

## PURCHASING

### Terms & Conditions

#### 1. Preamble

- 1.1. These General Purchasing Conditions (the "Conditions") shall apply to the purchase of any Goods offered or provided by the Supplier to the Company. They form an integral part of any purchase order(s) ("PO") placed by the Company with the Supplier. No terms and conditions other than those defined in the Conditions, the provisions of any PO and all documents incorporated therein by reference shall be binding upon the Company and the Supplier unless expressly accepted in writing. No terms and conditions contained in order confirmations, prior offers or any other document issued by the Supplier shall be binding on the Company, even if they have not been expressly rejected. By confirming the PO or by performing or supplying any goods and/or services set forth in the PO or invoicing pursuant to the PO the Supplier expressly agrees and accepts all terms of the PO including these Conditions.

#### 2. Definitions

- 2.1. "Company" shall mean Transmin Pty Ltd ACN 009 244 311 of 33- 37 Denninup Way, Malaga, Western Australia and any related body corporate of Transmin within the meaning of section 50 of the *Corporations Act 2001 (Cth)*.
- 2.2. "Goods" shall mean Goods supplied by the Supplier to the Company (and where the context so permits shall include any supply of Services as hereinafter defined).
- 2.3. "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Customer on a principal debtor basis.
- 2.4. "GST" means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended (GST Act) or any replacement or other relevant legislation and regulations.
- 2.5. "Price" shall mean the cost of the Goods as agreed between the Company and the Customer subject to clause 3 of this contract.
- 2.6. Premises mean the premises nominated by Transmin for the delivery of the relevant Goods.
- 2.7. "Supplier" means the entity named on the Purchase Order selling the goods and/or services to Company upon these Conditions.
- 2.8. "Services" shall mean all services supplied by the Company to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).

#### 3. Price, Invoicing, Payments and Taxes

- 3.1. Prices and Charges. The firm and fixed fees and charges for the delivery of goods and/or services shall be the price shown for each of such goods and/or services on the face of the PO or in a prices list attached to these Conditions. Apart from GST and taxes (as set out below), the fees and charges shall include all costs and expenses, whether internal or external, direct or indirect, incurred by the Supplier in complying with the obligations set out in this Agreement or required by law. The PO prices are inclusive of all packing, protecting, lashing and anchoring materials and of all necessary documents, accessories, devices and/or appropriate tools in view of a complete and functional use and maintenance of the Goods.
- 3.2. Invoicing. Invoices shall include all necessary references to the specific goods and services provided and Company's references including Buyer's name, contact person, PO number, place of delivery, quantity and description of the goods and services (in the same sequence as in the PO). With regards to taxes each invoice shall show the GST rate applicable to the charges being invoiced. Invoices may only be submitted on delivery of goods or completion of services.
- 3.3. Due payment and non-payment. Payment shall be due and payable 45 days from end of month in which a valid tax invoice is received by the Company unless alternative payment terms have been expressly agreed to in writing. In the event Company has not received invoice of goods or services under a PO at the address stated in the PO 180 (one-hundred and eighty) days after the delivery of the goods or completion of the services, such goods or services shall not qualify for invoicing and shall not be payable. If the Company disputes the whole or any part of a tax invoice issued by the Supplier, it may withhold payment of the invoice until the dispute is resolved. In this case, the Supplier shall have no claim for interest, penalties or any other compensation on the amount withheld. The Company may set off against any amount due for payment to the Supplier with any amount owed by the Supplier to the Company. In the case where the Company is entitled to claim duty rebates or any other kind of rebates that are dependent on documentation being provided by the Supplier, the Company will be entitled to withhold payment of invoices until the Supplier provides such documentation.

#### 4. GST

- 4.1. All prices and rates contained in this Agreement are exclusive of GST but inclusive of all other taxes, duties and charges.

