

Terms and Conditions

1 Parties and Agreement

- 1.1 This short form Purchase Order (Purchase Order) is between Mechanical Project Management Pty Ltd (MPM Pty Ltd) and the Supplier listed on the first page of this Purchase Order (Supplier).
- 1.2 This Purchase Order constitutes an offer by MPM Pty Ltd to the Supplier. The Supplier will be deemed to have accepted the terms of this Purchase Order if the Supplier proceeds with the supply of the goods specified in this Purchase Order.

2 Scope of the Purchase Order

- 2.1 This Purchase Order relates to the provision of the goods described in item 1 (Goods) by the Supplier to MPM Pty Ltd for the purposes of the project described in item 2 (Project).

3 Basis of Purchase Order

- 3.1 The Supplier acknowledges that MPM Pty Ltd is engaged on the Project by a contract with the Principal (**Principal**), and the Supplier shall not do anything that may cause MPM Pty Ltd to be in breach of any obligation of that contract.
- 3.2 Each party to this Purchase Order is an independent Supplier and will be exclusively responsible for its own employees, agents, subcontractors, suppliers and consultants.

4 Goods to be Supplied

- 4.1 The Goods must be provided by the Supplier to MPM Pty Ltd in strict accordance with the terms of this Purchase Order.
- 4.2 The Goods must be delivered by the Supplier to the Site nominated in item 3 (**Site**), or such other location as MPM Pty Ltd may direct by notice to the Supplier, by the delivery date described in item 4 (**Delivery Date**).

5 Inspection and return

- 5.1 Once the Goods have been delivered in accordance with clause 4.1 MPM Pty Ltd will:
 - (a) inspect the Goods; and
 - (b) if the Goods are not acceptable, MPM Pty Ltd will provide written notification of such to the Supplier.
- 5.2 If the delivered Goods are not acceptable to MPM Pty Ltd, MPM Pty Ltd may at its election and at the Supplier's expense:
 - (a) convert or repair the Goods into a condition acceptable to MPM Pty Ltd; or
 - (b) return the Goods to the Supplier.
- 5.3 MPM Pty Ltd may, at its election, deduct the cost of the conversion, repair or return from any money owed by MPM Pty Ltd to the Supplier under this Purchase Order or any other Purchase Order or Purchase Order between the parties.

6 Acceptance, title and risk

- 6.1 Delivery of the Goods in accordance with clause 5.1 does not constitute acceptance of the Goods by MPM Pty Ltd.
- 6.2 Without limiting clause 6.1, acceptance of the Goods will only occur if MPM Pty Ltd inspects the Goods and:
 - (a) provides the Supplier with notice that MPM Pty Ltd accepts the Goods; or
 - (b) pays for the Goods in full, whichever occurs first.
- 6.3 Title in the Goods will not pass to MPM Pty Ltd until MPM Pty Ltd accepts the Goods in strict accordance with clause 6.2 and until then the Goods will remain at the risk of the Supplier.

7 Warranties as to Goods

- 7.1 The Supplier warrants that it has unencumbered title to sell the Goods and that the Goods:
 - (a) are of merchantable quality;
 - (b) comply with all laws, legislation, regulations and codes (including standards laid down by any relevant standards association or any local supply authority) and any specifications and standards described in this Purchase Order;
 - (c) are fit for the purposes for which MPM Pty Ltd intends to use them; and
 - (d) are manufactured strictly in accordance with any plans and specifications incorporated by reference into this Purchase Order or notified by MPM Pty Ltd to the Supplier from time to time.
- 7.2 Any other warranty or guarantee by the Supplier is not revoked or varied by this clause 7.

