

STANDARD TERMS AND CONDITIONS OF PURCHASE

1. PURCHASE

The Seller sells and Ludowici buys the Deliverables for the Purchase Price in accordance with the Contract.

2. PURCHASE PRICE

(a) Unless otherwise stated in the Purchase Order the Purchase Price shall include all costs for the Deliverables including FIS.

(b) Ludowici will not accept any price escalation with respect to the Deliverables unless the parties have agreed upon such escalation in writing prior to the delivery or completion due date for the Deliverables.

3. SUPPLY

(a) The Deliverables are as set out in the Purchase Order.

(b) The Deliverables must comply strictly with the Specifications unless otherwise advised in writing by Ludowici.

(c) The Seller must notify Ludowici immediately in writing of any non-compliance with the Specifications.

(d) Ludowici will not be liable for any Deliverables supplied by the Seller which are not specified in the Purchase Order and such Deliverables may (at Ludowici's election) be returned to the Seller at the Seller's cost.

(e) If required by Ludowici, the Seller must allow and arrange for Ludowici or its authorised representative to inspect any Deliverables before delivery or at any time during their manufacture. However inspection will not alleviate the Seller's obligation to supply in accordance with the Specifications.

4. DELIVERY AND ACCEPTANCE OF DELIVERABLES

(a) The Deliverables must be:

(i) delivered FIS to Ludowici by the Delivery Date (unless otherwise specified in writing by Ludowici); and

(ii) delivered in accordance with any instructions given by Ludowici whether contained in the Purchase Order or otherwise given in writing to the Seller.

(b) In addition to its other remedies, Ludowici may require the Seller to pay the Late Fee for every day the delivery is delayed after the Delivery Date.

(c) Any extra costs incurred as a result of the failure by the Seller, for whatever reason, to follow Ludowici's instructions in paragraph 4(a) of the Contract will be at the Seller's cost.

(d) Notwithstanding anything in this Contract, the Seller must pack the Deliverables in order to ensure their safe arrival.

(e) Acceptance of and payment for the Deliverables delivered in accordance with this Contract is subject to Ludowici or its authorised representative, if required by Ludowici, carrying out an inspection of the

Deliverables to their satisfaction upon delivery.

(f) Where the Deliverables are to be supplied by the Seller in accordance with specified Milestones, Ludowici will confirm in writing, prior to delivery, whether the Milestone has been satisfied and Ludowici will be under no obligation to accept delivery of the Deliverables if it has not given notice that the Milestones have been satisfied.

(g) The Seller must provide to Ludowici:

(i) the Shipping Documents by no later than the date of dispatch or sailing of the ship carrying the Deliverables;

(ii) advance notice in relation to any heavy lifts of 3 tonnes or heavier, or individual pieces exceeding 2 metres wide, 2 metres high or 9 metres long.

(h) Title to the Deliverables will pass to Ludowici upon written acceptance of the Deliverables by Ludowici at Ludowici's premises.

(i) Subject to clause 13, time is of the essence in the Seller's performance of the Contract.

5. INDEMNITY

The Seller will be liable for and will indemnify and shall keep indemnified Ludowici, its officers, employees and agents from and against any liability, loss or damage of any kind whatsoever arising directly or indirectly from:

(a) any accident, injury or damage to persons or property in connection with, whether directly or indirectly, the use or on-sale of any Defective Deliverables;

(b) any claims, suits or judgments as a result of the sale of any Deliverables which infringe any rights under the patent law or copyright;

(c) any breach of any warranty or any of the terms and conditions of the Contract;

(d) the illness, injury or death of any of the Seller's employees, agents, contractors and/or subcontractors arising out of or in connection with the Contract;

(e) any loss or, damage arising out of, or in connection with, any personal injury, illness or death to any person or damage or any property or any other loss or damage of any kind whatsoever caused or contributed to by:

(i) the Deliverables; and/or

(ii) the entry into, and the activities undertaken on and in, Ludowici's premises by the Seller and/or the Seller's employees, agents, contractors and/or subcontractors;

(f) any negligence or wilful default by the Seller and/or any of the Seller's employees, agents, contractors and/or subcontractors in connection with this Contract;

(g) any claim made against Ludowici by any of the Seller's employees, agents, contractors and/or subcontractors in respect of any relevant legislation concerning income tax, workers' compensation, annual leave, long service leave, superannuation or any applicable award, determination or

agreement of a competent industrial tribunal; and

(h) any penalty imposed for breach of an applicable law in connection with the supply of the Deliverables by the Seller.

The Seller's liability to indemnify Ludowici under this clause 5 will be reduced proportionally to the extent only that a negligent act or omission of Ludowici, its employees or agents has contributed to the loss, damage, expense, injury, illness, death or other liability.

