

## 1 Definitions

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“**Claim**” means any claim, demand, action, or proceedings of any nature, whether actual or threatened.

“**Date for Delivery**” means the date(s) by which the Supplier must deliver the Services as stated in the Purchase Order and as amended in accordance with the Purchase Order.

“**Goods**” means the materials, products or goods detailed in the Purchase Order to be supplied by the Supplier in accordance with these Purchase Order Terms and Conditions.

“**GST**” has the meaning given to it in the A New Tax System (Goods and Services Tax) Act 1999.

“**Head Contract**” means the agreement between the Purchaser and its customer for which the Services are required.

“**Place for Delivery**” means the location where the Supplier must deliver the Services as stated in the Purchase Order.

“**Price**” means the total amount stated in the Purchase Order expressed in AUD as may be adjusted in accordance with the Purchase Order.

“**Purchase Order**” means the purchase order issued by the Purchaser detailing the Services to be provided by the Supplier in accordance with these Purchase Order Terms and Conditions, including any special conditions, specifications and other documents referred to therein.

“**Purchaser**” means the relevant AE Smith, NuvoGroup or Envar entity named in the Purchase Order.

“**Services**” means the works or services stated in the Purchase Order and all activities that are necessary or incidental to that work, including the supply of Goods (if any).

“**Site**” means the location owned or occupied by the Purchaser or a third party, to which the Supplier is granted access in accordance with the terms of this Purchase Order for the performance the Services.

“**Supplier**” means the person, company or organisation named as the supplier or subcontractor in the Purchase Order.

## 2 Entire Agreement

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Subject to clause 4.1, the Purchase Order represents the entire agreement between the Purchaser and the Supplier in relation to its subject matter and supersedes all prior correspondence, quotations, and negotiations.

## 3 Acceptance

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The Supplier acknowledges that it is bound by the terms of the Purchase Order by its acceptance (whether in writing, verbally or by commencement of the performance of the Services).

## 4 Order of Precedence

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4.1 Where there is a specific subcontract or agreement in place (“Framework Agreement”) between the parties, to the extent of any inconsistency between the Framework Agreement and this Purchase Order, the documents should be read with the following order of precedence: (a) Framework Agreement; (b) the Purchase Order.

4.2 To the extent clause 4.1 does not resolve any inconsistency, the Supplier must promptly notify the Purchaser. The Supplier must comply with the direction of the Purchaser as to the interpretation to be adopted in resolving the inconsistency.

4.3 Any additional or conflicting terms and conditions, whether provided by the Supplier before or after the issuance of this Purchase Order, shall be deemed null and void and have no effect on the rights and obligations of the parties under this Purchase Order.

## 5 Price

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5.1 The Price of the Services payable by the Purchaser shall be that specified in the Purchase Order and shall be fixed and firm, inclusive of GST, and may only be varied in accordance with this Purchase Order.

5.2 The Price is inclusive of all taxes, duties and government charges, freight, and unloading costs relating to the delivery of the Services.

## 6 Warranties

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6.1 The Supplier warrants that the Services:

- (a) are strictly in accordance with the Purchase Order, relevant laws and standards, and relevant specifications;
- (b) are of merchantable quality and are fit for the purpose for which they are intended;
- (c) are to a high standard and are free of defects in material, workmanship, and design;
- (d) are adequately packaged and free from damage;
- (e) do not contain any hazardous substances (including but not limited to asbestos or silica);
- (f) will be performed in a safe manner by experienced and skilled personnel with all relevant permits, licenses, and qualifications; and
- (g) are new and free of all liens, charges, security interests and encumbrances.

6.2 These warranties, the Purchaser’s rights under clause 12 and any other warranties or guarantees contained in the Purchase Order, are in addition to and do not limit any implied or expressed warranties at law.

6.3 The Supplier agrees that the Purchaser or its agents shall have the right of inspection of all Services performed under this Purchase Order while in any stage of engineering, manufacture, dispatch, delivery, or installation. The Purchaser or its agents shall have the power to reject any Services performed or being performed that does not conform to the Purchase Order. Any work rejected shall be reperfomed at no additional cost to the Purchaser. Any such inspection shall not relieve the Supplier of any obligations contained in the Purchase Order or at law.

## 7 Compliance with Laws

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7.1 The Supplier must comply with:

- (a) all applicable laws of the Commonwealth, any State, Territory or local authority;
- (b) any directions given by the Purchaser under any applicable occupational health and safety laws;
- (c) all applicable Australian Standards published by Standards Australia and any other relevant standards; and
- (d) the Purchaser's Environmental Policy, Health & Safety Policy, Integrated Management Plan and Modern Slavery Policy, as updated by the Purchaser from time to time.

