

FMS GROUP PURCHASE ORDER TERMS AND CONDITIONS (GENERAL GOODS AND SERVICES)

For the purposes of this Purchase Order:

Purchaser means the FMS Group entity named on the Purchase Order.

Supplier means the person, firm, or company who will deliver the Goods and/or Services to the Purchaser, as set out in this Purchase Order.

1. ENTIRE AGREEMENT

The Supplier acknowledges that the Purchase Order (which includes these terms and conditions ("Terms")) constitutes the entire agreement between the parties and that no prior or subsequent representations, quotations or agreements, whether oral or in writing, by the Purchaser or the Supplier or any employee or agent thereof will bind the parties unless such representation or agreements are set out or subsequently included and initialled in this Purchase Order by the Purchaser. Unless the context requires otherwise, words in the Terms have the same meaning as given to them in the Purchase Order.

2. SUPPLY OF GOODS OR SERVICES

In consideration of the Supplier supplying to the Purchaser the Goods and/or performing the Services in accordance with the Purchase Order, the Purchaser agrees to pay the Price, set out in and adjusted or calculated in accordance with the Purchase Order, which is exclusive of GST, but is inclusive of delivery and unloading and all other costs, charges, duties and taxes.

3. DELIVERY

The Supplier must deliver the Goods to the Delivery Place by the Delivery Date and when instructed by the Purchaser unload the Goods at the Delivery Place (being the delivery address in the Purchase Order). On Delivery, a delivery docket detailing the item and quantity of Goods or Services supplied must be signed by a representative of the Purchaser (Delivery Docket). The Supplier must leave a copy of the Delivery Docket with the Purchaser. If the Supplier fails to deliver the Goods or Services by the Delivery Date, the Purchaser may, without prejudice to any other remedies against the Supplier, refuse the Goods or Services (being the items described in the Purchase Order) delivered and obtain the Goods from a third party. If, on delivery, the Purchaser or any third party on behalf of the Purchaser signs a delivery docket or other document required by the Supplier or inspects the Goods, the Purchaser will not be taken to have accepted any terms or conditions of such document or that the Goods comply with the Purchase Order.

4. WARRANTIES

The Supplier warrants that:

- (a) it will take all reasonable steps to assign any manufacturer's warranties in the Goods (where the Goods are manufactured by a third party) to the Purchaser;
- (b) Goods supplied to the Purchaser must be:
 - (i) complete, undamaged and free of defects;
 - (ii) free of liens, charges, claims and other encumbrances;
 - (iii) in accordance with plans, drawings, specifications, directions and instructions given by or for the Purchaser; in accordance with the Purchase Order, legislative instruments and all applicable Australian Standards or Codes;
 - (iv) fit for the purpose set out in or that may reasonably be inferred from the Purchase Order;
 - (v) be new and of merchantable quality
- (c) all Services will be:

- (i) performed with the due standard of care and skill expected of an experienced person who regularly provides the same or similar services in Australia;
 - (ii) satisfy and comply with all legislative instruments and all applicable Australian Standards or Codes; and
 - (iii) undertaken by persons who are qualified, licensed, skilled, competent, experienced and adequately trained to provide those Services.
- (d) Any equipment the Supplier supplies or uses in the provision of the Goods or Services (including spare parts and consumable items) is at the Suppliers own risk and expense and such equipment will be maintained and operated by a suitably qualified and competent personnel for the duration of this Purchase Order. The Purchaser may reject any item of equipment which is determines is unsafe or unsuitable for the purposes of this Purchase Order;
 - (e) its direct conduct under this Purchase Order shall not constitute Modern Slavery;
 - (f) it becomes aware that Modern Slavery is taking place in its operations or supply chains it will notify the Purchaser; and
 - (g) it will not take Adverse Action against any person employed, contracted or otherwise engaged by the Supplier or any other third party due to their disclosure of information in good faith for the purpose of clause 9.

5. INSPECTION AND QUALITY

The Purchaser may reject the Goods if it considers that the Goods, in its sole discretion, are not in good working order, are not in accordance with the requirements of this Purchase Order or are not fit for their intended purpose and the Supplier must re-supply these at its own risk and cost in a timely manner as reasonably advised by the Purchaser.

6. DEFECTS

The Purchaser may direct the Supplier, at any time prior to 12 months after supply, to promptly rectify any defects in the Goods at the Supplier's cost.