8 Supplier's delivery default

- 8.1 If:
 - (a) the Supplier fails to deliver the Goods in accordance with clause 4
 - (b) the Supplier fails to comply with any warranty or term of this Purchase Order; or
 - (c) the Goods do not meet or exceed the standards or specifications

required by this Purchase Order, then MPM Pty Ltd may, without prejudice to any of its other rights:

- I. refuse delivery of the Goods (in which case, title in the Goods will not pass to MPM Pty Ltd); and
 - II. purchase goods that are similar or identical to the Goods from a third party.
- 8.2 If any of the events in clauses 8.1(a) to 8.1(c) inclusive occur, the Supplier will be liable to MPM Pty Ltd for the following:
 - (a) any loss or additional cost incurred by MPM Pty Ltd in purchasing the goods that are similar or identical to the Goods from the third party; and
 - (b) any loss or additional costs incurred by MPM Pty Ltd where the Supplier's failure under clauses 8.1(a) to 8.1(c) inclusive causes MPM Pty Ltd to be liable for any delay damages to the Principal under the Purchase Order between the Principal and MPM Pty Ltd.

9 Warranty period

- 9.1 The Supplier will be responsible for rectifying any omissions or defects in respect of the Goods for a period of twelve months from the Delivery Date for the Goods (**Warranty Period**).
- 9.2 If the Supplier fails to rectify any omissions or defects in accordance with any direction by MPM Pty Ltd during the Warranty Period or the rectification work is required urgently, MPM Pty Ltd may perform the rectification work itself or arrange for a third party to perform the rectification work. The Supplier will be liable for the cost of such rectification work.

10 Access to Site

- 10.1 If the Supplier enters MPM Pty Ltd's premises or the Site in order to deliver the Goods, the Supplier must take all measures necessary to ensure it protects people and property, avoids interference with the passage of people and vehicles and prevents nuisance, noise and disturbance on the premises and surrounding property.
- 10.2 MPM Pty Ltd will not be responsible for any damage done to any property which the Supplier owns or for any personal injury sustained by the Supplier occurring on the premises.
- 10.3 The Supplier unconditionally and irrevocably releases MPM Pty Ltd from the occurrences in clause 10.1.
- 10.4 The Supplier must ensure that it acts in a safe and lawful manner and that when it is on the premises, it complies with all relevant safety legislation and MPM Pty Ltd's safety standards and policies.

11 Insurances

- 11.1 At its own costs, the Supplier must obtain and maintain insurance cover from an insurer of good repute and standing and to MPM Pty Ltd's reasonable satisfaction for:
 - (a) Public Liability insurance;
 - (b) Professional Indemnity insurance;
 - (c) Motor Vehicle insurance; and
 - (d) Worker's Compensation insurance.
- 11.2 Where required by MPM Pty Ltd these policies must extend to cover MPM Pty Ltd and the Supplier will renew the policies as required for the Purchase Order Duration.
- 11.3 If the Supplier fails to provide evidence of any insurances required by the Purchase Order, MPM Pty Ltd may immediately purchase the insurance policy, and charge the Supplier, or immediately terminate the Purchase Order.
- 11.4 The Supplier will not be allowed access to the Site until evidence of satisfactory insurance is provided to MPM Pty Ltd.
- 11.5 Each policy must be on terms approved by MPM Pty Ltd.
- 11.6 Upon request by MPM Pty Ltd and immediately following the renewal of each insurance policy, the Supplier must provide MPM Pty Ltd with evidence, to the satisfaction of MPM Pty Ltd, that the Supplier has satisfied all of its insurance obligations under this Purchase Order.
- 11.7 The Supplier must effect and maintain any other insurance required by law or which MPM Pty Ltd may direct by notice to the Supplier.
- 11.8 The Supplier must not do, or permit to be done, anything which might cause the insurance policies required to be obtained by the Supplier under this clause to be cancelled, avoided or otherwise prejudiced.

12 Payments

- 12.1 **Item 5** describes the amounts payable in respect of the Goods (**Amount Payable**). It may describe any progress payments for the Goods that are payable to the Supplier.
- 12.2 Claims by the Supplier for payment, whether final or progress payments, must be submitted in a form acceptable to MPM Pty Ltd on or before the 25th day of the month, or, in respect of final payment claims, within seven days of the provision of the Goods by the Supplier.
- 12.3 If when MPM Pty Ltd receives a payment claim it:
 - (a) believes the claim should be rejected because the claim has not been made in accordance with this Purchase Order; or
 - (b) disputes the whole or part of the claim, MPM Pty Ltd must, within 28 days after receiving the claim, give the Supplier a notice in writing advising the Supplier why the claim is disputed

in whole or in part.