## 8 Performance

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- 8.1 The Supplier must deliver and complete the Services at the Place for Delivery in accordance with this Purchase Order, and as directed by the Purchaser.
- 8.2 The Supplier will not be granted access to the Site until it has completed any inductions required by the Purchaser. The cost of all inductions is deemed to have been included in the Price.
- 8.3 The Supplier must not carry out any work or use any plant or equipment on Site until the Supplier has provided all SWMS, permits, authorisations, licenses, and other documents requested by the Purchaser.
- 8.4 The Supplier acknowledges that it will not have sole access to the Site during the performance of the Services. The Supplier may be required to coordinate the Services with other contractors on Site and has included such allowance in the Price.
- 8.5 Subject to the satisfaction of the Supplier's obligations under clauses 8.2 and 8.3, the Purchaser will grant the Supplier sufficient access to carry out the Services.

## 9 Indemnity and Insurance

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- 9.1 The Supplier is liable for and indemnifies the Purchaser, its directors, officers, employees and agents against all loss, damage and claims arising from loss of or damage to property, injury, illness, and death, and arising from any act or omission of the Supplier in relation to the provision of Services under the Purchase Order.
- 9.2 The Supplier will, for so long as any obligations remain in connection with the Purchase Order, effect and maintain appropriate insurance policies as follows:
  - (a) public and products liability insurance for \$20,000,000 per occurrence and unlimited in the aggregate;
  - (b) unless otherwise waived by the Purchaser, professional indemnity insurance for \$1,000,000 per occurrence and \$5,000,000 in the aggregate;
  - (c) workers compensation insurance as required by law;
  - (d) if the Services involve the use of a motor vehicle, motor vehicle insurance as required by law, and liability insurance for third party property with a sum insured of not less than \$20,000,000 per occurrence; and
  - (e) any other policies as advised by the Purchaser from time to time.

- 9.3 The insurance policies required by clause 9.2 must include a principal's indemnity provision which insures the Purchaser against its vicarious liability arising from the acts of the Supplier, its employees and subcontractors, and a waiver of subrogation.
- 9.4 The Supplier must provide copies of the certificates of currency for the insurances required by clause 9.2 prior to the commencement of the Services.
- 9.5 The failure to effect and maintain the insurances under this clause constitutes a substantial breach of contract.

## 10 Variations

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- 10.1 The Supplier must not vary the Services without the prior written consent on the Purchaser.
- 10.2 The Purchaser may at any time direct the Supplier to alter, amend, omit, add to, or otherwise vary the Services ("Variation") by issuing the Supplier with a written direction ("Variation Direction"). The Supplier must immediately comply with any Variation Direction under this clause. No Variation will invalidate or constitute a breach of this Purchase Order.
- 10.3 The Supplier will provide a quote to the Purchaser setting out the cost of the Variation and the impact of the Variation (if any) on the Date for Delivery. As soon as practicable after receipt of the quote from the Supplier, the Purchaser will either accept the quote by signing and returning it to the Supplier or reject the quote in writing. If the Purchaser and the Supplier are unable to agree upon the cost of the Variation, a reasonable price will be determined by the Purchaser and the Price will be adjusted accordingly.
- 10.4 The Supplier is only able to claim additional costs for a Variation where the Purchaser has issued a Variation Direction, and the additional cost is accepted in writing by the Purchaser.

## 11 Time

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- 11.1 The Supplier must proceed with and deliver the Services diligently, without delay, and by the Date for Delivery.
- 11.2 Delivery of the Services is deemed to have occurred only when a duly authorised representative of the Purchaser has certified the completion of the Services in writing.
- 11.3 If the Supplier is or will likely be delayed in the delivery of the Services, the Supplier must give written notice to the Purchaser within 2 business days of becoming aware of the event giving rise to the delay. The notice must include details of the cause of the delay and the extent of the delay to the Date for Delivery of the Services. If the sole cause of the delay is due to a breach of the Purchase Order by the Purchaser or a Variation Direction, the Purchaser will adjust the Date for Delivery (acting reasonably) and advise the Supplier in writing of the adjusted Date for Delivery.
- 11.4 A breach of clause 11.1 by the Supplier is deemed to be a substantial breach of the Purchase Order. The Supplier is liable for and indemnifies the Purchaser against all costs, loss and damage suffered by the Purchaser arising from the Supplier's breach of clause 11.1.

