and any purported dealing in breach thereof is of no effect.
- (b) The Supplier shall not subcontract the whole of the scope of supply / work under the PO.
- (c) The Supplier, by subcontracting any part of the scope under the PO shall not be relieved of its liabilities or obligations, and shall be responsible for its subcontractors or sub-suppliers.

9.3 Waiver, Amendment, Survivorship, Severability

- (a) A change to a PO or to any provision thereof shall be of no effect unless it is in writing from the Purchaser.
- (b) Failure by either party to enforce a term of a PO shall not be construed as in any way affecting the enforceability of that term or the PO as a whole.
- (c) If any part of a PO is or becomes illegal, invalid or unenforceable, the legality, validity or enforceability of the remainder of the PO shall not be affected and shall be read as if that part had been severed.
- (d) Any term of a PO which expressly or by implication from its nature is intended to survive the termination or expiration of the PO and any rights arising on termination or expiration shall survive termination or expiration.

9.4 Anti-Bribery and Anti-Corruption

- (a) Supplier represents and warrants that other than as set out in the PO or as otherwise advised to Purchaser in writing it, its Personnel, 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 PO.
- (b) In the event of any breach of this condition by the Supplier, Purchaser may terminate the PO immediately and from the date of termination the PO shall be void and of no effect. Any payments made by Purchaser to Supplier before or after the date of termination under this clause shall be refunded by the Supplier to Purchaser on demand.

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9.5 Work Health, Safety and Environment

The Supplier shall comply with any applicable laws, statutes, regulations and Purchaser's policies, standards, plans, processes, procedures and instructions (including Purchaser's 'Supplier HSEQ Requirements Manual'), which will be provided upon request, relating to work health, safety and environment and shall provide the Goods in such a way that the Purchaser, its personnel and its customers are able to make full use of the Goods without contravening or being placed in breach of aforesaid requirements.

9.6 Privacy

The Supplier shall (i) comply with all privacy obligations under law and notify the Purchaser as soon as it becomes aware of a (possible) breach of any of the privacy obligations; and (ii) indemnify the Purchaser against any loss, liability or costs (including legal costs) suffered by the Purchaser which arises directly or indirectly from a breach of any of this clause.

9.7 Confidential Information

Each party dealing with confidential information under the PO shall ensure that the confidential nature of the information is protected except if and limited to the extent that disclosure is required in accordance under law or statutory or portfolio duties or the disclosing party has obtained the other Party's prior written consent. The Supplier shall only use confidential information solely for the purposes of the PO and return or destruction of items relating to confidential information shall not release the Supplier from such obligations.

9.8 Intellectual Property and Patents

- (a) Intellectual Property ("IP") means all copyright and all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs, circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.
- (b) Where IP is owned and supplied by a party (whether separately or as part of the Goods), that party shall retain ownership of all such IP. The other party undertakes not to disclose any information related to such IP to any third parties without the prior written consent of the first party, except where it is necessary for the usual or intended use of the Goods.
- (c) The ownership in IP which is created under or otherwise in connection with the PO, shall vest in the party which created such IP. In case that the Purchaser is not be the owner of such IP, then the Purchaser shall be granted by the owner of such IP, a royalty-free, irrevocable, world-wide, perpetual, non-exclusive, unrestricted license regarding such IP. Said licence shall not be limited to a particular project or purpose, shall include the right to sub-license and all documentation, data, samples or any other materials developed or created in connection with such IP.
- (d) 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 IP, and shall hold 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.

9.9 Forced Labour or Slavery

- (a) In this clause Forced Labour or Slavery means "slavery" and "forced labour" as these terms are defined by the International Labour Organisation (ILO) from time to time, including in any present or future ILO conventions.
- (b) The Supplier warrants that:
 - (i) it has thoroughly investigated its labour practices, and those of its Personnel, to ensure that there is no Forced Labour or Slavery used anywhere in the Supplier's business or by any of its Personnel;
 - (ii) it has put in place all necessary processes, procedures, investigations and compliance systems to ensure that the warranties made in this clause will continue to be the case at all times; and
 - (iii) it has taken, and will take in the future, all necessary actions and investigations to validate the warranties made in this clause.

9.10 Cyber Security

The Supplier and any of its Personnel shall comply with the Purchaser's 'Third-Party Management Standard', relating to Cyber Security, which will be provided upon request.