

Terms & Conditions for Purchases of Goods and/or Services

Terms and conditions for the purchase of Goods and/or Services (“Conditions of Contract”) form part of the Purchase Order and contain important information about the Purchase Order.

1. General

- 1.1 No additional conditions proposed by the Supplier apply to the provision of the Supplies unless agreed in writing by DSA.
- 1.2 If there is any inconsistency between the Purchase Order and these Conditions of Contract, the Purchase Order prevails to the extent of that inconsistency.
- 1.3 In these Conditions of Contract:
 - “**DSA**” means “Dennis Southam and Associates” ABN 14 772 489 431 and where relevant, includes its subsidiaries and related bodies corporate;
 - “**Contract**” means the contract between DSA and the Supplier for the purchase of the Supplies comprising the Purchase Order and the terms of the Conditions of Contract;
 - “**Goods**” means the articles, goods, material or parts thereof to be supplied under the Contract;
 - “**GST Act**” means A New Tax System (Goods and Services Tax) ACT 1999 (Cth);
 - “**Intellectual Property**” includes all copyright and neighbouring rights, all rights in relation to inventions (including patent rights) registered and unregistered trademarks, trade secrets and know how, circuit layouts, and all other rights resulting from intellectual activity;
 - “**Purchase Order**” means the form by that name for the purpose of Goods or Services, or both Goods and Services, as the case may be, to which these Conditions of Contract apply.
 - “**Services**” means the services to be performed under the Contract;
 - “**Supplier**” means the person named on the Purchase Order who is to supply the Supplies to DSA, and where the Supplier includes more than one person, those persons jointly and severally; and
 - “**Supplies**” means the Goods and/or Services, the subject of a Purchase Order.

- 1.4 In these Terms and Conditions of the Contract, unless the context otherwise requires:
 - Words importing one gender include any other gender;
 - Words importing the singular include the plural and vice versa;
 - Reference to a person includes a body politic, body corporate and a natural person; and
 - Headings are for guidance only and do not affect the interpretation of the clauses they refer to.

2. Performance and Delivery

- 2.1 The delivery of all Goods and the performance of all Services must be made at the time, place and in the manner, stated in the Purchase Order.
- 2.2 DSA may reasonably specify in writing to the Supplier another time, place or manner for delivery or performance, in which case that other time, place or manner applies in place of that stated in the Purchase Order.

- 2.3 Goods must be packed, marked and labelled to ensure their safe delivery and, if specific packing, marking or labelling is required under the Purchase Order, comply with those requirements.
- 2.4 Time is of the essence.

3. Quality and Compliance with Requirements

- 3.1 The Supplier must provide the Supplies at a high standard with all due skill, care, and diligence.
- 3.2 The Supplier must comply with any requirements relating to the Services as stated in the Purchase Order and all Goods must conform to any specifications relating to Goods as stated in the Purchase Order.
- 3.3 Without limiting clauses 3.1 and 3.2 all Goods must be free from defects in materials and workmanship, be of merchantable quality and be fit for the purpose and all Services must be free from defects in performance, meet their purpose and be complete.

4. Inspection and Acceptance

- 4.1 DSA may inspect the performance and outcome of the Services at any time and for that purpose the Supplier must at reasonable times, give DSA's representatives access to the premises at which the Services are being performed. If there is a defect in the performance of the Services or the Services are not complete, DSA may by notice require the Supplier to remedy the defect, or complete the Services, at no additional cost to DSA. If the Services do not meet their purpose or are not in accordance with the Contract, DSA may by notice require the Supplier to redo the Services at no additional cost to DSA. Where the Supplier fails to remedy a defect in the performance of the Services, complete the Services, or redo the Services, within 14 days after notification by DSA under this clause, DSA may perform, or have performed the necessary work and recover the cost from the Supplier without prejudice to any other rights or remedies DSA may have.

5. Goods

- 5.1 DSA may inspect the Goods at any time prior to acceptance and reject any Goods found not to be in accordance with the Contract. After acceptance, DSA may reject any Goods for non-conformity with the Contract which could not have been discovered by reasonable inspection before acceptance.
- 5.2 DSA will not be liable to pay for any rejected Goods or for any damages or cost arising from inspection or rejection of Goods.
- 5.3 If DSA rejects any Goods, the Supplier must, without prejudice to DSA's rights otherwise arising under the Contract or the general law, comply with a requirement of DSA to:
 - (a) replace, without cost to DSA the rejected Goods with goods complying in all respects with the Contract;
 - (b) refund any payments for the rejected Goods; or
 - (c) repair the Goods, on site or otherwise, to the satisfaction of DSA; and in the case of (a) and (b), remove the rejected Goods at the Supplier's expense.

- 5.4 Without additional cost to DSA, the Supplier must provide access to the premises and all other necessary assistance for DSA's representatives to inspect the manufacture of the Goods.
- 5.5 If DSA requires the Supplier to submit samples of Goods, the Supplier must not proceed to bulk manufacture until DSA has approved the samples.

6. Title

- 6.1 Title in, and risk of loss or damage to, the Goods passes to DSA on delivery.

7. Warranty

- 7.1 If DSA gives prompt notice of any defect or omission discovered in Goods during any warranty period, the Supplier must correct that defect or omission without delay and at no cost to DSA.
- 7.2 The Supplier must meet all costs of, and incidental to, the discharge of warranty obligations, including any packing, freight, disassembly and reassembly costs.

8. Inclusive Price

- 8.1 The price of the Supplies includes:

- (a) all taxes (including GST) duties and other imposts for which the Supplier is liable;
- (b) all insurance costs;
- (c) all amounts payable for the use thereof (whether in the course of manufacture or use of the patents, copyright, registered designs, trademarks, and other Intellectual Property rights);
- (d) all charges for supply of the Goods or the performance of the Services; and
- (e) no extra charges for testing, inspection, packaging, delivery or otherwise.