12.4 Within 42 days after MPM Pty Ltd receives a payment claim, it must do one of the following, unless the claim has been rejected or wholly disputed in accordance with sub-clause 12.3:

- (a) pay the part of the amount of the claim that is not disputed;
- (b) pay the whole of the amount of the claim.

12.5 It is a condition precedent to the Supplier's right of payment that, if requested by MPM Pty Ltd, the Supplier must provide MPM Pty Ltd with evidence, to the satisfaction of MPM Pty Ltd that the Supplier has complied with all its obligations under this Purchase Order.

12.6 The Amounts Payable:

- (a) are fixed and will not be subject to escalation for rise in cost for any cause whatsoever, unless otherwise agreed between the parties and noted as such in this Purchase Order; and
- (b) compensate the Supplier for everything necessary to provide the Goods and otherwise to fulfill all of its obligations under this Purchase Order.

12.7 The Supplier will not be entitled to interest on an amount that is payable under this Purchase Order by MPM Pty Ltd to the Supplier on or before a certain date but which is unpaid after the date.

13 Variations to Goods and this Purchase Order

13.1 MPM Pty Ltd may direct the Supplier to change the change the Goods ordered.

13.2 The Supplier must obtain the prior written consent of MPM Pty Ltd or MPM Pty Ltd Representative before carrying out any variation to provision of the Goods.

13.3 Where an approved variation to the Goods results in a reasonable change to the Amounts Payable or the Date for Delivery of Goods, such change to the Amounts Payable or the Date for Delivery of Goods will be determined by MPM Pty Ltd.

13.4 Without limiting clauses 13.1 to 13.3 the terms of this Purchase Order can only be varied where both parties agree the variation in writing.

14 Indemnity

14.1 The Supplier must indemnify MPM Pty Ltd from and against:

- (a) any cost, expense, loss, liability or damage, whatsoever and howsoever, whether directly or indirectly, and whether or not foreseeable, suffered or incurred by MPM Pty Ltd; and
- (b) any liability whatsoever in respect of any action, claim or proceeding brought or threatened to be brought against MPM Pty Ltd, including all costs and expenses which MPM Pty Ltd may suffer or incur in disputing any such action, claim or proceeding, including any injury to any person or damage to any property, in respect of, in relation to or in connection with:
- (c) a breach of this Purchase Order by the Supplier;
- (d) the performance of the Works/Services and the provision of the Goods and any activity directly or indirectly associated with the performance of the Works/Services and the provision of the Goods;
- (e) the proper and lawful use of the Works and the Goods by MPM Pty Ltd or any person to whom MPM Pty Ltd supplies the Works and the Goods; and
- (f) any negligent act or failure to act by the Supplier.

14.2 All amounts payable under this indemnity must be paid in full (without any deduction, withholding, counterclaim or set-off) on demand by MPM Pty Ltd.

14.3 If an indemnity payment is made by the Supplier, the Supplier must also pay MPM Pty Ltd an additional amount equal to any tax which is payable in respect of the indemnity payment.

15 Waiver

15.1 The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other of further exercise of it or the exercise of any other power or right.

15.2 A power or right may only be waived by a party by notice to the other party.

16 Governing Law

17.1 This Purchase Order is governed by the laws of Western Australia and the parties agreed to submit to the non-exclusive jurisdiction of the courts of Western Australia.

17 Interpretation

17.1 In this Purchase Order, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa, and a reference to a gender includes both genders;
- (b) headings are for reference only and do not affect the interpretation of this Purchase Order;
- (c) a reference to any legislation includes a reference to any proclamation, order, amendments or modification made under that legislation;
- (d) where two or more persons are named, then the obligations on their part will bind and be observed and performed by them jointly and severally;
- (e) references to monetary amounts are to Australian currency;
- (f) except in the context of any opinion or decision, a reference to "MPM Pty Ltd" or "Supplier" includes their respective employees, representatives, agents (including secondary Suppliers) and related bodies corporate as that term is defined in the *Corporations Act 2001*;
- (g) a reference to a "day" means a calendar day;
- (h) the time for doing any act or thing under this Purchase Order shall, if it ends on a Saturday, Sunday or Statutory or Public Holiday, be deemed

to end on the day next following which is not a Saturday, Sunday or Statutory Public Holiday.

