



Western Process Controls (WPC) Terms and Conditions of Purchase

1. Acceptance of Order

- 1.1 This Order is WPC's offer to the Supplier for the purchase of the goods and/or services described herein on the terms and conditions contained herein. Acceptance of this order by the Supplier shall constitute a binding contract comprising the terms and conditions contained herein (this "Agreement")
- 1.2 This agreement is a complete and exclusive statement of the terms and conditions of the contract between the parties.
- 1.3 This Agreement can be varied only by the Special Conditions set out in the Schedule or Purchase Order.
- 1.4 If the Supplier is unwilling or unable to accept this offer under the terms and conditions specified herein, the Supplier shall immediately contact WPC and advise of any variations it requires to be made for acceptance or rejection in writing by WPC.
- 1.5 If the Supplier does proceed with the manufacture or supply of the goods and/or services without first requesting WPC's written acceptance of variations proposed by the Supplier, then the Supplier is deemed to have accepted the terms and conditions contained herein.

2. Warranties

- 2.1 The provisions of Section 69, 70, 72 and 74(1) of the Trade Practices Act 1974 (as amended) shall form part of this Agreement as if the same were set out in full herein with the effect that they would have if:
 - (i) "WPC" was substituted for "consumer"; and
 - (ii) the "Supplier" were substituted for the words "a corporation", "a supplier" or "the supplier" (as applicable), wherever appearing therein.
- 2.2 The Supplier warrants that the goods shall:
 - (i) be of merchantable quality;
 - (ii) be manufactured and delivered strictly in accordance with any drawings, specifications and other instructions of WPC given for the purpose of this Agreement;
 - (iii) be free from defects in design and workmanship; and
 - (iv) comply with the requirements of any relevant statutes or regulations.
- 2.3 WPC relies on the Supplier's skill and judgment. The Supplier undertakes to advise WPC whenever the Supplier believes that compliance with a specification of WPC would render the goods and/or services unsuitable for WPC's requirements.
- 2.4 In addition to its other rights and remedies at law, WPC may reject goods which are defective in materials or workmanship, or which are contrary to its drawings, specifications or other instructions. The Supplier shall at WPC's option replace goods so rejected, or refund their purchase price and recompense WPC for any loss suffered by WPC in respect of such goods. If WPC so wishes, the Supplier shall credit the purchase price and the amount of such recompense to WPC's account with the Supplier.

3. Price and Payment

- 3.1 The price shall be that specified overleaf for the date of delivery of the goods or the date of commencement of any work, unless subject to alteration in accordance with a formula agreed in writing by the parties and noted in the Schedule.
- 3.2 WPC shall not be liable for additional costs or charges or an increase in price unless accepted by it in writing prior to the specified delivery date of the goods or prior to the specified commencement date of any work involving such increased cost or charges or price.
- 3.3 The price specified herein shall include packaging charges.
- 3.4 Amounts payable by WPC hereunder shall be made at the end of the month next following the month of delivery of goods or services and receipt of the Suppliers invoice.

4. Delivery

- 4.1 The goods shall be delivered on the date specified overleaf except where expressly agreed otherwise for any particular delivery (the "Delivery Date"). WPC may require that all goods ordered for a specified delivery date be delivered at the same time or may accept delivery in part from time to time as specified herein.
- 4.2 Subject to clause 5.2 title shall pass to WPC on delivery to WPC or its agent at the nominated place of delivery.
- 4.3 The Supplier shall pack the goods to ensure that no loss or damage results from weather or transportation. In particular, all exposed machined surfaces shall be coated with a suitable rust preventative.

- 4.4 WPC shall specify the method of delivery required at the time of placing of the order. Where the Supplier arranges transportation of the goods, (regardless of whether the carrier is nominated by WPC or not), risk remains with the Supplier until the goods are delivered to the nominated place of delivery. Where WPC nominates that delivery be made to a specific carrier, risk will pass on delivery of the goods to such carrier.

