

## General Purchase Conditions for Goods and Services

### 1. Incorporation and Inconsistency

- (a) These Conditions are incorporated in, and operate in conjunction with:
  - (i) the terms set out in any Purchase Order; and
  - (ii) if the Purchaser and Supplier have entered into an Agreement, the terms set out in the Agreement.
- (b) To the extent there is any inconsistency between the provisions of the Agreement and these Conditions, the provisions of the Agreement will prevail.
- (c) Any terms and conditions sought to be imposed on the Purchaser by the Supplier in relation to a Purchase Order Contract are excluded, except to the extent the Purchaser expressly agrees otherwise in writing.

### 2. Formation of a Purchase Order Contract

- (a) The Purchaser may request the Supplier to supply Goods and or Services to the Purchaser by submitting a Purchase Order to the Supplier.
- (b) A contract will be formed, and the Purchase Order will become binding on the Supplier and the Purchaser upon receipt and acceptance of the Purchase Order by the Supplier (**Purchase Order Contract**)
- (c) A Purchase Order Contract will consist of:
  - (i) the Purchase Order; and
  - (ii) any other document that is expressly incorporated in the Purchase Order as part of the Purchase Order Contract and signed by the parties.

### 3. Supply of Goods and Services

- (a) The Supplier must supply the Goods and or perform the Services to the Purchaser in accordance with the Specification and otherwise in accordance with these conditions.

- (b) The Supplier must deliver the Goods to the Delivery Location by the Delivery Date, and or perform the Services at the Performance Place and at the Performance Place. Delivery or performance will not be taken or deemed to have occurred until acknowledged in writing by the Purchaser.

### 4. Acceptance, rejection and inspection of Goods

- (a) If the Goods conform with the Specification or sample, the Purchaser will promptly accept the Goods in writing. If the Goods do not conform, the Purchaser may reject the Goods within 30 days by written notice giving reasons. If the Purchaser does not accept or reject the Goods within 30 days of delivery, delivery will be deemed to have then occurred.
- (b) The Supplier must at its cost collect and remove any Goods that have been rejected as soon as practicable or the Purchaser may return the Goods to the Supplier at the Supplier's expense.
- (c) If stipulated in a Purchase Order, the Supplier must provide a sample inspection report or complete, to the satisfaction of the Purchaser, a production part approval process (**PPAP**).
- (d) The Purchaser may, at any time before the Delivery Date, inspect the Goods, provided the Purchaser gives the Supplier notice in writing.

### 5. Invoicing and payment

- (a) The Product Price is fixed unless 60 days prior notice has been received in writing and agreed by the Purchaser or as is mutually agreed in writing between the Supplier and the Purchaser. The Product Price includes transport, insurance, loading, unloading and storage costs and any other costs incurred by the Supplier.
- (b) The Supplier must submit to the Purchaser a tax invoice for the Purchase Price and or the Rates and Service Charges following the supply of the Goods and or services which contains the information necessary to be a tax invoice for the purposes of the GST Act together with such other information as the Purchaser may reasonably require. The tax invoice must be sent to the address specified in the Purchase Order.

- (c) The Purchaser will pay the invoiced amount within 45 days of receipt of an accurate invoice. However, if the Purchaser disputes the invoiced amount it must pay the undisputed amount (if any) and notify the Supplier of the amount in dispute. The parties will endeavour to resolve any such dispute.
- (d) Payment of an invoice is not to be taken as evidence that the Goods have been supplied in accordance with the Agreement but must be taken only as payment on account.

## 6. Title and risk

Title to and risk in the Goods will pass to the Purchaser on completion of delivery by the Supplier to the Delivery Location.