(i) a reference to "Australian Standard" means a current standard published by Standards Australia Limited; and

(j) the words "including" and "include" are to be construed without limitation.

17.2 Any consent, approval or opinion which MPM Pty Ltd can grant or form under this Purchase Order will be at the absolute discretion or opinion of MPM Pty Ltd and may be granted with or without conditions. MPM Pty Ltd does not have to provide any reasons for withholding or granting its consent or approval or for forming any opinion or attaching any conditions.

17.3 Any notice to be given to either party under this Purchase Order must be made in writing and given by delivering it, posting it by prepaid post, or transmitting it by facsimile or email to the address specified in this Purchase Order or by any other means agreed between the parties from time to time. Changes to a party's address must be notified to the other party in writing.

17.4 A notice sent:

(a) by post shall be deemed to be sent and received on the third business day after the date of posting;

(b) by facsimile or email transmission shall be deemed to be received upon despatch by the sender.

17.5 Any action which MPM Pty Ltd takes or omits to take to enforce any of its rights or powers under this Purchase Order will not release the Supplier from any of its obligations under this Purchase Order.

17.6 This Purchase Order is not to be construed against MPM Pty Ltd merely because MPM Pty Ltd prepared the Purchase Order.

17.7 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Purchase Order, but the rest of this Purchase Order is not invalid.

18 GST

18.1 All Amounts Payable or other *consideration* referred to in this Purchase Order are exclusive of GST.

18.2 MPM Pty Ltd is not required to pay the GST component of the Amount Payable or other *consideration* until MPM Pty Ltd has received a *tax invoice* from the Supplier in respect of the *taxable supply*.

18.3 If an *adjustment event* occurs, the Supplier must issue an *adjustment note* and a payment must be made as between the parties to reflect the adjusted amount of the GST on the *taxable supply*.

18.4 Italicised expressions used in this clause have the meaning given to them in the *A New Tax System (Goods and Services Tax) Act 1999*.

19 Allowances and taxes

19.1 On its behalf and on behalf of persons it engages to provide the Goods, the Supplier will have the sole responsibility for payment of all federal, state and local taxes or contributions imposed or required under Australian law, including Payroll Tax, Workers Compensation and Superannuation Levy, or any other jurisdiction to which the Supplier is committed pursuant to the terms of this Purchase Order.

19.2 In no event will MPM Pty Ltd be liable for taxes or contributions imposed on the Supplier or any persons engaged by the Supplier to supply Goods under this Purchase Order.

20 Setoff

20.1 If the Supplier fails to comply with any of its obligations under this Purchase Order, MPM Pty Ltd may, without prejudice to any of its rights under this Purchase Order, rectify such failure at the Supplier's risk and expense and deduct such expense from Amounts Payable under this Purchase Order.

20.2 This clause 21 applies, without limitation, to failure of the Supplier to:

(a) promptly and properly make good any damage or loss for which the Supplier is responsible;

(b) pay for works, materials, plant and services provided by MPM Pty Ltd either directly or indirectly;

(c) remove:

- I. rubbish left by; or
- II. other items belonging to, the Supplier, the Supplier Representative or any other person engaged by the Supplier to perform the Works/Services; and

(d) to comply with any other obligation under this Purchase Order.

21 Termination

21.1 In the event that the Supplier:

(a) ceases, or threatens to cease to conduct its business;

(b) suspends or threatens to suspend payment of its debts;

(c) enters or threatens to enter insolvency, bankruptcy, liquidation, administration, management, receivership or a scheme of arrangement with its creditors; or

(d) in the case of an individual, dies, then MPM Pty Ltd may, at its sole discretion, terminate this Purchase Order.

