

## GENERAL CONDITIONS OF PURCHASE

### 1. APPLICATION OF CONDITIONS

These conditions govern the rights and obligations of the Supplier and Watpac Construction (SA) Pty Ltd under the Watpac Construction (SA) Pty Ltd purchase order (the Watpac Construction (SA) Pty Ltd purchase order and these General Conditions of Purchase are collectively referred to as the "Purchase Order"). Under the Purchase Order Watpac Construction (SA) Pty Ltd is the Purchaser. No document or statement other than the Purchase Order shall form part of the contract between the Supplier and the Purchaser unless otherwise agreed in writing by the Purchaser. If there is a conflict between the General Conditions of Purchase (as varied with the Purchaser's written agreement) and any other document or statement forming part of the contract between the Supplier and the Purchaser, these General Conditions of Purchase (as varied) shall prevail. The acceptance by the Supplier of the Purchase Order or the supply of any goods or performance of any works shall be deemed to be acceptance of the terms of the Purchase Order and shall constitute a binding contract between the Supplier and the Purchaser.

### 2. ELECTRONIC TRANSACTIONS (SOUTH AUSTRALIA) ACT 2000

The *Electronic Transactions (South Australia) Act 2000* applies to the Purchase Order. The Supplier has consented to the provision of these General Conditions of Purchase by means of electronic communication via the Purchaser's website, <http://www.watpac.com.au>. Refer to trading Terms and Conditions.

### 3. PRICE

The unit prices and values indicated on the Purchase Order for the goods and/or work the subject of the contract ("the Goods" and/or "the Work" as the case may be) include, as appropriate, the cost of delivery free into the store to the address stated in the Purchase Order and any insurance, duty, taxes and packing costs and any other costs and expenses associated with manufacturing, delivering and/or supplying the Goods or the Work.

### 4. DELAYS

If the Supplier fails to make deliveries within the time specified, the Purchaser has the option to terminate this Purchase Order or such part or parts thereof to which there has been delay, without incurring cancellation or any other charges.

### 5. NON-WAIVER

Failure of the Purchaser to insist upon strict performance of any of the terms of the Purchase Order shall not be deemed a waiver of any subsequent default of them. The shipping or receiving of any article under the Purchase Order shall not be deemed a waiver of any rights for any prior failure by the Supplier to comply with any of the Conditions for the Purchase Order.

### 6. NO ASSIGNMENT

The Purchase Order shall not be assigned by the Supplier in whole or in part without prior written consent of the Purchaser.

### 7. INFRINGEMENT

The Supplier warrants that the articles described in the Purchase Order and the sale or use of them will not infringe any patent or any other intellectual property right, and the Supplier covenants that it will defend at its own cost and expense every action which may be brought against the Purchaser or those selling or using the Purchaser's product for any alleged infringement of any patent or breach of any other intellectual property right by reason of the sale or use of such articles and the Supplier agrees to pay all costs, damages, fines and profits recoverable in any such action.

### 8. COMPLIANCE

In performing its obligations under this Purchase Order the Supplier agrees to comply with all laws and regulations applying to the Purchase Order, the Goods and the Works.

### 9. CHANGES

The Purchaser has the right at any time to make changes in quantities ordered or in specifications and drawings. If the Purchaser forwards an amended order changing the quantity so ordered or changing the specifications and drawings and such changes cause an increase or decrease in the amount due then a variation shall be made to allow remuneration on the basis of the unit prices or values stated on the Purchase Order for the work that has been completed but no cause of action for breach of contract or other right of action shall arise or be instituted by the Supplier as a result of the amended order and the only remedy for the Supplier will be the right to payment of the remuneration referred to in this clause for that part of the order that has been completed. If such changes result in an increase or decrease in the time required for performance a reasonable variation of the time shall be made. Any claim by the Supplier for adjustment under this provision must be made within two (2) weeks from the date when the change is made.

### 10. WARRANTY

Notwithstanding the Purchaser's acceptance or right of inspection and/or other terms of the Purchase Order, the Supplier warrants that all articles furnished under the Purchase Order are free from any encumbrances, free from any defects in design, materials and workmanship and that the articles fully comply with any supplied or referenced specifications and drawings ("Technical Requirements") and where not specified that the articles are suitable and fit for the use intended and comply with all regulatory requirements. The Purchaser relies on this warranty by the Supplier in purchasing the articles covered by the Purchase Order. The Supplier must obtain and provide for the benefit of the Purchaser and the person who engaged the Purchaser ("the Principal") the guarantees and warranties as may be required under the Purchase Order or as is advised by the Purchaser.

### 11. INSPECTION AND TESTING

The Purchaser, its insurers and the Principal for whom the Goods or Work are intended shall be entitled to inspect and test the Goods or Work during manufacture, whether on the Supplier's premises or the premises of any subcontractor and the Supplier shall attend the inspection and provide any requested assistance to those conducting the inspection and testing. Such inspection and testing shall not release the Supplier from any obligation of the Supplier in the Purchase Order.

### 12. REJECTION

The Purchaser may at any time whether before or after delivery reject any Goods or Work found to be inferior or defective or damaged or not in accordance with the Purchase Order or any Technical Requirements and without limiting the liability of the Supplier, the Purchaser may require, at its option, a refund of payment by the Supplier within seven (7) days, replacement of the Goods or resupply of the Work. Risk in the rejected Goods immediately re-vests in the Supplier. The Supplier is liable for all loss or expenses incurred by the Purchaser due to the rejection of the Goods or Work. This condition shall apply notwithstanding that the Goods or Work have been inspected or tested or that the Purchaser has paid for the Goods or Work.

