

# KADOR ENGINEERING (AUSTRALIA) PTY. LIMITED'S TERMS AND CONDITIONS OF PURCHASE

## 1. INTRODUCTION

### 1.1 Application of these Terms and Conditions

Acceptance by a party ("the Supplier") of a purchase order ("Purchase Order") issued by Kador Engineering (Australia) Pty Ltd ABN 41 010 145 534 named on the Purchase Order ("Purchaser") shall give rise to a Contract ("Contract") between the Purchaser and the Supplier incorporating these terms and conditions of purchase and any other terms and conditions which are part of the Purchase Order. No other term and conditions will form part of the Contract unless expressly agreed in writing by the Purchaser. The Contract may not be varied except by agreement in writing by the Purchaser. In the Contract "Goods" means the Goods under the Contract (if any); Services means the Services under the Contract (if any); "Goods and Services" means all of the Goods and/or Services the subject of the Contract and "Materials" means production of the Goods and/or supply of the Goods In this Contract, "GST" means Goods and Services tax levied in accordance with the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and the expressions "supply", "tax invoice" and adjustment event" have the same meanings as in the Act.

## 2. SPECIFICATION

Goods and/or Services shall be supplied by the Supplier in a timely manner and in accordance with the Contract including any specification set out in the Contract.

## 3. PRICE

3.1 The Purchaser agrees to pay the Supplier the price stipulated in the Purchase Order for the Goods and/or Services based on the rates and quantities set out in the Purchase Order within the time/s and at the place/s stipulated in the Purchase Order.

3.2 Unless otherwise expressly provided in the Contract, the price for the Goods and/or Services includes the cost of transport insurance (to be paid by the Supplier), all duties, taxes (except GST) and packing costs and any other costs and expenses associated with manufacture, delivery and/or supply, and offloading, of the Goods and/or Services FIS to the address stipulated in the Contract.

3.3 Any increase in the cost of manufacture, delivery and / or supply of the Goods and/or Services between the date of the Purchase Order and the date of delivery or supply shall be borne by the Supplier.

3.4 The Purchaser may direct the Supplier to alter, add to or omit all or part of the Goods and/ or Services without cause and for its own convenience and for the purpose of having all or part of the Goods and/or Services provided by another supplier. Unless the parties agree upon a price for such variation the price in respect thereof shall be a reasonable price.

## 4. GST

4.1 The price is exclusive of GST. The Purchaser will reimburse the Supplier for the amount of any GST payable in respect of any supply made under or in connection with the Contract, provided the Supplier provides the Purchaser with a tax invoice in respect of the supply.

4.2 If there is an adjustment event in relation to the supply:

(a) the Supplier must refund to the Purchaser the amount by which the amount reimbursed pursuant to clause 4.1 exceeds the adjusted GST on the supply; or

(b) The Purchaser will pay to the Supplier the amount by which the adjusted GST on the supply exceeds the amount reimbursed pursuant to clause 4.1.

## 5. DELIVERY AND ACCEPTANCE

5.1 Without limiting the Purchaser's rights hereunder, the Supplier shall:

(a) repair or replace any Goods which are damaged or found

not to be in accordance with the Contract; and

(b) re-perform any Services which are found not to be in accordance with the Contract or which, in the Purchaser's reasonable opinion fail to comply with the standard of care referred to in clause 10.1(c) below.

5.2 Delivery shall not have taken place and property and risk in the Goods shall not pass until the Supplier has obtained from the Purchaser or its authorised agent a signed receipt or delivery docket.

5.3 Goods and/or Services will not be considered accepted until they have passed any acceptance tests set out in the Contract and are apparently in conformity with the Contract.

5.4 Delivery and acceptance shall not have taken place until the Supplier has provided all designs, specifications and technical information including installation, operating, repair and maintenance manuals and all other documents and things specified in the Contract or reasonably required in the Purchase Order to use the Goods and/or Services for their intended purpose.

5.5 Goods and/or Services not required to be tested will be deemed accepted by the Purchaser seven (7) days after delivery, unless the Purchaser advises otherwise. The inspection and acceptance referred to in this clause shall be without prejudice to any of the Purchaser's rights and remedies under the Contract or otherwise.

5.6 Delivery of any Goods will not be acceptable to the Purchaser unless:

(a) all Goods are securely packed as required by the Purchaser from time to time so as to prevent damage and allow proper storage and stock control; and

(b) each box or container has a suitably visible delivery note detailing its contents including Purchaser Order number, quantity delivered, part number, code number, the Supplier's name, a description of the Goods and such other details as required by the Purchaser from time to time.

