



Purchase Order Terms and Conditions

Entire agreement and application

- 1) This Contract is the entire agreement between the parties for the Goods or Services and supersedes all prior negotiations and communications.
- 2) These Terms and Conditions do not apply where the parties have executed a written formal agreement in relation to the Goods or Services, even where these Terms and Conditions are attached to any purchase order relating to that agreement.
- 3) To the extent that the Supplier's terms and conditions are attached to or within a Proposal or are supplied with the Goods or Services, they shall be of no legal effect and will not constitute part of this Contract.
- 4) In the event of any inconsistency between the component parts of this Contract, they shall be read in the following order of precedence: the Special Conditions, the Purchase Order and these Terms and Conditions.

Commencement

- 5) This Contract commences on the date the Purchase Order is given to the Supplier by the Company.

Variation

- 6) Any variation to these Terms and Conditions must be in writing and specified in the Purchase Order or in the Special Conditions.
- 7) Any variation to this Contract must be in writing and signed by the parties.

Price

- 8) The Price is on a free-in-store basis.
- 9) Where the Price for Services is not fixed and is on a rates basis, then:
 - a. the Price is to be determined by multiplying the actual days or hours worked by the Supplier as verified by the Company by the rates set out in the Purchase Order or as otherwise agreed by the parties;
 - b. any daily rate will be calculated on a nominal working day of 8 hours and where less than 8 hours are worked on any day and not made up on another day, the Company reserves the right to pay the Supplier an hourly rate equivalent to 1/8th of the daily rate for that day; and
 - c. the rates include all salary, overheads and cost of equipment, systems and software to be used in the performance of the Services.

Payment

- 10) The Supplier must issue the Company with a GST invoice, specifying the Purchase Order number, after the Goods have been delivered or the Services provided. Where the Goods or Services will be delivered or provided for a period in excess of one month, the Supplier may issue a GST invoice on or before the end of each month for Goods or Services delivered or provided during that month.
- 11) The Company will pay the Supplier within 30 days of the end of the month in which it receives a correctly rendered invoice.
- 12) The Company may reduce any payment due to the Supplier under this Contract by any amount which the Supplier is liable to pay to the Company.

Delivery of Goods

- 13) The Supplier must deliver the Goods to the delivery address specified in the Purchase Order for the Price on or before the Delivery Date. Where Goods are delivered after the Delivery Date, the Company may refuse to accept those Goods in its absolute discretion.
- 14) The Supplier warrants that the Goods shall be new and comply with the highest relevant commercially accepted standards, be Fit for Purpose and be delivered without defect.

- 15) The Company may reject, within 5 Business Days of delivery, Goods that are defective, and shall have no liability to pay for those Goods.
- 16) The Supplier must ensure that the Goods are suitably packed to avoid damage in transit or in storage.
- 17) The Supplier must notify the Company on delivery of the Goods of any special requirements that apply to the handling or storage of the Goods and provide any associated material safety data sheet.

Performance of Services

- 18) The Supplier must perform the Services for the Price on or before the Completion Date. The Supplier warrants that any materials supplied in connection with the Services (**Materials**) will be Fit for Purpose.
- 19) The Supplier must comply with the Company's directions in relation to the performance of the Services.
- 20) The Supplier and its personnel must be appropriately qualified, competent and skilled to perform the Services.
- 21) In performing the Services, the Supplier and its personnel will exercise the standards of diligence, skill and care normally exercised by a suitably qualified and competent person in the performance of comparable work.
- 22) The Company may object to any of the Supplier's personnel who, in the opinion of the Company, are lacking in appropriate skills or qualifications, engage in misconduct or are incompetent or negligent. The Supplier must remove such personnel on receipt of notice from the Company and must at its cost replace such removed personnel with suitably qualified, competent and skilled personnel.

Title and risk

- 23) Subject to clauses 15 and 24, title to the Goods passes to the Company on the earlier of payment by the Company for the Goods or acceptance of the Goods by the Company. The risk of any loss or damage to the Goods remains with the Supplier until delivery to the Company, and reverts to the Supplier immediately where the Goods are rejected under clause 15.
- 24) The title to Goods supplied for hire remains with the Supplier and the risk of any loss or damage to such Goods remains with the Supplier.