### 13. CANCELLATION

The Purchaser may by notice in writing to the Supplier cancel the Purchase Order in whole or in part if the Supplier fails to complete supply of the Goods or Work by the date and time specified in the Purchase Order; fails to replace defective Goods or Work in accordance with the Purchase Order; breaches any provision contained in the Purchase Order; becomes insolvent or subject to any kind of external administration, files or has filed against it a petition in bankruptcy, or makes an assignment for the benefit of creditors. If the Purchaser cancels the Purchase Order, then the Purchaser may also cease payment,

recover from the Supplier all monies paid for undelivered Goods or uncompleted Work and purchase similar Goods or Work from an alternative supplier and the Supplier must indemnify the Purchaser for any additional cost it may incur in doing so.

#### **14. DELIVERY OF GOODS**

Delivery shall occur when the Goods have been delivered in good condition at the address stated in the Purchase Order at a point stipulated by the Purchaser's representative and receipt of the Goods has been given by the Purchaser's representative. All the Goods shall remain at the Supplier's risk until delivery is effected. Title to the Goods passes to the Purchaser on delivery unless payment has been made prior to delivery and then title to the Goods passes upon payment.

#### **15. WORK ON PURCHASER'S PREMISES**

If any Work is to be performed at the Purchaser's or Principal's premises, then the Supplier must comply with all applicable laws in the performance of the work.

#### **16. INSURANCE**

Unless the Purchaser has provided evidence in writing to the Supplier of insurance cover for:

- (1) damage to vehicles, plant and equipment of the Supplier used or supplied under the Purchase Order, including liability cover for property damage and death or bodily injury ("Plant and Equipment Insurance");
- (2) liability at common law in accordance with statutory requirements for the Supplier's employees ("Worker's Compensation Insurance"); or
- (3) the Supplier's liability to third parties for loss or damage to property (including any indirect or consequential loss) and death of or injury to any person ("Public Liability Insurance"),

The Supplier shall have in place its own Plant and Equipment Insurance, Worker's Compensation Insurance and Public Liability Insurance. If requested by the Purchaser, the Supplier shall produce evidence of the currency of the Supplier's Worker's Compensation, Public Liability and Plant and Equipment Insurance Policies.

#### **17. TERMS OF PAYMENT**

Unless otherwise specified, payment shall be due to the Supplier within thirty (30) days of the end of the month in which the Supplier's invoice for the Goods or Works is received by the Purchaser, provided that all other terms of the Purchase Order have been observed.

#### **18. GST**

Unless this Purchase Order provides otherwise, and subject to this clause, any consideration that may be provided for under the Purchase Order is exclusive of GST. If a party makes a taxable supply in connection with this Purchase Order for a consideration which represents its value, then the recipient of the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply subject to the provision to the recipient of a valid tax invoice.

#### **19. PRICE VARIATION**

Unless stated in the body of the Purchase Order the cost of the Goods or Works shall be fixed and not subject to escalation.

#### **20. JURISDICTION AND NATIONAL CODE OF PRACTICE**

20.1 The law of South Australia governs the Purchase Order.

##### **Alternative 1 – Orders up to \$25,000**

20.2 The National Code of Practice for the Construction Industry (the Code) and the Australian Government Industry guidelines for the National Code of Practice for the Construction Industry, reissued June 2006 (the Guidelines), apply to this project. By entering into the Purchase Order the Supplier is deemed to have read and agreed to comply with the Code and Guidelines.

##### **Alternative 2 – Purchase Orders over \$25,000**

20.3 The Supplier must comply with the National Code of Practice for the Construction Industry ("the Code") and the Australian Government Implementation Guidelines for the National Code of Practice for the

Construction Industry ("the Guidelines"), revised September 2005, and reissued June 2006. Copies of the Code and Guidelines are available at [www.workplace.gov.au/building](http://www.workplace.gov.au/building).

20.4 Compliance with the Code and Guidelines shall not relieve the Supplier from responsibility to perform the Purchase Order, or from liability for any defect in the works arising from compliance with the Code or the Implementation Guidelines.

20.5 Where a change in the Purchase Order is proposed and that change would affect compliance with the Code and Guidelines, the Supplier shall submit a report to the Purchaser and the Commonwealth specifying the extent to which the Supplier's compliance with the Code or the Implementation Guidelines will be affected.

20.6 The Supplier shall maintain adequate records of the compliance with the Code and Guidelines by:

- (1) the Supplier;
- (2) its Subcontractors
- (3) consultants;
- (4) material suppliers; and
- (5) its Related Entities.

20.7 If the Supplier does not comply with the requirements of the Code or the Guidelines in the performance of the Purchase Order such that a sanction is applied by the Minister for Employment and Workplace Relations, the Code Monitoring Group or the Commonwealth, without prejudice to any rights that would otherwise accrue, those parties shall be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of future tenders that may be lodged by the Supplier or a related entity in respect of work funded by the Commonwealth or its agencies.

20.8 The Supplier shall not appoint a subcontractor, consultant or material supplier in relation to the Purchase Order where the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations.

20.9 The Supplier agrees to require that it and its subcontractors, consultants or material suppliers and its related entities provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, with access to:

- (1) inspect any work, material, machinery, appliance, article or facility;
- (2) inspect and copy any record relevant to the goods and works the subject of this Purchase Order; and
- (3) interview any person as is necessary to demonstrate its compliance with the Code and Guidelines.

20.10 Additionally, the Supplier agrees that the Contractor and its related entities will agree to a request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, to produce a specified document within a specified period, in person, by fax or by post.

20.11 For the avoidance of doubt, Clause 20.9 applies in relation to the Supplier's work performed on privately funded construction sites.

20.12 The Supplier shall ensure that all subcontracts impose obligation on its subcontractors equivalent to the obligations under these Contract clauses.