21.2 If the Supplier breaches any provision of this Purchase Order, MPM Pty Ltd may give notice of that breach to the Supplier. If within 7 days of delivery of that notice, the breach has not been remedied without just cause, MPM Pty Ltd may terminate this Purchase Order immediately by notice to the Supplier.

21.3 MPM Pty Ltd may terminate this Purchase Order immediately at any time without cause by giving notice to the Supplier.

22 Effect of Termination

22.1 If this Purchase Order is terminated by MPM Pty Ltd in accordance with clause 21 MPM Pty Ltd will not be liable for any direct, indirect, special or

punitive loss or damages that the Supplier or any third party may suffer as a result of that termination, including any penalty payments.

- 22.2 If this Purchase Order is terminated by MPM Pty Ltd in accordance with clause 21.3 and provided that the Supplier is not in breach of this Purchase Order, MPM Pty Ltd will be liable only for Amounts Payable up to the date the Purchase Order was terminated less any set-off costs under clause 20, plus reasonable costs associated with the cancellation of orders placed prior to the termination.
- 22.3 Once the Goods have been provided or this Purchase Order is terminated, whichever occurs first, the Supplier must promptly return all Confidential Information (including all documentation containing details of Confidential Information) belonging to MPM Pty Ltd which is in the Supplier's possession, power or control, unless directed otherwise by MPM Pty Ltd. In the case of Confidential Information that is stored in electronic form, if MPM Pty Ltd directs the Supplier to destroy the information, destruction means to permanently erase the material from any storage media so that the material cannot later be retrieved or reconstituted.
- 22.4 Clauses 5, 6, 7, 8, 9, 10, 14, 20 and 25 survive termination or expiry of this Purchase Order.

23 Assignment and Contracting

- 23.1 The Supplier must not assign:
- (a) the whole or any part of this Purchase Order nor any payment, right or interest under this Purchase Order; or
 - (b) the provision of the Goods, without prior written consent.
- 23.2 Consent under clause 23.1 by MPM Pty Ltd will not relieve the Supplier from any liability or obligation under this Purchase Order and the Supplier will be liable for the acts and omissions of the secondary Supplier.
- 23.3 Any secondary supplier engaged by the Supplier in contravention of clause 23.1 will not be permitted to enter the Site and MPM Pty Ltd will not be liable to pay for any Goods provided by such secondary supplier.

24 Entire Purchase Order

- 24.1 This Purchase Order constitutes the entire Purchase Order between MPM Pty Ltd and the Supplier. No prior or subsequent representation or Purchase Order (whether verbal or in writing) by MPM Pty Ltd or the Supplier will bind the parties unless such representation or Purchase Order is detailed in this Purchase Order.
- 24.2 No terms or conditions contained on any invoice, delivery document or the like provided by the Supplier will have any effect except to the extent that MPM Pty Ltd agrees in writing to amend this Purchase Order to incorporate those terms.

25 Release

- 25.1 Upon:
- (a) provision of the Goods; or
 - (b) termination of this Purchase Order, and prior to the final payment to the Supplier, the Supplier must fully release and discharge MPM Pty Ltd from and against all claims, demands and causes of action and proceedings of every kind and nature which the Supplier may have.
- 25.2 Acceptance by the Supplier of the final payment will constitute the release or discharge under clause 25.1.

26 Confidentiality

- 26.1 In this Purchase Order, "Confidential Information" includes details of this Purchase Order, liabilities and obligations arising out of this Purchase Order, negotiations in relation to this Purchase Order and, in respect of each party, information about the business of or intellectual property owned by the other party, but excludes any information or intellectual property that is generally and publicly available at the date of this Purchase Order or which subsequently becomes so available other than by breach of any duty or obligation of the parties.
- 26.2 The parties must keep the Confidential Information physically secure from unauthorised access and may only disclose it to their employees, agents, representatives or authorised Suppliers on a "need to know basis" in order for the parties to discharge their obligations under this Purchase Order.
- 26.3 Either party may disclose Confidential Information to their solicitors, auditors, insurers or accountants provided that every person to whom the disclosure is made uses that information solely for the purposes of advising or reporting to the party and to the extent necessary for the purpose of prosecuting or defending any legal action.
- 26.4 The parties must ensure that all recipients of Confidential Information are aware that the Confidential Information is confidential and agree to be personally bound by the confidentiality obligations imposed under this Purchase Order.