## 6. TIME

6.1 The Supplier shall provide written confirmation to the Purchaser three (3) days prior to any delivery that delivery will be made to the required time/s and place/s.

6.2 The Purchaser may by notice in writing given at any time prior to actual delivery or supply, postpone the time for delivery or supply or require the Supplier to deliver the Goods and/or perform the Services in installments.

6.3 If the Supplier fails to deliver and/or supply the Goods and/or Services by the time stipulated in the Contract, the Supplier must pay the Purchaser any amount payable by the Purchaser under any Contract under which the Goods and/or Services are to be onsold together with any amount stipulated in the Contract as liquidated damages in respect of the period thereafter up to the date upon which delivery and supply is achieved. The Purchaser reserves its rights to claim actual damages for delay where no amount or 'nil' is stipulated for liquidated damages.

## 7. PAYMENT

7.1 Unless the Contract provides for periodic progress payments or for payment by installments (upon delivery or otherwise) the Supplier may only submit a claim for payment after all of the Goods and/or Services have been delivered and/or completed and accepted by the Purchaser, such claim to be submitted by the next following 25<sup>th</sup> day of the month after acceptance;

7.2 Where the Contract provides for periodic progress payments or payment by installments or milestones, the Supplier may submit a claim for payment of the amount due in respect of the relevant Goods and/or Services after delivery and/or completion, and after acceptance by the Purchaser, by the next following 25<sup>th</sup> day of the month after the relevant payment period or installment or milestone date (as applicable).

# KADOR ENGINEERING (AUSTRALIA) PTY. LIMITED'S TERMS AND CONDITIONS OF PURCHASE

7.3 The Purchaser may issue to the Supplier a Payment Schedule setting out the amount payable in respect of the claim and the reasons for any difference between that amount and the amount claimed.

7.4 The amount otherwise payable by the Purchaser to the Supplier shall be reduced by any amount due from the Supplier to the Purchaser or that the Purchaser is entitled to be paid, or to deduct, set off or withhold under the Contract, for breach or otherwise, which amount shall be a debt owing from the Supplier to the Purchaser.

7.5 The Purchaser shall pay the Supplier the amount of the claim due to the Supplier within 30 days after the end of the month in which the claim for payment is submitted. A claim submitted after the 25<sup>th</sup> day but by the end of a month shall be considered to have been submitted in the following month.

7.6 If the Contract is a construction contract for the purpose of the Building and Construction Industry Payments Act 2004 (Qld)

(a) any certificate issued by the Purchaser in response to a payment claim is deemed to be a payment schedule for the purpose of that Act; and

(b) the authorised nominating authority to whom any adjudication application may be made is the Institute of Arbitrators and Mediators Australia.

7.7 Any amount paid by the Purchaser to any subcontractor or supplier of the Supplier pursuant to any notice of claim served on the Purchaser by such subcontractor or supplier under the Subcontractors Charges Act 1974 or the Building and Construction Industry Payments Act 2004 (Qld) shall be a debt due and payable by the Supplier to the Purchaser.

7.8 All delivery notices, invoices, packages and any other documentation relating to the purchase of Goods and/or Services by the Purchaser must include the relevant Purchase Order number, and where available any serial or asset numbers and/or any product or contractor names. Without limiting the above, invoices which do not quote a Purchase Order number will not be accepted for payment by the Purchaser.

## 8. INSURANCE

8.1 The Supplier shall, until acceptance of the Goods by the Purchaser and/or completion of the performance of the Services, at its own cost and in a form acceptable to the Purchaser, insure the Goods and any Materials provided by the Purchaser to the Supplier pursuant to clause 11 in the joint names of the Purchaser and the Supplier for any loss of or damage to the Goods and/or such Materials.

8.2 The Supplier shall have in effect for the duration of the Contract the following insurances:

(a) where required by law, adequate Employers Indemnity and Workers Compensation insurance;

(b) Public and Products Liability insurance for an amount of at least \$5,000,000.00 per occurrence/aggregate;

(c) adequate Motor Vehicle Third Party Liability insurance for all vehicles in the ownership or control of the Supplier; and

(d) where the Supplier is providing services in a professional capacity, adequate Professional Indemnity Insurance for an amount of at least \$1,000,000.00 per claim/aggregate on a claims made basis.