Compliance with laws and standards

- 25) In supplying the Goods or performing the Services the Supplier:
 - a. must comply with and ensure that its personnel comply with all applicable laws including all relevant health, safety and environmental laws;
 - b. must comply with and ensure that its personnel comply with the applicable policies, standards and procedures of the Company, including the Company's health, safety and environmental policies;
 - c. must comply with and ensure that its personnel comply with all directions given by the Company whilst on the Company's site;
 - d. must ensure that its personnel, while on the Company's site, perform their tasks in a safe manner and are properly qualified for and skilled in the performance of their tasks such as not to prejudice safe working practices and safety and care of persons and property on the site; and
 - e. where the Goods are on hire from the Supplier, or where equipment is used in the performance of the Services, warrants that any such Goods or equipment operated on the Company's site by the Supplier or its personnel will be in safe working condition, will comply with all applicable laws and will be operated by qualified and competent personnel to the satisfaction of the Company.

Default and termination

- 26) If a party defaults in the performance of a provision of this Contract, the other party may by notice require the party in default to remedy the default within 5 Business Days or such longer period as may be specified in the notice.
- 27) A party may terminate this Contract immediately by notice, in whole or in part, when the other party:
 - a. has not remedied a breach within the time specified in a notice of default given under clause 26; or
 - b. becomes bankrupt or insolvent or has an administrator appointed.
- 28) Notwithstanding clause 27, the Company may terminate this Contract in whole or in part without being required to give a reason, by giving the Supplier 2 Business Days notice in writing.
- 29) The Company shall pay for any Services performed to the termination date, and for any Goods delivered up to the date on which the termination notice is given.

Warranty

- 30) If required by the Company, at its cost, the Supplier shall make good or replace any defective Goods or Materials notified during the Warranty Period, including removal and incidental costs, or re-perform or make good any defective Services notified during the Warranty Period, within a reasonable time of receiving notification.

Assignment and subcontracting

- 31) The Supplier must obtain the prior written approval of the Company to assign or subcontract this Contract. Approval to subcontract shall not relieve the Supplier from any of its obligations under this Contract, or impose any liability upon the Company to the subcontractor. This clause does not apply to persons under contracts for services with the Supplier and the Supplier remains responsible for such persons.

Confidential Information

- 32) The Supplier covenants and undertakes:
 - a. to keep confidential all Confidential Information and not to disclose any Confidential Information to any person except to their own personnel who need the information to provide the Goods or Services, or as required by law, or otherwise with the prior written consent of the Company;
 - b. to use its best endeavours at all times to prevent the use or disclosure of any Confidential Information to or by third parties; and
 - c. to maintain proper and secure custody of all Confidential Information.

Intellectual Property

- 33) The Supplier retains title to all intellectual property belonging to it prior to providing the Goods or Services and which is used by it in providing the Goods or Services (**Background IP**) and grants to the Company and its related bodies corporate a non-exclusive, irrevocable and royalty-free licence to use any Background IP to the extent required to use the Goods or Services.
- 34) The Supplier warrants that the Company will be entitled and able to use any intellectual property comprised in the Goods.
- 35) In the event that any intellectual property is created during the performance of the Services, the Supplier assigns to the Company on creation all current and future rights which may be acquired by the Supplier in relation to such intellectual property so as to vest title in that intellectual property in the Company absolutely.

Insurance

- 36) The Supplier must effect and maintain, with a reputable insurer:
 - a. public liability insurance for an amount not less than \$20,000,000 for any one occurrence;

- b. in the case of the Goods, insurance for full replacement value against loss, damage or theft until risk in the Goods has passed to the Company;
 - c. third party property insurance for damage caused by all vehicles used in connection with the provision of the Goods or Services;
 - d. comprehensive motor vehicle insurance for all vehicles used in connection with the provision of the Goods or Services;
 - e. insurance in respect of all claims and liabilities arising in respect of its workers, relating to worker's compensation or employer's liability in compliance with all statutory requirements, with a principal's indemnity extension for statutory and common law benefits;
 - f. adequate insurance to cover loss or damage to all plant, equipment or other property owned, operated or controlled by the Supplier or for which it is responsible, which it brings to or uses on the Company's site for the purpose of providing the Services;
 - g. where professional services are provided by the Supplier, professional indemnity insurance; and
 - h. any other insurance required by law or otherwise as reasonably required by the Company,
- and the Supplier will, if required by the Company, provide the Company with certificates of currency for these insurances.