#### 5. Delivery, Title and Risk

- 5.1. Incoterms. Unless otherwise provided in a PO, delivery terms for (i) goods shall be DDP (incoterms 2010) at the delivery point and on the date stated in the PO with all necessary invoices and delivery notes, advice note, bills of lading and other documents ordinarily accompanying such goods and (ii) the services at the delivery point and on the date stated in the PO.
- 5.2. Title and risk. Without prejudice to Company's rights and remedies herein, the Company will have title to the goods when the Company pays for the goods and bear the risk in the goods when the Company takes delivery of those goods at the delivery point. If the Company rejects the goods for any reason, then title and risk do not pass to the Company.
- 5.3. Transportation. The Supplier will undertake based on the INCOTERM 2010 agreed by the parties to take all measures necessary to perform proper transportation of the Goods by all appropriate means and using all appropriate equipment, with the assistance of competent agents or sub-contractors where necessary. The Supplier must ensure the transportation of the Goods is done in a manner to avoid damage to the Goods, and so as to avoid difficulties in unloading the Goods at the Company's place of delivery.
- 5.4. In the event of refusal of all or part of any delivery, the Goods rejected shall be stored and shipped back by the Company at the Suppliers expense and risk.

#### 6. Packing, Marking and Restricted Articles

- 6.1. Packaging requirements. Unless it is set out differently in a PO all goods shall be delivered in a secure and appropriate packing suitable for domestic transport, with due consideration to the generic nature and composition of the goods supplied. Each PO must be packed separately to ensure proper registration and receipt. Supplier is allowed to pack several POs on the same pallet, as long as each PO is packed in its own package. Pallets containing packages for several POs shall be labelled with an A4 size sign "Mixed Pallet" or "split Pallet". Supplier must pack multiple packages for a single PO on the same pallet. Supplier may not split a PO with multiple packages over several pallets, unless the PO is so large that it fills on a pallet and needs to be packed on a second pallet.
- 6.2. Marking. Each delivery shall be clearly marked with Company's name and address, Company's PO number, place of delivery, on the exterior of the package(s) and be included in the documentation. Dangerous goods must be marked and packed accordingly according to relevant legislation in force at the time of the delivery. Likewise all documents/ certificates must accompany the goods but should not be enclosed in the packages

#### 7. Inspection, testing, Acceptance and Documentation.

- 7.1. The Company reserves the right to verify the progress and proper performance of any order and to conduct any quality investigations and testing it deems advisable. The Supplier shall provide the Company, and its representatives, free access to the Suppliers workshops at all times. The Company will provide adequate notice of any inspections and will endeavour to use all reasonable means to avoid any disruptions to the Supplier.
- 7.2. Any inspections done or acceptance testing done does not relieve the Supplier from its obligations to ensure that the Goods conform to the technical specifications required. The Supplier will still be liable for any defects found in the Goods even after an inspection.
- 7.3. The Supplier shall deliver to the Buyer, in English language, at such times as may be agreed but at the latest upon delivery of the Goods, all technical documentation relating to the Goods.

#### 8. Intellectual Property, Confidentiality and Reference

- 8.1. Intellectual Property and Confidentiality. The Supplier acknowledges and agrees that: (i) all Company's intellectual property rights are at all times the property of the Company and the Supplier does not acquire any right, title or interest in such rights and Company grants the supplier a non-transferable, non-exclusive, royalty free license to use such rights solely for the purpose of supplying the Goods to Company. (ii) If any intellectual property rights are created during the production and supply of the Goods by the Supplier to the Company, then upon their creation the Supplier assigns such rights to the Company at no cost; and (iii) All Company's intellectual property rights and other information relating to Company's business affairs is confidential and must not be disclosed to any third party including any other Supplier's personnel. The Supplier warrants that the Goods do not infringe the intellectual property rights of any third party and indemnifies Company against all losses and liabilities incurred by Company and all costs actually payable by Company and other expenses incurred by Company in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal) in connection with any claim relating to the infringement of a third party's intellectual property rights.
- 8.2. Reference and advertising. Supplier is not permitted, without prior written consent from Company, to use Company's name or any commercial relation with Company or a company associated with Company for the purpose of advertising or as a reference.