## 9. GUARANTEE AND INDEMNITY

9.1 Without limiting any of the Purchaser's rights and without limiting any other warranty provided elsewhere in the Contract, the Supplier hereby guarantees the Goods and/or Services against any omissions, defects or failures whether due in whole or in part from faulty design, materials or workmanship or any other cause which occurs (whether or not apparent) at any time from the date of acceptance of all of the Goods and/or completion of all of the Services until the date twelve (12) months from the date the Goods and/or Services are put into commercial use, notwithstanding that such

omissions, defects or failures come to the attention of the Purchaser at any time after the expiry of that period.

9.2 Without limiting any other rights of the Purchaser, if the Supplier breaches its obligations under clause 9.1, the Supplier shall, at the option of the Purchaser:

(a) refund the price for and, where applicable remove such of the Goods as do not conform with the Contract; and/or

(b) repair, modify or replace at the Supplier's expense, such Goods as do not so conform; and/or

(c) re-perform the services which, in the reasonable opinion of the Purchaser do not so conform;

and the Supplier shall be liable for all resulting costs and expenses incurred by the Purchaser, including but not limited to, where applicable, any costs and expenses incurred by the Purchaser in recovering the Goods, testing them, returning them to the Supplier, re-installing and recommissioning them.

9.3 The Purchaser may, at its option, have any repair, modification or replacement of the Goods or resupply of the Services referred to in clause 9.2 undertaken by a third party or undertake the repair, modification, replacement or resupply itself, and all resulting costs and expenses shall be borne by the Supplier.

9.4 The Supplier shall indemnify the Purchaser against:

(a) loss of or damage to property of the Purchaser including the Contract Material;

(b) claims by any person against the Purchaser in respect of personal injury or death or loss of or damage to property, arising out of or as a consequence of the carrying out by the Contractor of the Services.

(c) any liability or costs incurred by the Purchaser as a consequence of the Supplier (or any of the Supplier's staff) being deemed an employee of the Purchaser.

The provisions of this clause 9.4 shall survive termination of the Contract for any reason.

## 10. WARRANTY

10.1 The Supplier hereby warrants to the Purchaser that:

(a) the Goods and/or Services correspond to the description in the Contract and conform to all relevant specifications, drawings, samples and/or descriptions therefore;

(b) the Goods and/or Services are fit and sufficient for the purpose for which they are intended;

(c) the Goods and/or Services are of the quality specified or, if no quality is specified, in the case of Goods, new and of the best merchantable quality, and in the case of Services, are performed with due care, skill and diligence, and to the standard of care normally exercised by members of the trade, industry or profession relevant to the Services;

(d) the Goods are free of all defects and will operate satisfactorily and reliably under all conditions;

(e) the Goods are free of all liens and encumbrances and the Supplier has good title to them and;

(f) the Goods and/or Services strictly comply with all applicable laws, regulations, standards and codes.

## 11. MATERIALS SUPPLIED BY THE PURCHASER

11.1 The Purchaser shall provide to the Supplier any patterns, designs, specifications, drawings, samples, dies, tools, jigs, technical information, equipment and other materials specified in the Contract (whether in electronic format or otherwise) or which the Purchaser has agreed in writing to provide to enable the Supplier to produce the Materials.

11.2 All materials and the Purchaser's intellectual property rights therein (if any), remain the property of the Purchaser. The Supplier must return the materials to the Purchaser within seven (7) days after delivery of the Goods and/or supply of the Services.

11.3 The Supplier must not use the materials for any other purpose except the supply of the Goods and/or Services to the Purchaser.

# KADOR ENGINEERING (AUSTRALIA) PTY. LIMITED'S TERMS AND CONDITIONS OF PURCHASE

## 12. DESIGN AND SPECIFICATIONS

12.1 If the Purchaser reviews design drawings, specifications, construction drawings or workshop drawings or any other documents prepared by or on behalf of the Supplier, gives any approval, direction, or instruction to the Supplier, or provides information to the Supplier, this shall not relieve or reduce the Supplier's sole responsibility for the supply of the Goods and performance of the Services in accordance with the Contract, nor release the Supplier from its obligations under clause 9 and 10, and shall not restrict the Purchaser's rights and remedies under the Contract or constitute acceptance by the Purchaser that the Supplier has complied with its obligations under the Contract.

## 13. CONFIDENTIALITY

13.1 The Supplier shall keep confidential the terms of the Contract and the materials and shall only disclose the same as required by law and to those of its employees, servants or agents necessary to enable the Supplier to perform the Contract.

## 14. INTELLECTUAL PROPERTY

14.1 The Supplier hereby grants to the Purchaser a perpetual, irrevocable, non-exclusive, royalty - free, transferable licence (with the right to sub-license) to use all intellectual property (whether owned by the Supplier or not) which is used or developed by the Supplier in connection with the Goods or Services under the Contract.

