

# PURCHASE ORDER TERMS AND CONDITIONS GOODS ONLY

SCEE agrees to purchase the Goods from the Supplier and the Supplier agrees to sell the Goods to SCEE.

## 1. CONTRACT

- 1.1 The Conditions together with the Purchase Order constitute a legally binding contract between SCEE and the Supplier and set out the terms and conditions of the purchase of the Goods.
- 1.2 The Contract comes into existence on the issue of the Purchase Order, irrespective of whether the Supplier returns a signed copy of the Purchase Order to SCEE or expressly confirms its agreement of these Conditions.
- 1.3 To the extent the Supplier's terms and conditions are supplied to SCEE, including with the Goods or as printed on consignment notes or other documents (including quotations), those terms and conditions will be of no legal effect and will not constitute part of the Contract even if any of SCEE's personnel signs those terms and conditions or annexes the terms and conditions to the Contract.

## 2. PRECEDENCE

- 2.1 The Purchase Order prevails to the extent of any inconsistency with these Conditions.

## 3. THE GOODS

- 3.1 The quantity, quality and description of the Goods are as stated in the Purchase Order.
- 3.2 The Supplier must supply the Goods in accordance with, and as specified in, the Contract.

## 4. TIME FOR PERFORMANCE

- 4.1 Time is of the essence in respect of all obligations of the Supplier under the Contract.
- 4.2 The Supplier must deliver the Goods to the Delivery Address by the Delivery Date.
- 4.3 The Supplier must immediately report to SCEE any actual or likely delay in delivery of the Goods and its cause. The Supplier must take all reasonable steps to prevent delay.

## 5. INSPECTION AND SAMPLING

- 5.1 If inspection and testing requirements are specified in the Purchase Order, the Supplier must conduct those tests in strict accordance with the requirements of the Purchase Order.

- 5.2 In addition to any specifications as to testing and inspection in the Purchase Order, the Supplier must ensure that SCEE has the opportunity to inspect, test, and witness any test of the Goods wherever they may be located. The Supplier must provide or ensure that its suppliers provide unrestricted access to reasonable facilities

- 5.3 The Supplier is not relieved of any of its obligations under the Contract because SCEE has inspected the Goods or witnessed any testing prior to delivery of the Goods.
- 5.4 SCEE shall be entitled to reject Goods that do not comply with the Specification.
- 5.5 SCEE is entitled to request samples of the Goods or components of the Goods in connection with the supply or use of the Goods, which must be supplied by the Supplier at its cost.

## 6. PACKAGING

- 6.1 The Supplier must:
  - (a) suitably pack the Goods to avoid damage during loading, transit, delivery, unloading or storage;
  - (b) pack and transport the Goods in accordance with any applicable regulations and industry codes; and
  - (c) clearly mark all packages of the Goods for delivery and the delivery documents for the Goods with the Contract number and any Purchase Order number and ensure that the delivery documents accompany the Goods to the Delivery Address.

## 7. DELIVERY

- 7.1 The Supplier must obtain all necessary permits and licenses which must be obtained in Supplier's name and are necessary for Supplier to perform its obligations under the Contract.
- 7.2 The Supplier must arrange for delivery of the Goods to the Delivery Address.
- 7.3 The Supplier must, in delivering the Goods:
  - (a) not interfere with SCEE's activities or the activities of any third party at the Delivery Address;

- (b) be aware of and comply with and ensure that its personnel, contractors and agent comply with all applicable laws, site standards, plans and procedures and all lawful directions and orders given by or on behalf of SCEE at the Delivery Address.

## 8. TECHNICAL MATERIAL

- 8.1 The Supplier must, without additional cost to SCEE, supply all required plans, drawings, specifications, manuals, certificates, instructions, fabrication reports and the like in the form and at the times and in the numbers of copies specified in the Purchase Order or otherwise as reasonably required by SCEE.

## 9. PRICE

- 9.1 The price for the Goods is the price stated in the Purchase Order. Unless otherwise agreed and clearly stated in the Purchase Order the price stated on the Purchase Order excludes GST but includes any other applicable taxes, customs, excise and import duties, tariffs, fees, levies, charges, costs or expenses incurred by the Supplier, including transport, packing and insurance costs.
- 9.2 Unless otherwise agreed and clearly stated in the Purchase Order the Price is fixed and firm and not subject to adjustment due to currency fluctuation or any other reason.