7. TITLE AND RISK

If the Goods are hired to the Purchaser, the Goods remain the property of the Supplier and remain the risk of the Supplier at all times. In all other circumstances, title to the Goods passes to the Purchaser upon full payment for the Goods. Risk in the Goods passes when the Goods are delivered to the Delivery Place and the Purchaser has, subject to clause 3, inspected and accepted the Goods.

8. HEALTH AND SAFETY

The Supplier must carry out and complete its obligations under this Purchase Order in accordance with the WHS Requirements, consult with the Purchaser in relation to how its obligations under this Purchase Order can be undertaken in a way that prevents or minimises all risks to health and safety, and comply with all lawful directions of the Purchaser. In these Terms, WHS Requirements means all statutory and common law obligations, all directions, plans, statements, policies and procedures of the Purchaser or any statutory authority relating to workplace health and safety, including (but not limited to) legislation relating to the Chain of Responsibility provisions in the Heavy Vehicle National Law.

9. MODERN SLAVERY

The Supplier must comply with any Modern Slavery Law by which it is bound and by which the Purchaser is bound. The Supplier must not do anything that will cause it, or the Purchaser to breach any Modern Slavery Law.

- (a) The Supplier will, for the purpose of allowing the Purchaser to ensure the Supplier's compliance with this clause 9 or to allow the Purchaser to comply with its obligations under Modern Slavery Law, provide to the Purchaser:
 - (i) information as requested by the Purchaser from time to time;
 - (ii) entry to the premises of the Supplier without prior notice; and
 - (iii) access to speak freely, without interference from or in the presence of any representative of the Supplier with any person engaged by the Supplier in connection with this Purchase Order.
- (b) In this Purchase Order Modern Slavery means:
 - (i) any conduct involving the use of any form of slavery, human trafficking, exploitation, forced labour practices or servitude to exploit children or other persons taking place in operations and/or supply chains;
 - (ii) any other slavery-like practices; and
 - (iii) any conduct constituting an offence and/or as otherwise defined as Modern Slavery, under Modern Slavery Law.
- (c) Modern Slavery Law means any primary or delegated/subordinate legislation (and any binding or non-binding guidelines issued by any entity or person so authorised under Modern Slavery Law), applicable in Australia, any State or Territory and/or otherwise applicable to the Purchaser from time to time with respect to reporting on and/or addressing the risks of Modern Slavery, including in business operations and supply chains and with respect to related purposes including but not limited to the Modern Slavery Act 2018 (Cth) and the Modern Slavery Act 2018 (NSW).
- (d) Adverse Action includes:
 - (i) any action or threatened action:
 - (A) to dismiss the disclosing person and/or any other person from employment or otherwise end their engagement with the Supplier;
 - (B) to cause injury to the disclosing person and/or any other person;
 - (C) to alter the disclosing person's and/or any other person's position with the Supplier to that person's prejudice;
 - (D) to discriminate between the disclosing person and/or any other person, and other persons employed, or otherwise engaged, by the Supplier;
 - (E) to refuse to employ or otherwise engage the disclosing person and/or any other person;
 - (F) to refuse to use the services of, or supply to, the disclosing person and/or any other person; and
 - (G) to discriminate against the disclosing person and/or any other person in the terms or conditions on which the Supplier offers to employ or otherwise engage that person,
 - (ii) any action taken against a person on the basis of any contractual, civil or criminal liability that may

be incurred by that person due to their disclosure of information under this clause 9; and

- (iii) repeated unreasonable behaviour towards a person or group of persons (beyond the scope of reasonable management action carried out in a reasonable manner) and that behaviour creates a risk to the health and safety of that person or group of persons.

10. INDEMNITIES

- 10.1 To the extent that any losses, damages, or claims arise out of the Supplier's failure to comply with these Terms, or arise out of or in connection with or as a consequence of the Supplier providing the Goods under this Purchase Order, the Supplier indemnifies the Purchaser against:
 - (a) loss of or damage to property;
 - (b) claims by any person against the Purchaser in respect of personal injury, death, or loss of or damage to any property;
 - (c) claims in any way connected with any infringement of any patent, registered design, copyright; and
 - (d) to the extent not prohibited by law, any losses, damages, costs, charges, expenses, penalties, interest, and fines incurred in connection with non-compliance by the Supplier with the WHS Requirements, arising out of or in connection with this Purchase Order.
- 10.2 The Supplier's liability to indemnify under this clause will be reduced proportionally to the extent that any negligent or unlawful act or omission of the Purchaser directly contributes to the loss or liability.