- 11.5 If the Supplier intends to deliver any Goods which form part of the Services prior to the Date for Delivery, the Supplier must seek the Purchaser's prior written approval, and will be liable to pay any storage costs incurred by the Purchaser.
- 11.6 The Purchaser may unilaterally extend the Date for Delivery at its discretion by giving written notice to the Supplier. The Supplier acknowledges that it has no entitlement to costs arising from such notice.

## 12 Warranty Period

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- 12.1 A warranty period for the Services will commence on the date after completion of the Services as certified by the Purchaser, and expire on the later of:
- (a) a period of not less than 12 months; or
  - (b) the expiry of the Purchaser's warranty period under the Head Contract,  
("Warranty Period").
- 12.2 If at any time from the date of the Purchase Order to the expiry of the Warranty Period, the Services are found to be not in accordance with the Purchase Order, the Purchaser may, by notice, direct the Supplier to:
- (a) repair any defect in the Services;
  - (b) replace the Goods or reperform the Services; or
  - (c) complete the Services,  
at its discretion and at no additional cost to the Purchaser, including any subsequent cost of rework.
- 12.3 Where the Supplier fails to comply with the Purchaser's direction under clause 12.2 within 3 days after notification by the Purchaser, the Purchaser may perform the work stated in the direction or have it performed by others. The cost of doing so will be a debt due and payable from the Supplier to the Purchaser.
- 12.4 If requested by the Purchaser, the Supplier must provide a warranty certificate for the Warranty Period in a form approved by the Purchaser, for the benefit of the Purchaser and such other parties advised by the Purchaser.
- 12.5 The Supplier must assign the benefit of any manufacturer's warranties that it receives for components of the Services to the Purchaser.
- 12.6 The Supplier shall, without limitation, indemnify the Purchaser and its directors, officers, employees and agents against any loss, damage, expense, claim or liability suffered or incurred by the Purchaser, whether consequential or otherwise, arising from a breach of any of the warranties under clause 6.1.

## 13 Payment

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- 13.1 The Supplier may submit a payment claim to the Purchaser no later than the 20th of the calendar month, or such other date as set out in the Purchase Order. The Supplier may claim the amount of the Price for the Services completed in accordance with this Purchase

Order and must include details of the Services completed and supporting evidence of the amount claimed.

- 13.2 The Purchaser will assess the payment claim within 10 business days of its receipt, and certify the amount payable to the Supplier in accordance with this Purchase Order.
- 13.3 The Supplier must submit a valid tax invoice for the amount certified as payable by the Purchaser within 2 days of the receipt of the Purchaser's certification under clause 13.2. The tax invoice must clearly state the payment claim reference date, the correct Purchaser details, the Supplier's name and ABN, a description of the Services being claimed, the Purchase Order number and any other information requested by the Purchaser.
- 13.4 Unless otherwise agreed in writing, the Purchaser will pay for the Services within 30 days after receipt of a tax invoice issued in accordance with clause 13.3, or such other time as required by the relevant Security of Payment legislation in the jurisdiction under clause 20.6.
- 13.5 Where the Purchase Order states that retention monies are to be retained, the Purchaser will withhold retentions from invoice payments in the amount of 10% per invoice up to a total of 5% of the Price. Subject to the Purchaser's rights under clause 13.6, the Purchaser will release 50% of the retention monies held to the Supplier upon the completion of the Services and the remaining 50% of the retention monies will be released to the Supplier upon expiry of the Warranty Period. The Supplier may elect to provide unconditional Bank Guarantees in lieu of retention monies with the Purchaser's written consent.
- 13.6 The Supplier acknowledges that the retention monies are held for the purpose of ensuring the due and proper performance of the Supplier's obligations under the Purchase Order. The Purchaser may deduct from the retention monies any amount that becomes due and payable from the Supplier to the Purchaser.
- 13.7 Payment of the Services by the Purchaser does not constitute acceptance or completion of the Services by the Purchaser.
- 13.8 The Purchaser is entitled to set off from any amount owed by the Purchaser to the Supplier, any amount the Supplier owes to the Purchaser, whether under this Purchase Order or otherwise.

## 14 Title and Risk

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- 14.1 The Supplier warrants that the Goods are owned by the Supplier, or that the Supplier will obtain legal title to the Goods, by the date that title passes to the Purchaser under clause 14.2.
- 14.2 Title to the Goods passes to the Purchaser upon the earlier of:
- (a) delivery of the Goods to the Place for Delivery; or
  - (b) any payment made by the Purchaser for the Goods.
- 14.3 Risk of loss or damage to the Goods passes to the Purchaser upon delivery of the Goods in accordance with the Purchase Order.