## 10. PAYMENT

- 10.1 The Supplier must claim payment for the supply of the Goods by submitting to SCEE invoices monthly. Each such invoice must:
  - (a) be a tax invoice;
  - (b) be correctly dated;
  - (c) refer to the Purchase Order;
  - (d) list the particular Goods supplied; and
  - (e) be supported by relevant records to calculate and verify the amount set out in the invoice.
- 10.2 Compliance by the Supplier with clause 10.1 is a condition precedent to the Supplier's entitlement to claim the amount stated in an invoice submitted by the Supplier to SCEE.

- 10.3 If the Supplier submits an invoice earlier than the time for submission of that invoice set out in these Conditions, the Supplier agrees that the invoice shall not be taken to have been submitted until that time.
- 10.4 Save to the extent provided for in these Conditions, SCEE shall not be liable to pay for the Goods until the Goods have been supplied in accordance with, and as specified in, the Contract.
- 10.5 SCEE may, within 7 days of receiving a Supplier invoice, request by written notice that the Supplier provides SCEE with all additional relevant records to calculate and verify the amount set out in any Supplier invoice, by the time stated in the notice or, whether no time is specified, within 48 hours.
- 10.6 Subject to clause 10.2, SCEE shall pay the Supplier the amount claimed in an invoice within 30 days of the end of the month in which the invoice was submitted..
- 10.7 If SCEE disputes any amount claimed in an invoice, SCEE shall make a determination of the amount payable and provide a payment certificate to the Supplier of its determination within 10 days of the receipt of the invoice. The payment certificate may take any form.
- 10.8 SCEE shall pay any amounts not in dispute in accordance with clause 10.6.
- 10.9 Without limiting clause 10.7, SCEE may issue a revised payment certificate at any time correcting any omission or error discovered in any previous payment certificate or modifying any previous payment certificate issued by it, including as a result of the provision of information under clause 10.5.
- 10.10 SCEE may deduct from moneys due to the Supplier any debt or other monies which are due from the Supplier to SCEE, whether under the Contract or otherwise.
- 10.11 Payment to the Supplier is on account only and does not constitute approval of the Goods or any other matter or thing in respect of which payment is made.
- 11. TITLE AND RISK**
- 11.1 Risk in the Goods passes to SCEE upon delivery to the Delivery Address.
- 11.2 Property in the Goods passes to SCEE upon delivery to the Delivery Address.
- 12. WARRANTIES**
- 12.1 The Supplier represents and warrants that the Goods:
- (a) match the description of the Goods in the Purchase Order;
  - (b) if the Supplier gave SCEE a sample of the Goods before SCEE issued the Purchase Order, correspond with the sample;
  - (c) strictly comply with the Specifications;
  - (d) are fit for the purpose for which Goods of the same kind are commonly supplied and for any other purpose described in the Purchase Order;
  - (e) are of new and of merchantable quality;
  - (f) are free from all Defects;
  - (g) do not infringe the IP Rights of any third party; and
  - (h) are completely owned by the Supplier and will be supplied to SCEE free of any third party interests, liens, charges or encumbrances.
- 12.2 The Supplier must immediately rectify or replace at SCEE's option and at Supplier's sole cost any Defective Goods discovered within 15 months after delivery or 12 months after the Goods are first used or enter into the service for which they are purchased, whichever occurs first.
- 12.3 If SCEE reasonably considers that it is necessary to immediately rectify or replace Defective Goods then SCEE is not obliged to give the Supplier an opportunity to rectify or replace such Goods before SCEE does so or causes a third party to do so. The Supplier must reimburse SCEE for the full cost of such replacement or rectification.
- 12.4 The Supplier's obligation to replace or rectify Defective Goods is cumulative of other remedies available to SCEE.
- 12.5 The Supplier must ensure that SCEE has the full benefit of any manufacturer's warranties that may be applicable to the Goods and the Supplier must pursue any manufacturer's warranties on SCEE's behalf if SCEE requests.
- 12.6 If the Supplier has replaced or rectified Defective Goods, the rectified or replacement Goods must be subject to the same warranty period as the original Goods, from the date of rectification or replacement.
- 12.7 If SCEE elects to accept Defective Goods, such election does not bind SCEE to accept any other Defective Goods and does not affect any of SCEE's other rights under the Contract in respect of those Replacement Goods.
- 12.8 SCEE may assign any or all of the above warranties to any of its clients or related companies and the Supplier consents to such assignment.
- 13. LIABILITY AND INDEMNITY**
- 13.1 The Supplier is liable for, indemnifies and will indemnify and keep SCEE indemnified against all Loss, and hereby releases and will release SCEE from any Action arising directly or indirectly from any breach of any warranty or obligation of the Supplier under the Contract, except to the extent caused or contributed to by any wrongful act or omission of SCEE.
- 13.2 Notwithstanding any other provision of the Contract, in no event shall either party be liable to the other in respect of any Consequential Loss arising out of or in connection with this Contract.
- 13.3 The rights and obligations under clauses 12 and 13 survive termination of the Contract.
- 14. CANCELLATION**
- 14.1 In addition to its rights under clause 14, SCEE may cancel all or any part of the Purchase Order at any time for any reason, in its sole and absolute discretion by written notice of cancellation to the Supplier but:
- (a) SCEE shall pay for any Goods delivered prior to the cancellation;
  - (b) if Goods have been shipped, but not delivered, at the time of cancellation SCEE shall either:
    - (i) accept those Goods when delivered, and pay the Price for them; or
    - (ii) return those Goods to the Supplier at SCEE's expense;