#### 9. Warranties

- 9.1. Supplier's warranties. Supplier warrants and undertakes that (i) the goods shall be new, of good quality and workmanship, free from defects and fit for the intended purposes, including complying with all legislation, regulations and other governmental requirements in Australia relating to the Goods and to the relevant "Australian standard" issued by Standards Australia; (ii) all the Goods are manufactured from high-grade materials and to rigid specifications; (iii) the Goods are an will remain free from any Security Interest (as that term is defined in the *Personal Property Securities Act 2009*) or other security, charge or encumbrance; and (iv) the services shall be delivered in accordance with market standards and good practise or such other level of standards agreed between the Parties.
- 9.2. The Supplier warrants the adequacy of the technical Specifications of any relevant PO to meet the specific needs of the Company, and the Supplier acknowledges having examined those Specifications thoroughly.
- 9.3. If any Goods, at any time, are found not to be conforming as per Clause 7.1, then the Company can, at its sole discretion, direct the Supplier to either deliver replacement Goods in a reasonable timeframe or repair the Goods at the Suppliers expense. All goods rejected for any reason will be returned to the Supplier (if not been repaired) at the Sellers risk and expense. Any non-conforming goods that are to be returned to the Supplier will be subject to a storage charge after 15 days of written notification about the non-conformance.
- 9.4. If the Supplier fails to deliver suitable replacement or make repairs promptly or urgently as the case may be, the company shall be entitled to replace or repair such Goods through an alternative party and recover all related costs from the Supplier.
- 9.5. Warranty Period. The Supplier warrants due performance of the Goods for a period of 2 (two) years after they are put into service. Claims made under this warranty shall suspend the warranty period until the Seller has remedied the default, and the warranty period will be extended accordingly. Any goods repaired or replaced under warranty shall be subject to a new warranty period that shall start anew following delivery or repair for a period of two years.

#### 10. Remedies

- 10.1. Delay and defects. In the event of Supplier's delay with respect to delivery of correct and non-defective goods or services, the Company may at its discretion demand that the Supplier: (i) pays the Company a sum by way of liquidated damages of 2% (two per cent) of the total charges to be paid under the PO per day of delay, however such liquidated damages shall not exceed a total of 20% (twenty per cent) of the total charges of the PO in question; (ii) immediately delivers, i.e. via the fastest means of transportation, at the cost of the Supplier (airfreight included) and/or (iii) agrees to receive and goods not complying with those described in this Agreement at Supplier's risk and expense. If the Company has incurred any costs (including costs of rectification to fix defective goods) which can be directly attributable to the Suppliers delay in respect of delivery of correct and non-defective goods and those costs exceed the sum of liquidated damages that the Company can recover from the Supplier, then at the Company's discretion, the Company can recover from the Supplier the costs incurred in lieu of the liquidated damages. Material breach. Any failure or delay in delivery of correct and no-defective goods or services, including partial delivery,