6. INSURANCE

(a) Unless contrary provisions are set out in the Purchase Order, or are otherwise agreed in writing between the parties, the Seller must, before commencing execution of the Deliverables, effect and maintain from the commencement of the Contract until the expiry of the Defect Liability Period the following insurances:

(i) public and product liability insurance for an amount not less than \$10 million for each claim;

(ii) insurance for the Deliverables up to the time they are delivered and installed (if required) for an amount not less than their replacement value;

(iii) if the Seller provides professional services, professional indemnity insurance for an amount not less than \$10 million for each claim;

(iv) statutory workers' compensation insurance in accordance with the requirements of all relevant laws applicable to the Seller;

(v) third party property damage motor vehicle insurance for an amount not less than \$20 million;

(vi) any such other insurance and coverage which Ludowici may request in writing as appropriate or necessary for the Deliverables.

(b) The insurance policies referred to in clause 6(a)(i) and (ii) of the Contract shall include:

(i) Ludowici; and

(ii) Any other parties of whom Ludowici notifies the Seller in writing;

as insured or interested parties to each of the respective insurance policies.

(c) The Seller:

(i) warrants that the insurances required under this clause 6 will be in place prior to commencing any work on the Deliverables; and

(ii) shall provide Ludowici whenever requested with a copy of any policy of insurance required under this clause 6, failing which Ludowici may effect the required insurance at the cost of the Seller.

(d) The Seller must notify Ludowici immediately of any cancellation of a relevant insurance policy and of any change to an insurance policy which affects the Seller's obligations under this clause 6.

7. WARRANTY

- (a) The Seller warrants to Ludowici that, at all relevant times during the term of the Contract:
- (i) any personnel assigned to carry out any obligations under the contract shall be suitably qualified and experienced, and shall exercise due skill, care and diligence in the carrying out of the Contract and delivery of the Deliverables;
 - (ii) the Seller has examined the Specifications that the Specifications are suitable, appropriate and adequate for the purposes of the Deliverables;
 - (iii) the Seller shall deliver the Deliverables in accordance with the Specifications and when the Deliverables are delivered to Ludowici they shall:
 - (A) be fit for their stated purpose;
 - (B) be free of any defect in design, performance, workmanship or material;
 - (C) have been constructed or produced from new material of the highest quality available, and in any event to a quality equal to or exceeding the Specifications;
 - (D) comply with Ludowici's quality assurance system as notified by Ludowici to the Seller, and in any event with any industry standards applicable to the Deliverables;
 - (E) comply with all the requirements in the Contract and the Specifications in relation to the Deliverables
- (b) The Seller warrants to Ludowici that at the time of Delivery, the Seller transfers to Ludowici good title to the Deliverables which is unencumbered and free from any other third party interests.
- (c) Where the Seller obtains from a third party a warranty in relation to any of the Deliverables, the Seller must ensure that Ludowici, its successors and assigns have the benefit of that warranty.

8. DEFECT LIABILITY

- (a) The Seller shall be responsible to Ludowici for repair and replacement of any defect in the manufacture, material, workmanship, installation or testing of the Deliverables for the Defect Liability Period.
- (b) If, during the Defect Liability Period, Ludowici finds that any of the Deliverables are Defective Deliverables, Ludowici may at its option:
- (i) return the Defective Deliverables to the Seller;
 - (ii) reject the Defective Deliverables by notifying the Seller that Ludowici is rejecting them; or
 - (iii) repair or make good the Defect Deliverables.

- (c) At Ludowici's option and request, during the Defect Liability Period, the Seller shall at the Seller's cost within the time reasonably directed by Ludowici and at Ludowici's election, either:
- (i) repair or, at Ludowici's option, replace any Defective Deliverables that Ludowici returns pursuant to clause (b)(i);
 - (ii) re-perform or make good any Defective Deliverables that Ludowici rejects pursuant to clause (b)(ii); or
 - (iii) reimburse Ludowici for any expenses Ludowici incurs in making good any Defective Deliverables pursuant to clause (b)(iii) including costs of repair and transport costs of return.
- (d) Ludowici may exercise its rights under this clause 8, even if Ludowici has accepted or paid for the Deliverables.
- (e) Any repairs or replacement Deliverables provided by the Seller under this clause 8 will be subject to the same warranty as the original Deliverables from the date of repair or replacement.
- (f) The remedies provided in this clause 8 do not exclude any other remedies provided by the Contract or law.