- (c) if the Goods have not been shipped at the time of cancellation, on receiving the cancellation notice the Supplier must stop manufacturing (or cancel any third party supply of) the Goods in accordance with and to the extent specified in the cancellation notice, and do everything possible to mitigate any costs incurred in relation to the Goods; and
- (d) if clause 14.1(b)(ii) or clause 14.1(c) applies:
  - (i) to the extent that the Goods were manufactured or fabricated in accordance with the Specification, SCEE shall pay costs reasonably incurred by the Supplier prior to the date of the cancellation which is directly attributable to the placing of the Purchase Order and which the Supplier is not able to recoup in some other way;
  - (ii) the Supplier is not entitled to the Price of those Goods or to any compensation for that cancellation other than as specified in clause 14.1(d)(i); and
  - (iii) the maximum compensation payable under clause 14.1(d)(i) must not exceed the Price of the relevant Goods.

## 15. DEFAULT AND TERMINATION

- 15.1 The Contract may be terminated by SCEE immediately on giving written notice of termination to the Supplier if the Supplier:
  - (a) fails to remedy any breach of its obligations under the Contract within 7 days after receiving written notice from SCEE requiring it to do so;
  - (b) is unable to pay its debts when they fall due;
  - (c) ceases to hold any licence, qualification, approval, authority or consent required to supply the Goods;
  - (d) threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvent administration;

- (e) enters into any negotiations for any arrangement or composition with its creditors;
- (f) being a company, goes into liquidation, whether voluntary or compulsory, or has a receiver or receiver and manager or administrator appointed, or an application is made for the Supplier to be wound up;
- (g) being an individual, has a trustee in bankruptcy appointed;
- (h) ceases or threatens to cease to carry on business; or
- (i) assigns or subcontracts the Contract or any part of the Supplier's obligations under the Contract without the prior written consent of SCEE,

in which case SCEE's liability to the Supplier must be limited to payment of the Price for Goods delivered prior to such termination.

- 15.2 Termination of the Contract does not affect or prejudice any rights of SCEE which have accrued prior to the termination. SCEE's exercise of its rights under this clause does not affect or limit its ability to exercise any other rights under the Contract, at law or in equity.

## 16. INSURANCE

- 16.1 The Supplier must for as long as it has obligations outstanding in connection with the supply of the Goods, effect and maintain:
  - (a) all insurances specified in the Purchase Order; and
  - (b) insurances with the following minimum limits, unless otherwise specified in the Purchase Order:
    - (i) public and product liability: \$20 million;
    - (ii) workers' compensation: as required by applicable Legislative Requirements.

- 16.2 Compliance by the Supplier with this clause is a condition precedent to the Supplier being entitled to:

- (a) make a claim for payment for the supply of the Goods;
- (b) payment for the supply of the Goods.

## 17. SECURITY OF PAYMENT

- 17.1 The parties agree that for the purposes of any adjudication under any security of payment Legislative

Requirement in relation to the Contract or the Goods:

- (a) the prescribed appointor shall be the Chairperson from time to time of the Chapter of Institute of Arbitrators and Mediators Australia in the State where the Delivery Address is located;
- (b) the amount set out in a payment certificate given by SCEE under clause 10.7 is the amount of the 'progress payment' calculated in accordance with the terms of the Contract to which the Supplier is entitled; and
- (c) the date under clause 10.1 on which the Supplier must claim payment is the 'reference date'.