11. INSURANCE

The Supplier must affect and maintain the following policies of insurance until the Supplier has completed all its obligations in connection with the Purchase Order:

- (a) insurance, for the replacement value of the Goods against loss or damage occurring at any time prior to risk passing in the Goods under clause 7 (including during transit and unloading);
- (b) material, plant and equipment insurance, for the market value of the material, plant and equipment hired or supplied to the Purchaser against loss or damage in connection with the hire of any material, plant or equipment;
- (c) public and product liability insurance, noting the interests of the Purchaser as an insured, in respect of personal injury and property damage for an amount not less than \$20,000,000 for any one occurrence;
- (d) worker's compensation insurance or any other insurance required by law; and
- (e) motor vehicle insurance covering legal liability in respect of injury to people and damage to property, including compulsory third-party insurance, arising out of the vehicles used or controlled by the Supplier in the performance of the Purchase Order.
- (f) professional indemnity insurance (where the Services include professional services such as design, engineering, or professional advice) covering any legal liability arising from breach of professional duty under or in connection with the Supplier's performance of the Services from the commencement of the Services and for 24 months after completion of the Services, with a minimum limit of \$5,000,000 per occurrence and in the aggregate

12. PAYMENT

- 12.1 Prices listed on this Purchase Order are fixed and not subject to escalation or rise and fall. Subject to satisfactory performance by the Supplier and compliance with the Terms, the Purchaser agrees to pay the Price (as calculated and adjusted in accordance with these terms), subject to deduction of any amount payable to the Purchaser under this clause 12, within 30 days from the end of the calendar month in which the correct tax invoice is received attaching the applicable Delivery Dockets (or any other terms expressly agreed by the parties) from the Supplier.
- 12.2 Without prejudice to any other rights whether under the Purchase Order or at law, the Purchaser may set-off or deduct from any amounts due to the Supplier under the Purchase Order or any other Purchase Order between the Purchaser and the Supplier or which the Purchaser reasonably asserts is or will be due from the Supplier to the Purchaser in connection with the Purchase Order including (but not limited to) any costs incurred or losses suffered (including the costs of having a third party supply the Goods or perform the Services) in connection with:
- the Supplier's failure to deliver the Goods or Services in accordance with the Purchase Order; refusal of the Goods under clause 3;
 - the Supplier's failure to comply with a direction of the Purchaser under clause 0 including the cost of having the defects rectified;
 - or any termination or other right exercised under clause 14.

13. TERMINATION FOR CONVENIENCE

The Purchaser may terminate this Purchase Order for convenience by giving the Supplier 3 days written notice. If the Purchaser terminates this Purchase Order under this clause, it agrees to pay the Supplier the sum certified by the Purchaser as being due to the Supplier under this Purchase Order up to the date of termination.

14. BREACH AND INSOLVENCY OF SUPPLIER

- 14.1 The Purchaser may, at its sole discretion, (but subject always to the Ipso Facto Laws, if applicable), terminate the Purchase Order and the Purchaser will be under no liability for payment for any Goods not then delivered to or accepted by the Purchaser or for Services not yet performed by the Supplier if:
- the Supplier has breached a condition of the Terms or Purchase Order;
 - the Supplier is insolvent or is financially unable to proceed with its obligations under this Purchase Order;
 - execution is levied against the Supplier by a creditor;
 - the Supplier is a natural person or a partnership and, commits an act of bankruptcy, is made bankrupt, has a bankruptcy petition presented against him or her or presents his or her own petition, makes a proposal for a scheme of arrangement or a composition or is required to present a debtor's petition or has a sequestration order made under Part X of the Bankruptcy Act 1966 (Cth); or
 - the Supplier is a corporation, and it enters a deed of company arrangement with creditors, a controller or administrator is appointed, an application is made to a court for its winding, a winding up order is made in respect of the corporation, or it resolves by special resolution that it be wound up voluntarily.

- 14.2 In these Terms. Ipso Facto Laws means Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Act 2017.

15. CONFLICT

- 15.1 In the event of any conflict or ambiguity, the Purchase Order will have precedence over these Terms. If there is ambiguity, conflict, discrepancy or inconsistency between the documents comprising this Purchase Order, the following order of precedence shall apply:
- the Purchase Order;
 - these Terms and Conditions;
 - any other documents forming part of this Purchase Order
- 15.2 Any terms and conditions created or supplied by the Supplier in respect of the Goods and/or Services, will be of no legal effect and will not constitute part of this Purchase Order.