5. Timeliness

- 5.1 Time shall be of the essence of this Agreement.
- 5.2 The Supplier acknowledges that WPC may return part or all of any shipment received outside the Delivery Date and charge the Supplier with any loss or expense sustained as a result of the Supplier's failure to deliver as agreed. Without prejudice to the foregoing, if any circumstances arise which may delay the delivery of the goods, the Supplier shall immediately notify WPC of the circumstances and a revised delivery date. The exercise by WPC of its rights under this clause shall be without prejudice to any claim for damages or other rights it may have against the Supplier.
- 5.3 The Supplier acknowledges that WPC may terminate this Agreement if the Supplier does not provide the service or commence work within 14 days of the date:
 - (a) Specified for providing the service or commencing the work; or
 - (b) WPC gives possession of sufficient of WPC's premises to enable the Supplier to provide the service or commence the work, whichever is the later.

6. Inspection

- 6.1 On request and after being given reasonable notice, the Supplier shall arrange for WPC's representative to have access to its or its sub-contractors premises or processes for the purposes of inspecting any materials, work in progress or finished goods being supplied or manufactured for WPC.
- 6.2 Such inspection shall not be deemed to be acceptance by WPC of the materials, work or goods inspected or affect any obligation of the Supplier under this Agreement.

7. Indemnities

- 7.1 The Supplier shall indemnify and keep indemnified WPC from and against any loss, damage or expense (including legal fees) incurred by WPC and arising directly or indirectly out of:
 - (a) any claim or suit for alleged infringement of patents or copyright relating to any use or sale of goods or services hereunder and will assume the defence of any and all such suits and will pay all costs and expenses incidental thereto;
 - (b) the failure of the goods to conform to or fulfil any term or condition of this Agreement; or
 - (c) the Supplier's performance or non-performance of any services required hereunder including claims for personal injuries, death and property loss or damage and the claims or liens of workmen or suppliers of goods, except where such injury, death, damage or loss arises solely from the wilful misconduct of WPC or WPC's employees or agents.

8. Notices

- 8.1 Any notice in connection with this Agreement shall be deemed to be sufficiently given if sent by email to the email address provided by each party for that purpose, or facsimile to the facsimile number provided by each party for that purpose, or delivered to either party personally or by forwarding the same to either party by pre-paid letter post, or addressed to or delivered at the registered office of the relevant party.

9. Site Work

- 9.1 Where the Supplier provides work in connection with the installation or fitting of the goods or where the Supplier, its employees, contractors or agents enter upon WPC's premises, the Supplier shall, and shall procure that its employees, agents and contractors shall:
 - (a) perform all work in a proper and workmanlike manner and in strict accordance with any drawings, specifications and instructions;
 - (b) perform all work so as not to impede, or interfere with any activities being carried out on WPC's premises;
 - (c) comply with WPC's safety regulations and with WPC's directions and orders in regard thereto;
 - (d) provide at their own expense (except where otherwise specified in this Agreement) all labour, tools, equipment and material necessary to complete the work; and
 - (e) enter upon WPC's premises at their own risk.