9. TERMS OF PAYMENT

- (a) The terms of payment of the Purchase Price will be 30 days from the end of the month of the date of receipt of invoice from Seller, upon the satisfaction of the Milestones or as otherwise specified in the Purchase Order.
- (b) Payment may be made, at Ludowici's election by an unconditional and irrevocable letter of credit, by bank guarantee, or transfer of funds.
- (c) Ludowici may reduce any payments due to the Seller under the Contract by any amount for which the Seller is liable to Ludowici, including costs, charges, damages and expenses. This does not limit Ludowici's right to recover those amounts in other ways.

10. HEALTH, SAFETY AND ENVIRONMENTAL COMPLIANCE

The Seller must ensure that the Deliverables comply with all applicable workplace health and safety legislation, regulations, codes of practice and industry standards.

11. CONFIDENTIALITY

- (a) The Seller must keep this Contract strictly confidential and must not disclose or in any way advertise it or its contents to anyone unless required by law or with the prior written approval of Ludowici.
- (b) The Seller shall indemnify and keep indemnified Ludowici against any loss or damages suffered by Ludowici as a result of, whether directly or indirectly, any breach of clause 11(a) above.

12. INTELLECTUAL PROPERTY

- (a) Where Ludowici provides the Seller access to or use of the Intellectual Property with respect to the Deliverables, all title in the Intellectual Property shall remain the property of Ludowici and nothing in the

Contract shall be taken to be a deemed assignment of the Intellectual Property to the Seller.

- (b) The Seller must:
- (i) keep any intellectual property provided to it pursuant to this clause 12 strictly confidential;
 - (ii) not disclose the Intellectual Property unless:
 - (A) required by law; or
 - (B) the Intellectual Property is already generally available in the public domain;
 - (iii) only disclose the Intellectual Property to its employees, agents and consultants on a need to know basis and must ensure that such persons also observe the confidentiality attaching to the Intellectual Property;
 - (iv) if reasonably required by Ludowici, enter into any document required to protect Ludowici's right, title and interest in the Intellectual Property or to maintain the confidentiality of the Intellectual Property;
 - (v) sign any document required by Ludowici to assign to Ludowici any right, title or interest in any improvements to the Intellectual Property which have been made by the Seller or its employees, agents or consultants including procuring where the context requires its employees, agents and consultants to sign such document;
 - (vi) return the Intellectual Property or any copies thereof to Ludowici, or to deal with the Intellectual Property strictly in accordance with Ludowici's instructions;
 - (vii) comply immediately and strictly with Ludowici's direction in regard to dealing with Intellectual Property, including without limitation, upon written request, the return of any Intellectual Property to Ludowici, or to destroy or delete from the Purchaser's records and systems any Intellectual Property or copies thereof.

13. FORCE MAJEURE

- (a) If the occurrence of a Force Majeure Event prevents or is likely to prevent the supply of the Deliverables by the Delivery Date, the Seller must immediately give Ludowici written notice of the Force Majeure Event. Upon receipt of such notice, Ludowici may:
- (i) request the Seller to supply the Deliverables by a mutually agreed alternative delivery date; or
 - (ii) after not less than 14 days notice in writing, cancel the Contract.
- (b) Each party must bear its own costs and no party will have any claim for compensation against the other arising from the cancellation of the Contract pursuant to this clause.

14. DISPUTE RESOLUTION

- (a) If any dispute arises in relation to this Contract ("Dispute"), then either party may give the other party a written notice setting out the nature of the dispute ("Notice of Dispute").
- (b) Each party's senior representative(s) must meet within 21 days after the date of receipt of the Notice of the Dispute to seek to resolve the dispute in good faith.
- (c) Where the Dispute is not resolved under paragraph (b) herein within 21 days of it being referred for resolution, the dispute must be dealt with under the provisions of paragraph (d) herein.
- (d) Except as provided in paragraph (c) herein, all Disputes shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules, with however the place of arbitration being in Brisbane, Queensland, Australia.
- (e) This clause shall not preclude a party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- (f) The parties shall share the costs of dispute resolution under this clause equally unless the arbitrator or expert gives a certificate that the conduct of a party is such that it should bear all or a major portion of the costs.
- (g) Nothing in this clause shall prevent a party from applying to a court of competent jurisdiction for an injunction or other equitable relief.

15. GST

- (a) For the purposes of this clause 15:
 - (i) "GST", "Supply", "Tax Invoice" and "Taxable Supply" have the meanings given in the GST Act.
 - (ii) "GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* as amended.
- (b) If any Supply made by either party ("Supplier") to the other ("Recipient") under this Contract is a Taxable Supply, then in relation to any consideration payable by Recipient to Supplier under this Contract, Supplier shall be entitled to recover from Recipient an additional amount on account of GST, such amount to be equal to the amount of Supplier's GST liability in respect of the supply calculated in accordance with the GST Act and on the basis that the consideration otherwise payable under this Contract is the value of the Taxable Supply and shall be recoverable at the time when the Purchase Price is paid. Supplier must issue a Tax Invoice to Recipient for the amount of GST referable to each Taxable Supply.
- (c) If any Supply under this Contract is a Taxable Supply, then both parties acknowledge that they are registered for GST purposes.