- 26.5 If a party is compelled to disclose Confidential Information by law, an order of any court, the rules of any stock exchange or any applicable accounting standards, the disclosure will not be in breach of the confidentiality obligations under this Purchase Order however those obligations will continue to apply in respect of the Confidential Information for all other purposes.

27 Intellectual Property

- 27.1 "Intellectual Property Right" means copyright (including future copyright), trade marks, designs, patents and circuit layout rights and all other intellectual property rights whether registered or unregistered and whether registrable or not.
- 27.2 Subject to any written Purchase Order to the contrary, each party acknowledges that any Intellectual Property Right of MPM Pty Ltd that MPM Pty Ltd brings to the Project belongs to MPM Pty Ltd and any Intellectual Property Right of the Supplier that the Supplier brings to the Project belongs to the Supplier.
- 27.3 Once the Goods have been provided, or if this Purchase Order is terminated, the Supplier grants at no cost to MPM Pty Ltd, a perpetual, irrevocable, royalty free, non-exclusive licence (which licence includes the right for MPM Pty Ltd to grant a concurrent licence to a third party) to use the Supplier's Intellectual Property Rights for the purposes of its business, and to enable MPM Pty Ltd to comply with its obligations under any Purchase Order for which it has obtained the Goods.
- 27.4 The parties must act in a manner that will protect the Intellectual Property Rights of the other and their respective rights to the Intellectual Property Rights, but this obligation does not extend to include an obligation to institute or defend any legal proceedings relating to the Intellectual Property Rights.
- 27.5 Each party warrants that:
- (a) any Intellectual Property Right which that party brings to the Project is the property of that party; or
 - (b) that the party is legally entitled to use the Intellectual Property Right in the Project.
- 27.6 The Supplier warrants that it is legally entitled to grant to MPM Pty Ltd the rights referred to in clause 27.

28 Delays

- 28.1 Without limiting any other clause of this Purchase Order or any other rights MPM Pty Ltd may have, if the Supplier fails to deliver the Goods by the Delivery Date for the Goods, the Supplier must pay MPM Pty Ltd, immediately on demand, liquidated damages of 0.5% of the Amount Payable for the Goods for every day or part of a day from the Date for Delivery of the Goods until the Goods are delivered to satisfaction of MPM Pty Ltd in accordance with this purchase order.
- 28.2 MPM Pty Ltd will not be liable to pay the Supplier in respect of any prolongation, acceleration, delay or disruption claim unless MPM Pty Ltd has agreed in writing to do so.

29 Special Conditions

- 29.1 This Purchase Order is subject to the special conditions (if any) set out in **item 6 (Special Conditions)**.
- 29.2 In the event of any inconsistency between the Special Conditions and the other terms and conditions of this Purchase Order, the Special Conditions shall apply to the extent of the inconsistency.

30 Latent Conditions

- The Supplier:
- 30.1 warrants that it has made its own investigations of the conditions on or within the Site;
- 30.2 has not relied on any information provided by MPM Pty Ltd in relation to the conditions on or within the Site but has made its own investigations to verify the information; and
- 30.3 may not make any claims against MPM Pty Ltd as a consequence of any conditions on or within the Site (including any prior work by others) and has no entitlement as a consequence of those conditions.

31 Dispute Resolution

- 31.1 If a dispute arises under this Purchase Order, either party may at any time give written notice to the other requesting that nominated representatives of both parties meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference; and
- 31.2 If within 14 days of the meeting set out in clause 31.1 the dispute remains unresolved, then either party may seek to have the dispute resolved by litigation.
- 31.3 Notwithstanding the existence of a dispute, the Supplier shall continue to perform and execute the Provision of Goods in accordance with this Purchase Order.