Indemnity

- 37) The Supplier shall indemnify the Company, its officers, employees, and agents (**those indemnified**) from and against all claims, liabilities, losses and expenses (including legal costs on a solicitor/own client basis) suffered by those indemnified and caused directly or indirectly by any act or omission of the Supplier, its personnel, agents or subcontractors in connection with the performance of this Contract, save to the extent contributed to by the Company.

Waiver

- 38) Any waiver of a provision of this Contract or breach of any provision, shall only be a waiver of that specific provision or breach in that particular instance and shall not be construed as in any way affecting the enforceability of that provision in any other instance, or the enforceability of this Contract as a whole.

Force Majeure

- 39) If a party is prevented in whole or in part from carrying out its obligations under this Contract as a result of a Force Majeure Event, and gives prompt notice and reasonable particulars of that Force Majeure Event to the other party, then that obligation is suspended during the continuance of that Event. Where the Force Majeure Event continues for more than 30 calendar days, either party may terminate this Contract by notice to the other.

Applicable Law

- 40) This Contract shall be governed by the laws of Western Australia.

Notices

- 41) All notices are to be in writing and sent to the street, postal, facsimile or email address stated in the Purchase Order, or to any subsequently notified address.

Definitions

- 42) In this Contract, unless otherwise indicated:

Business Day means a day which is not a Saturday or Sunday or public holiday in Western Australia.

Company means the Asia Iron Australia Group company named in the Purchase Order.

Completion Date means the completion date specified the Purchase Order or as otherwise agreed by the parties.

Confidential Information means all information of the Company which, by its nature or by the circumstances of its disclosure, is or could reasonably be regarded as confidential to the Company, including

any databases, specifications, drawings, records, reports, material and information whether in writing or otherwise concerning the Company or its business, and excluding any information known to the other party prior to its disclosure or which is in the public domain (other than through a breach of clause 32).

Contract means the Purchase Order, these Terms and Conditions and any Special Conditions.

Delivery Date means the delivery date specified in the Purchase Order or as otherwise agreed by the parties.

Fit for Purpose means the purpose communicated by the Company to the Supplier prior to the date of the Purchase Order or stated on the Purchase Order or if no purpose is communicated or stated, the purpose for which goods of that type are usually acquired.

Force Majeure Event means an event or circumstance, or combination of events or circumstances which are beyond the reasonable control of the party affected (**Affected Party**) which causes or results in default or delay in the performance by the Affected Party of any of its obligations under this Contract and which the Affected Party could not reasonably have been expected to have prevented, avoided or overcome by exercising a standard of care and diligence consistent with that of a prudent, competent and experienced person in the circumstances, provided that event or circumstance excludes an event or circumstance caused by an act or omission of the Affected Party or a lack of money.

Goods means the Goods specified in the Purchase Order.

GST means the Goods and Services Tax as defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Proposal means a proposal submitted by the Supplier to the Company in relation to the Goods or Services prior to the issue of the Purchase Order.

Price means the purchase price specified in the Purchase Order inclusive of GST (where applicable) for the Goods or Services.

Purchase Order means the purchase order to which these Terms and Conditions relate.

Services means the Services specified in the Purchase Order and any scope of work contained in a Proposal.

Special Conditions means any special conditions referred to in the Purchase Order or which are signed by the Company and attached to the Purchase Order.

Supplier means the Supplier identified in the Purchase Order.

Terms and Conditions means this document entitled 'Purchase Order Terms and Conditions'.

Warranty Period means:

- a. in the case of the Services, 12 months from the Completion Date; and
- b. in the case of the Goods or Materials, the longer of:
 - i. 12 months from acceptance of the Goods or the Completion Date in the case of Materials; and
 - ii. the manufacturer's standard warranty period.