16. GENERAL

- (a) This Contract must not be amended, deleted or added to without the consent of Ludowici in writing.
- (b) Any purported terms and conditions of sale in relation to the Deliverables, which may be contained in sales literature, tenders, quotations, information, notices, delivery dockets, acceptance letters, invoices or other material provided by the Seller but which are not expressly contained in the Contract are excluded and do not form part of the Contract.
- (c) This Contract shall be governed by and be construed in accordance with the laws of Queensland, Australia and the parties submit to the jurisdiction of the Courts of Queensland, Australia and any appellate courts therefrom.
- (d) Other than as expressly provided for in these Standard Terms and Conditions of Purchase, where any ambiguity or conflict exists between the Purchase Order and these Standard Terms and Conditions of Purchase, these Standard Terms and Conditions of Purchase shall prevail.
- (e) A reference to "\$" or an amount of money shall be a reference to that amount in Australia dollars.
- (f) Any notice or other communication to be given by a party to another party under this Contract must:
 - (i) be in writing;
 - (ii) give the address of recipient as set out in the Contract or as revised by notice from the relevant party;
 - (iii) be left at or sent by prepaid/registered post to that address or sent by facsimile; and
 - (iv) be deemed to be served:
 - (A) on the day of delivery; or
 - (B) 3 days (if sent within Australia) or 7 days (if sent outside Australia) after the date of posting by prepaid; or
 - (C) on the date recorded on the transmission report if sent by facsimile or the next business day if outside of business hours.

17. DEFINITIONS

- "**Contract**" means the Purchase Order and these Standard Terms and Conditions of Purchase, together with any special conditions agreed to by the parties in writing and identified as such.
- "**Defect Liability Period**" means the later of:
- (a) the term of the Defect Liability Period, if that term is defined in the Purchase Order;
 - (b) 18 months from delivery of the Deliverables; or
 - (c) 24 months from Practical Completion, if that term is defined in the Purchase Order.
- "**Defective Deliverables**" means those Deliverables which are not in conformity with the Contract, are of inferior quality or workmanship or are otherwise unsatisfactory.

"**Deliverables**" means the procurement, manufacture, testing, delivery and, where specified in the Purchase Order, the installation, acceptance testing and defects maintenance of goods as set out in the Purchase Order, in accordance with the Specifications.

"**Delivery Dates**" means the date by which the Deliverables must be delivered as specified in the Purchase Order or as otherwise specified by Ludowici in writing.

"**Force Majeure Event**" means a labour dispute, lockout, act of government, war, riot, civil disturbance, embargo, storm, tempest, fire, flood, earthquake, or natural calamity.

"**FIS**" or "**Freight in Store**" means the Seller must pay all insurance, customs, duties and delivery costs to deliver the Deliverables to Ludowici's Premises.

"**Intellectual Property**" means any confidential information, manufacturing methods, know-how, processes, technology (whether patentable or not), illustrations, drawings and the Specifications and any improvements thereto in relation to the Deliverables which Ludowici may provide to the Seller.

"**Late Fee**" means the amount per day, if any, payable upon late deliver identified in the Purchase Order.

"**Ludowici**" means the entity so called set out in the Purchase Order.

"**Ludowick's Premises**" means the specified location of Ludowici's premises on the Purchase Order or any other location nominated by Ludowici to the Seller in writing.

"**Milestones**" means milestones, if any, specified in the Purchase Order or otherwise specified by Ludowici in writing.

"**Purchase Order**" means a purchase order in Ludowici's standard form which Ludowici has given the Seller for any Deliverables.

"**Purchase Price**" means the purchase price for the Deliverables which the parties have agreed upon whether set out in the Purchase Order or otherwise in writing.

"**Shipping Documents**" means the packing slips and invoices which must be submitted against a Purchase Order and must clearly show:

- (a) Purchase Order number;
- (b) Quantity and description of the Deliverables;
- (c) Purchaser's part number for each item;
- (d) Date and method of dispatch, ie. mail, air, road or sea including name of vessel;
- (e) Number of packages dispatched; and
- (f) Weight of each package.

"**Specifications**" means any specifications required by Ludowici with respect to any of the Deliverables including, but not limited to, the quantity and quality of the Deliverables and which is set out in the Purchase Order or otherwise advised or varied by Ludowici in writing, or in the absence of the above, by any industry, national and international standard applicable to the Deliverables.