14.2 The Supplier warrants that:

(a) the supply of the Goods and/or Services by the Supplier to the Purchaser and the licence granted by the Supplier pursuant to clause 14.1 does not infringe the intellectual property rights of any third party and;

(b) the Goods and Services are not subject to any intellectual property rights of any third party that in any way restrict the rights of the Purchaser or its customers to use or sell the same.

14.3 In this Contract "intellectual property" means any intellectual or industrial property whether protected by statute, at common law or in equity, including any patent, invention, copyright, or design right (whether or not registrable), in any design, specification, process, technique, software, know how, trade secret, technical information, financial information, business method and confidential information.

## 15. BREACH AND TERMINATION

15.1 The Purchaser may terminate the Contract by written notice to the Supplier:

(a) in its absolute discretion twenty one (21) days prior to the date of delivery stated in the Purchase Order;

(b) if the Goods are not delivered and/or the Services not supplied by the time/s stipulated in the Contract as varied pursuant to clause 6;

(c) if the Supplier is in breach of a term of the Contract and fails to remedy the breach within fourteen (14) days of the receipt by it of a notice in writing from the Purchaser specifying the breach and requiring the Supplier to remedy it;

(d) if the Purchaser is of the reasonable opinion that the Supplier is unable or unwilling to comply with its obligations under the Contract with due diligence or in a competent manner; or

(e) if the Supplier becomes bankrupt or makes an assignment of its estate for the benefit of its creditors or makes a composition or other arrangement with its creditors or if, being a company, the Supplier goes into liquidation whether voluntary or compulsory (except for the purposes of reconstruction) or has a receiver appointed over all or any of its assets or if any person or corporation goes into possession of or appoints an agent overall of any of the assets of the Supplier.

15.2 Termination of the Contract pursuant to this clause shall be without prejudice to the rights of either party accruing prior to termination.

## 16. ASSIGNMENT

16.1 The Supplier must not assign, sub-licence, sub-contract or transfer in whole or in part any of its interest or obligations under the Contract without the Purchaser's prior written consent, which consent may be granted, withheld or granted subject to conditions in the Purchaser's absolute and unfettered discretion.

## 17. DISPUTE RESOLUTION

17.1 If a difference or dispute between the parties arises in connection with the subject matter or interpretation of the Contract, including a dispute concerning a claim in tort, under statute, or on any other basis in law or equity available under the law governing the Contract ("Dispute"), either party may by hand or registered post give the other party written notice of dispute identifying and providing details of the dispute and entitled Dispute Notice ("Dispute Notice")

17.2 Within seven (7) days of receipt of a Dispute Notice, representatives of the parties having authority to bind the parties shall confer to seek to resolve the dispute or agree on a method of doing so and whether that method shall be binding. If a resolution or method of resolution has not been agreed within twenty one (21) days of the service of Dispute Notice, the Chief Executive Officers of the parties shall confer for the same purpose as the parties' representatives. All aspects of such conference/s shall be privileged.

17.3 Except for the enforcement of payment due under the Contract or to seek injunctive or urgent declaratory relief, and subject to any agreement to the contrary, neither party may institute legal proceedings in respect of any dispute unless a Dispute Notice in respect thereof has first been given and then only after a period of twenty eight (28) days from receipt of such Dispute Notice has elapsed.

## 18. GOVERNMENT LAW AND JURISDICTION

These terms and conditions are governed by the laws of the State of Queensland and all disputes arising between the Supplier and the Purchaser will be submitted to the Brisbane Registry of any Court as is competent to hear the matter.

## 19. GENERAL

19.1 The Purchaser shall have no liability to the Supplier in respect of any matter in connection with the Contract unless the claim together with full particulars thereof is lodged with the Purchaser within twenty one (21) days of the occurrence of the event/s or circumstances/s on which the claim is based.

19.2 If any provision or part of any provision of the Contract is unenforceable, such unenforceability shall not affect any other part of such provision or any other provision of the Contract.

19.3 Any waiver by the Purchaser of strict compliance with any provision of the Contract shall not be effective unless in writing and signed by an authorised officer of the Purchaser.

19.4 Delivery acronyms such as FIS, FCA, FOB, CIF used in the Contract shall be interpreted in accordance with INCOTERMS 2000 edition.

19.5 No provision of the Contract shall be construed adversely against one party solely on the basis that that party was responsible for the drafting of that provision.