16. CONFIDENTIALITY

- 16.1 Each Party must, subject to the terms of this Purchase Order, at all times:
- keep each other Party's Confidential Information secret and preserve its confidential nature;
 - implement appropriate security and other measures to safeguard the other Party's Confidential Information, which must be no less stringent than the measures the Party takes in respect of its own confidential information;
 - not use the other Party's Confidential Information for any purpose other than (in the Supplier's case) the purpose of supplying Goods and/or performing the Services or (in the Purchaser's case) using or receiving the benefit of the Goods or Services (including any deliverables) supplied, or exercising the rights the Purchase receives under this Purchase Order; and
 - only copy or reproduce the other Party's Confidential Information for an applicable purpose as stated in clause 16(b) or with the written consent of the other Party.
- 16.2 Neither Party may disclose the other Party's Confidential Information to any person except:
- with the prior written approval of the other Party, which consent may be withheld in its discretion;
 - to the Party's Personnel, Related Bodies Corporate or professional advisors, but, in each case, only where the recipient has been advised of the confidential nature of the Confidential Information, and only to the extent necessary for an applicable purpose as stated in this Clause and further, in the case of professional advisors, contractors, suppliers, agents, consultants or representatives, only where the recipient is obliged to the receiving Party to keep the Confidential Information confidential;
 - if the receiving Party is required to do so by Legislation, a Government Authority or by a stock exchange.
- 16.3 Each Party is, and remains, liable for any breach of confidentiality or of this clause 16 by any recipient to which it discloses the other Party's Confidential Information.
- 16.4 The Supplier must not display or otherwise release any advertisement, information, media announcement or release, or promotional material in connection with The Purchase or the site on which the Services or Goods are supplied, including the Suppliers appointment under this Purchase Order, without the prior written approval of the Purchaser.

17. INTELLECTUAL PROPERTY

For the purposes of this clause, the following terms have the following meanings:

Background IP means all Intellectual Property Rights owned or created by a party independently of the Purchase Order or developed other than in the course of performing the Services.

Project IP means all Intellectual Property Rights created, developed, written, discovered or arising from, or in connection with, the Supplier's performance of the Goods and/or Services under the Purchase Order, excluding Background IP.

Intellectual Property Rights means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trademarks, designs, patents, circuit layouts, domain names, trade secrets, know-how, Confidential Information, and all other proprietary rights, whether registered or unregistered, and any applications or rights to apply for registration of any of them.

Moral Rights has the meaning given in the Copyright Act 1968 (Cth) and includes the rights of attribution, the right not to have authorship falsely attributed, and the right of integrity.

Personnel mean officers, employees, agents, contractors and subcontractors of the relevant party.

17.1 Background IP

- (a) The Supplier retains all rights, title and interest in the Supplier's Background IP.
- (b) The Purchaser retains all rights, title and interest in the Purchaser's Background IP.

17.2 Licence to Purchaser

- (a) The Supplier grants the Purchaser a perpetual, worldwide, irrevocable, royalty-free and non-exclusive licence (with the right to sublicense) to use, copy, adapt and modify the Supplier's Background IP to the extent necessary for the Purchaser to:
 - (i) install, operate, maintain, repair or improve the Goods;
 - (ii) use and exploit the Project IP; and
 - (iii) otherwise obtain the full benefit of the Goods and/or Services.

17.3 Project IP

- (a) All Project IP vests in the Purchaser immediately upon creation.
- (b) To the extent any Project IP does not automatically vest, the Supplier assigns all rights, title and interest in the Project IP to the Purchaser upon creation and must do all things reasonably required to give effect to this clause.

17.4 Licence to Supplier

- (a) The Purchaser grants the Supplier a non-exclusive, non-transferable, non-sublicensable (except to approved subcontractors) royalty-free licence to use the Purchaser's Background IP and the Project IP solely for the purpose of supplying the Goods and/or Services under the Purchase Order.

17.5 Restrictions

- (a) The Supplier must not disclose, reproduce, communicate or use the Project IP or the Purchaser's Background IP other than as necessary to supply the Goods and/or Services.

17.6 Supplier Warranties

- (a) The Supplier warrants that:
 - (i) it owns or is otherwise entitled to provide the Supplier's Background IP;
 - (ii) the Supplier's Background IP is free from encumbrances;
 - (iii) the Goods and/or Services (and their use by the Purchaser) will not infringe any third-party Intellectual Property Rights;

- (iv) the Project IP (and its use by the Purchaser) will not infringe any third-party Intellectual Property Rights;
- (v) it has obtained all Moral Rights consents necessary to allow the Purchaser to fully use the Goods, Services and Project IP; and
- (vi) it is entitled to assign the Project IP in accordance with clause 3.