## PURCHASING

- or breach of Supplier's warranties shall be considered a material breach of the PO and entitle Company to terminate the PO with no prior notice.
- 10.2. If the Company terminates this PO under 9.1 above, Company's sole liability to Supplier, and Supplier's sole and exclusive remedy, is payment for Goods received and accepted by Company prior to date of termination, payment which can be set off against any damages to Company. Upon termination, Company may require Supplier to transfer title and delivery to Company any or all property produced or procured by Supplier for performance of this PO and Supplier will be credited with the reasonable value thereof not to exceed Supplier's actual cost of the Purchase order value, whichever is less.
- 10.3. To the extent that any portion of this PO is not terminated pursuant to 9.1 above, Supplier will continue performance of that portion
- 11. Indemnity**
- 11.1. Intellectual property indemnity. Supplier shall defend, indemnify and hold harmless Company from and against all claims resulting from and proceeding brought against Company or its affiliates or Client(s) based on a claim that any goods or services, or their use in the manner intended by Supplier, infringe any patent or other intellectual property right. Supplier shall pay any judgement awarded as a result of any such proceeding against Company or its affiliates or Clients. If the use of any such goods as intended by Supplier is prohibited, Supplier shall, at its own expense, either obtain for Company and its affiliates and Clients the right to continue using such goods or services, replace it with a non-infringing item, modify it so it becomes non-infringing, or remove such items and refund the purchase price and all transportation and/or installation costs.
- 11.2. Indemnity. The Supplier must indemnify, and keep indemnified, the Company from and against all claims, proceedings, expenses, costs (including legal costs on a full indemnity basis), damages, losses and other liabilities in respect of death of, or personal injury, disease or illness (including mental injury) to, any person, third party property damage or breach of third party Intellectual Property Rights, arising directly or indirectly from any breach of these terms or conditions, by the Supplier or the Supplier's Personnel or any Wilful Misconduct or a negligent act or omission of the Supplier or the Supplier's Personnel, except to the extent of liability which is caused by the Wilful Misconduct or a negligent act or omission of the Company or the Company's Personnel.
- 12. Insurance**
- 12.1. Scope of insurance. The Supplier shall have and maintain insurance coverage in accordance with applicable law, including Worker's Compensation/Employer's Liability, Fabrication Plant, Commercial General Liability including Contractual liability, All risk cover for all goods and services provided by Supplier, and any other insurance which Supplier deem appropriate in connection with fulfilling the duties under these Conditions e.g. Professional Liability and Equipment and Tools insurance, at its expense with a reputable insurance company, properly safeguarding Supplier against its liability hereunder.
- 13. Assignment**
- 13.1. Company's right to assign rights and obligations. The Company is entitled to assign, subcontract or otherwise transfer its rights and obligations under the Agreement and any PO in whole or in part to any related entity as defined under the Corporations Act 2001 (or as amended from time to time). Company shall within reasonable time of such assignment notify Supplier in writing hereof.
- 13.2. Supplier's right to assign rights and obligations. Supplier shall not be entitled to assign or otherwise transfer any rights or obligations under the Agreement or any PO without the prior written consent of Company. Any such attempted assignment shall be void.
- 14. Sub-contractors**
- 14.1. Use and liability. The Supplier shall be entitled to use sub-contractors in the performance of the goods and services; however, the Supplier shall be liable for all acts and omissions of its sub-contractors (including and sub-sub-contractors) to the same extent as the Supplier is itself liable to Company.
- 15. Law, Jurisdiction and Disputes**
- 15.1. Law. The law of Western Australia governs these terms and conditions. The parties submit to the non-exclusive jurisdiction of Western Australia and of the Commonwealth of Australia.
- 15.2. Dispute Resolution. If a dispute arises between the Supplier and Company out of or in connection with these terms and conditions and/or the supply of the Goods to Transmin, either party may give the other written notice of the dispute. The notice must be give reasonable details about the nature of the dispute and the basis or any claim that party is making. Neither party will commence proceedings (other than for injunctive or other urgent relief) in respect of any such dispute before a notice under this clause 10 has been served and the procedure in clause 10.2 has been complied with. If a dispute notified under this clause 10 has not been settled within 7 days of the date of the notice, either party may require by further notice in writing to the other, that a person holding a position of senior management of each of the Supplier and the Company meet and undertake negotiations in good faith and on a without prejudice basis with a view to resolving the dispute. If such a meeting is required by either party, each party must ensure attendance on its behalf by a person holding a position of senior management within 7 days of the receipt of the further notice. Despite the existence of a dispute, the Supplier must continue to perform its obligations under these terms and conditions.
- 16. Waiver**
- 16.1. Failure to exercise a right. The failure or delay of a Party to insist upon performance of any provision or part of a provision of the Agreement or a PO or the failure or delay of a Party to exercise any right or remedy to which it is entitled hereunder shall not constitute a waiver thereof and shall not cause a diminution of the obligations created by the Agreement or PO.
- 17. Vienna Sales Convention**
- 17.1. The application of the Sale of Goods (Vienna Convention) Act 1986 (WA) is excluded.