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- 9.2 The Supplier shall not sub -contract or assign the work or any part thereof without WPC's prior written consent;
- 9.3 The Supplier performs all work hereunder as an independent contractor and not as an agent or employee of WPC.
- 10. Defects Liability Period**
- 10.1 For contracts for the supply and installation of goods, the Supplier, at its cost, if required to do so by WPC, shall rectify any omission or defect in the work under this Agreement existing at the date of completion or which becomes apparent prior to the expiration of the Defects Liability Period.
- 10.2 Unless otherwise agreed, the Defects Liability Period shall be a period of twelve (12) months from the date of completion of work under this Agreement.
- 10.3 If the work of rectification is not commenced or completed as required by WPC, WPC may have the work of rectification carried out at the Supplier's expense but without prejudice to any other rights WPC may have, and the cost of rectification incurred by WPC shall be a debt due from the Supplier.
- 11. Insurance**
- 11.1 The Supplier, at its cost, shall effect and maintain throughout the currency of this Agreement (including any defects liability period) for:
- (a) goods in transit;
Transit and Material Damage Insurance for the goods' purchase value (including freight and other charges), up until title and risk in the goods pass to WPC; and
- (b) site works;
- (i) Workers Compensation and Employer's Liability Insurance in accordance with the law of Western Australia and any other relevant jurisdiction, if applicable, in which work is performed.
Such insurance shall be unlimited in respect of common law liability and shall be extended to indemnify WPC for WPC's statutory liability to persons employed by the Supplier; and
- (ii) Public Liability Insurance in the joint names of the Supplier and WPC for an amount in respect of any one occurrence of not less than the sum of five million dollars. Such insurance shall include a cross-liability clause in which the insurer agrees to waive all rights of subrogation or action against any persons comprising the insured and for the purpose of which the insurer accepts the term "insured" as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject to the overall sum not being increased thereby); and
- 11.2 The insurances specified in clause 11.1 shall cover WPC, the Supplier and any sub -contractors for their respective rights and interests and shall be subject to approval by WPC prior to the commencement of performance of this Agreement, (such approval not to be unreasonably withheld), and WPC's interest shall be noted on the insurance policy specified in clauses 11.1 (a) above.
- 11.3 As and when requested by WPC, the Supplier shall provide copies of the policies of insurance the Supplier is required to effect and evidence to WPC's satisfaction of their currency.
- 11.4 If the Supplier fails to effect or maintain any such insurance as specified above, WPC may effect or maintain such insurance and recover from the Supplier as a debt or set off against any amount payable to the Supplier, any premium so paid by WPC.
- 12. Termination**
- 12.1 WPC may forthwith terminate this Agreement by notice in writing if the Supplier is in default of any term or condition of the Contract.
- 12.2 If judgment is entered against the Supplier or if the Supplier commits an act of bankruptcy or makes or endeavours to make any scheme of arrangement with creditors, or if any order appointing a receiver or for the winding up of the Supplier (whether voluntary or otherwise) is made in any Court of competent jurisdiction, then WPC may without prejudice to any other rights or remedies hereunder terminate this Agreement forthwith by notice in writing to the Supplier.
- 12.3 If goods to be supplied under this Agreement are of standard stock of the Supplier, then WPC may terminate this Agreement upon written notice to the Supplier, so far as it relates to any unshipped or undelivered portion of goods without further obligation hereunder, except payment (subject to the other terms hereof) for the goods shipped or delivered prior to termination.
- 12.4 If this Agreement requires goods to be manufactured to WPC's specification or requires the Supplier to install or fit goods, then at any time prior to completion of the work to be performed in fulfilment of this Agreement, WPC may terminate this Agreement upon written notice to the Supplier, and upon receipt of such notice the Supplier shall stop all work hereunder, except as may be otherwise directed by WPC. Upon termination under this clause 12.4, WPC shall pay to the Supplier an amount equal to:
- (a) the completed pro-rata amount of the contract price; and
- (b) five percent (5%) of the amount calculated in paragraph (a). The amount described in paragraph (a) shall be agreed by both parties and shall reflect the amount completed or committed at the date of termination provided that at such date the Supplier is not in breach of any of these terms or conditions, and provided further that such amount shall not exceed the total contract price nor provide for any amount for anticipated profit for performance not rendered or for any amount for consequential loss or damage.
- 13. Confidentiality**
- For the term of this Agreement and thereafter the Supplier shall treat as confidential and shall not disclose to a third party all or any information acquired by the Supplier or provided or made available by WPC to the Supplier during this Agreement.
- 14. Law of Contract and Jurisdiction**
- This Agreement shall be governed by and construed according to the laws of Western Australia and the parties shall submit to the jurisdiction of the Courts of Western Australia.
- 15. Supply Contract**
- If a written Supply Contract exists between WPC and the Supplier for supply of the goods and/or services listed on this order, the terms and conditions of the Supply Contract shall take precedence over these terms and conditions to the extent of any inconsistency.