9. GST

- 9.1 Unless defined in these conditions capitalised expressions used have the meaning given to those expressions in the GST Act.

10. Intellectual Property

- 10.1 All Intellectual Property created under the Contract and relating to the Supplies is from the time of creation owned by DSA.
- 10.2 The Supplier must not use, disclose, copy or reproduce that Intellectual Property except for the purposes of the Contract.
- 10.3 The Supplier must at all times indemnify DSA its, officers, employees and agents from and against all loss, damage, costs (including legal costs and expenses on a solicitor/ own cost basis) compensation and expenses arising out of the infringement or alleged infringement of any Intellectual Property, by reason of the purchase, possession, or use of the goods or the outcomes of the Services.

11. Assignment and Subcontracting

- 11.1 The Supplier must not, without the consent in writing of DSA assign its rights under the Contract, or subcontract any part of the performance of the Contract.

12. Applicable Law

- 12.1 This Contract shall be construed and take effect in accordance with the laws in force in the State of South Australia and the Courts of South Australia have exclusive jurisdiction.
- 12.2 The Supplier shall ensure that the work done under this Contract complies with the laws from time to time in force in the state or territory in which the work under the Contract is performed.

13. Payment

13.1 Subject to clause 5.2, DSA must pay for the Supplies no later than the end of the month following; if

- (a) title in the goods (if applicable) has passed to it and they have been accepted;
- (b) satisfactory completion of the Services (if applicable); or
- (c) receipt of a correctly rendered invoice;

whichever is the later.

13.2 An invoice will be correctly rendered if it;

- (a) is addressed in accordance with the Purchase Order;
- (b) identifies the Purchase Order;
- (c) is, where explanation is necessary, accompanied by documentation substantiating the amount claimed; and
- (d) is, where required by Australian law, accompanied by a valid Tax Invoice within the meaning of the GST Act.

14. Termination for Insolvency or Breach

14.1 Without prejudice to its rights at common law, DSA may by notice in writing to the Supplier terminate the Contract if the Supplier:

- (a) becomes bankrupt or insolvent, being a partnership, becomes dissolved, makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver or receiver and manager appointed, goes into liquidation, passes a resolution to go into liquidation, otherwise than for the purpose of reconstruction, or becomes subject to any petition or proceedings in a court for its compulsory winding up or becomes subject to supervision of a court either voluntarily or otherwise, or suffers any execution against its assets; or
- (b) fails:
 - (i) to commence performance of the Contract or to proceed at a rate of progress so as to ensure the due and proper completion of the Contract; or
 - (ii) to take action to remedy a breach or any other obligation under the Contract within seven (7) days of being given notice by DSA requiring the Supplier to remedy the breach; or to remedy a breach referred to in this paragraph within fourteen (14) days of being given the notice referred to; or
 - (iii) assigns its rights otherwise than in accordance with the requirements of this Contract.

14.2 Where, before termination of the Contract under clause 14.1, DSA has made any payment in advance on account of the contract price to the Supplier the total amount of that payment must be repaid by the Supplier to DSA on termination and, if not repaid is recoverable by DSA from the Supplier as a debt.

14.3 If the Contract is terminated under this clause:

- (a) the parties are relieved from future performance, without prejudice to any right of action that has occurred at the date of termination;
- (b) rights to recover damages are not affected; and
- (c) the Supplier must indemnify DSA in respect of any loss it may occur in purchasing similar goods or services from other Suppliers.

15. Termination for Convenience

- 15.1 DSA may at any time give notice in writing to the Supplier to terminate the Contract, or any part, without cause.
- 15.2 On receipt of the notice, the Supplier must cease or reduce work as specified in the notice and take all steps possible to mitigate losses.
- 15.3 On termination of the Contract or any part under this clause the Supplier may submit a claim for compensation and DSA must pay to the Supplier such sums as are fair and reasonable in respect of the loss or damage sustained by the Supplier in consequence but the Supplier will not be entitled to claim compensation for any work done or expenditure incurred contrary to the Contract or from loss of anticipated profits.
- 15.4 The aggregate of any compensation and any sums paid or due or becoming due to the Supplier under the Contract will not exceed the contract price payable under the Contract.
- 15.5 If this clause is invoked, it will prevail over other inconsistent provisions.

16. Confidentiality

- 16.1 The Supplier must treat and require its employees, agents and subcontractors to treat all confidential information of DSA given in connection with the Contract and identified as having, or marked with, a classification indicating its confidentiality, according to that classification, as confidential. This clause does not apply to information which is part, or becomes part, of the public domain otherwise than by breach of this clause.

17. Compliance with DSA's Policies

- 17.1 The Supplier must, when using DSA premises, comply with all reasonable directions of DSA and all procedures and policies of DSA relating to occupational health (including no smoking), safety and security in effect at those premises or in regard to those facilities as notified by DSA or as might reasonably be inferred from the use to which the premises or facilities are being put.

18. Compliance with laws

- 18.1 The Supplier must, in carrying out the Contract, comply with all relevant laws and the requirements of relevant authorities.

19. Indemnity

- 19.1 Subject to the Contract, the Supplier must at all times indemnify DSA its officers, employees and agents ("those indemnified") from and against any loss and including legal costs and expenses on a solicitor/ own client basis), or liability, reasonably incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such loss or liability was caused by any wilful, unlawful or negligent act or omission of the Supplier, its officers, employees, agents or subcontractors in connection with the Contract.

20. Waiver

- 20.1 A party's failure or delay to exercise a power or right does not operate as a waiver of the power or/right. A waiver is not effective unless in writing.