## 18. GENERAL

- 18.1 **Entire Agreement:** The Contract comprises the entire agreement between the Parties in respect of its subject matter and supersedes all prior agreements, quotation requests and quotations, understandings, representations, warranties, promises, statements, negotiations, letters and documents in respect of its subject matter.
- 18.2 **Severance:** If any provision of the Contract is determined to be void by any court then that determination does not affect any other provision of the Contract which otherwise remains in full force and effect.
- 18.3 **Waiver:** No waiver by a Party of any breach of a provision of the Contract is a waiver of any subsequent breach of that provision or any other provision. A waiver is not effective unless it is in writing.
- 18.4 **Variations:** An amendment or variation to the Contract is not effective unless it is in writing and signed by the Parties.
- 18.5 **Assignment:** The Supplier must not assign the Contract or any part of the Supplier's obligations under the Contract without the prior written consent of SCEE, which must not be unreasonably withheld.
- 18.6 **Subcontracting:** The Supplier must not subcontract all or any of its obligations under the Contract without the prior written consent of SCEE, which must not be unreasonably withheld.
- 18.7 **Exclusion and apportionment:** The operation of the Convention and, to the extent not prohibited by law, Apportionment Legislation is excluded. The Supplier indemnifies

SCEE against any claim, cost, expense or liability whatsoever arising out of or in connection with the Contract which are caused or contributed to by the Supplier's Personnel and for which the Supplier would have been liable to SCEE but for, or which SCEE is not able to recover from the Supplier because of, any apportionment under any Apportionment Legislation.

- 18.8 **Governing Law:** The Contract is governed by, and is to be interpreted in accordance with the laws in force in the State where the Delivery Address is located and the Parties submit exclusively to the jurisdiction of the courts in that State.

## 19. DEFINITIONS

In these Conditions:

**Action** means any claim, action, suit, proceeding or demand.

**Apportionment Legislation** means any legislation under which an apportionment may be made.

**apportionment** includes an apportionment of liability for damages, a limit on the amount of damages that may be awarded against a party or a determination of or judgment for the proportion of any damages which should be borne by a party.

**Conditions** means these terms and conditions of purchase including any additional special conditions stated in the Purchase Order, and any variations agreed by the Parties in

writing.

**Contract** means the Purchase Order and the Conditions.

**Consequential Loss** means consequential loss, damage or expense (including but not limited to loss of profit or revenue, loss of market or loss of contracts or damage to commercial reputation)

**Convention** means the United Nations Convention on Contracts for the International Sale of Goods, adopted at Vienna, Austria on 10 April 1980.

**Defect** means any aspect of the Goods not in accordance with this Contract, or which is damaged, deficient, faulty, inadequate or incomplete in design, performance, workmanship, quality or makeup and **Defective** has an equivalent meaning.

**Delivery Address** means the address for delivery stated in the Purchase Order.

**Delivery Date** means the date for delivery stated in the Purchase Order.

**Goods** means the goods specified in the Purchase Order and any Specification including, without limitation, manuals, operating instructions, reports and drawings.

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

**IP Rights** means all industrial and intellectual property rights whether protectable by statute, at common law or in equity, including all copyright and similar rights which

may subsist or may hereafter subsist in works or any subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registrable), rights in relation to registered or unregistered trade marks, circuit layout designs and rights in relation to circuit layouts, but excludes non-assignable moral rights and similar non-assignable personal rights of authors and producers.

**Loss** means any loss, damage, expense, payment or liability, , but excludes Consequential Loss.

**Party** means SCEE or the Supplier, and a reference to Parties is a reference to both of them.

**Price** has the meaning given in clause 9.1.

**Purchase Order** means the written order signed by or on behalf of SCEE and given to by the Supplier for the purchase of the Goods.

**SCEE** means Southern Cross Electrical Engineering Ltd (ABN 92 009 307 046).

**Supplier** means the Supplier of the Goods specified in the Purchase Order.

**Specification** means all codes, standards, drawings, scopes of work and specifications applicable to the Purchase Order, referred to in the Purchase Order or otherwise incorporated into the Purchase Order by reference and to be complied with by the Supplier.