- 14.4 The Purchase Order constitutes a security agreement and secures the interest of the Purchaser in all Goods and Services and their related materials in accordance with the Personal Property and Security Act 2009 (Cth).

## 15 Intellectual Property

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- 15.1 Intellectual property includes all copyright in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), design, and circuit layouts, and all other rights resulting from intellectual activity.
- 15.2 Unless otherwise agreed in writing between the parties, all intellectual property created during the performance of the Purchase Order and relating to the Services is, from the time of creation, owned by the Purchaser.
- 15.3 The Supplier hereby grants the Purchaser an irrevocable and transferrable license to use the Supplier's background or pre-existing intellectual property for the purpose of fulfilling its obligations under the Purchase Order. This license includes the right to sublicense such rights to subcontractors, affiliates, or other third parties engaged by the Purchaser in connection with the performance of the Services outlined in the Purchase Order.
- 15.4 The Supplier shall indemnify the Purchaser and its directors, officers, employees and agents from any loss, damage, expense, claim, or liability suffered or incurred by the Purchaser arising from the Supplier's breach of clause 15 and any claim by a third-party alleging infringement of intellectual property rights in relation to the Services.

## 16 Confidentiality

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Both parties agree to treat as confidential any information, whether oral, written, or otherwise, disclosed by one party to the other that is not publicly available. Neither party shall disclose, reproduce, or use the confidential information for any purpose other than the performance of obligations under the Purchase Order without the prior written consent of the disclosing party.

## 17 Subcontracting and Assignment

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The Supplier must not, without the Purchaser's prior written consent, subcontract the whole or any part of the Services, or assign its rights, under the Purchase Order. Despite any approval to subcontract, the Supplier remains fully liable for the performance of its obligations under the Purchase Order.

## 18 Disputes

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- 18.1 If a dispute arises between the parties, either party may give a written notice to the other party identifying details of the dispute ("Notice of Dispute"). The Supplier must continue to perform its obligations under this Purchase Order despite the existence of a dispute.
- 18.2 Within 10 business days of the receipt of a Notice of Dispute, a representative of the Supplier and the Purchaser who have the authority to bind the respective parties must confer at least once with a view to reaching a resolution. All aspects of every such conference, except the fact that it took place, are privileged and confidential.

## 19 Termination

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- 19.1 If the Supplier commits any breach of this Purchase Order and fails to remedy such breach within 7 days of notification by the Purchaser requiring it to do so, the Purchaser may immediately terminate the Purchase Order in whole or in part.
- 19.2 The Purchaser may immediately, and without cause, terminate the Purchase Order or reduce the scope of the Services by giving written notice to the Supplier.
- 19.3 Upon termination, the Purchaser may:
- cease payments under the Purchase Order;
  - recover from the Supplier all sums paid for the Services not provided and any other amount due and payable from the Supplier to the Purchaser; and
  - purchase similar services from alternative suppliers or subcontractors and, where entitled under the terms of the Purchase Order, claim by way of indemnity from the Supplier any loss it may incur in doing so.

## 20 General

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- 20.1 Except for the Supplier's claim for payment under clause 13.1, if the Supplier wishes to make a Claim against the Purchaser, the Supplier shall notify the Purchaser in writing within 5 business days from the commencement of the event giving rise to the Claim. Failure to provide such notice within the stipulated timeframe shall result in the Supplier forfeiting any entitlement to the Claim, and the Purchaser shall be released from any liability or obligation related to the unnotified Claim.
- 20.2 Any communications or notices given under this Purchase Order must be in writing, sent by either email or registered post, and addressed to the relevant party's representative.
- 20.3 Any modifications to the Purchase Order must be in writing and signed by both parties.
- 20.4 If any term of this Purchase Order is found to be illegal or unenforceable, then that term may be severed, and the remaining provisions of the Purchase Order continue in force.
- 20.5 The rights and obligations contained in clauses 6, 7, 9, 12.4, 12.5, 12.6, 14, 15, 16, and 19 survive termination of the Purchase Order.
- 20.6 The terms of the Purchase Order shall be governed by, subject to and construed in accordance with the laws of the State or Territory in which the Services are performed, and the parties accept the jurisdiction of the courts in that State or Territory and the Commonwealth of Australia.