## 7. Warranties

A. The Supplier warrants to the Purchaser that in relation to the Goods:

- (a) it has the right to sell and transfer title to and property in the Goods to the Purchaser and the Goods are free from any and all Encumbrances;
- (b) it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the Goods;
- (c) it and its employees, agents and contractors do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations whereby duties or interests are or might be created in conflict with or might appear to be created in conflict with its obligations under the Agreement; and
- (d) the Goods:
  - (i) are new and fit for the purpose stated in the Specification (or, if no purpose is stated, the purpose for which the Goods would ordinarily be used);
  - (ii) conform in all respects with the Specification;
  - (iii) are free from defects (including defects in installation); and
  - (iv) are of merchantable quality and comply with all Laws.

Further, the Supplier must obtain, where provided for in the Specification, for the Purchaser the benefit of any manufacturer's warranties.

B. The Supplier warrants to the Purchaser that in relation to the Services:

- (a) the provision of the Services will be carried out with all due care and skill and in accordance with all applicable standards, principles and practices;
- (b) it has the accreditation or membership of professional or other bodies necessary for the provision of the Services and, where the Purchaser and Supplier have entered into an Agreement, that it will use its best endeavours to maintain such accreditation or membership during the Term;
- (c) it and its employees, agents and contractors are appropriately qualified and have the requisite knowledge, skill and expertise to perform the Services in accordance with the Service Level Requirements;
- (d) whilst on premises owned or controlled by the Purchaser, the Supplier and its employees, agents and contractors will at all times comply with the Purchaser's lawful directions and policies of which the Supplier is notified or is otherwise aware, including any applicable occupational health and safety and security policies;
- (e) where the Purchaser has, either expressly or by implication, made known to the Supplier any particular purpose for which the Services are required, the Services will be performed in such a way as to achieve that result;
- (f) the provision of the Services will not infringe any right of any third party (including, without limitation, any intellectual property right) or any Laws; and
- (g) all representations made by the Supplier in or in connection with a Purchase Order Contract and or the Agreement are accurate and the Supplier has and will maintain during the Term the quality assurance arrangements set out in the Service Level Requirements.

## 8. Liability

The Supplier must indemnify the Purchaser and each of its employees and agents against any loss, damage, claim, action or expense (including legal expense) which any of them suffers as a direct result of any failure to deliver the Goods or perform the Services in accordance with the Agreement or any other breach of the Agreement.

## 9. Intellectual Property Rights

The Supplier grants to the Purchaser a non-exclusive, perpetual, royalty-free transferable licence to use any Intellectual Property Rights in relation to any Goods supplied to the extent necessary to allow the Purchaser the full use and enjoyment of those Goods and the Supplier must, upon request by the Purchaser, do all things as may be necessary (including executing any documents) to give full effect to such rights.

## 10. Insurance

- (a) The Supplier must obtain and maintain insurance cover at all relevant times sufficient to cover any loss or costs that may be incurred and for which the Supplier is liable in connection with the supply of the Goods or provision of the services, including product liability insurance to the value of the Purchase Order Contract and, if applicable, public liability insurance. Product liability insurance must match any warranty period or three years after acceptance of the Goods, whichever is the greater.
- (b) On request, the Supplier must provide the Purchaser with evidence of the currency of any insurance it is required to obtain.

## 11. Non-conforming Goods or Failure to Perform Services

A. Without limiting any other clause of these Conditions or, if applicable, the Agreement, or any other remedy that the Purchaser may have, if Goods supplied pursuant to a Purchase Order do not meet or exceed the standards required by a Specification either upon delivery or within five years of the date of delivery, the Purchaser will not be required to pay for those Goods (**Non-conforming Goods**) and the Supplier must, at the

Supplier's cost, if the Purchaser requires it to do so, promptly remove those Non-conforming Goods from the Purchaser's premises, and at the election of the Purchaser, either:

- (a) replace the Non-conforming Goods with Goods that do meet the relevant standards and Specifications and which are acceptable to the Purchaser; or
- (b) repair or remedy any defects in the Non-conforming Goods; or
- (c) reimburse the Purchaser if the Purchaser carries out repairs or remedies the defects in the Non-conforming Goods itself, or engages a third party to do so; or
- (d) refund to the Purchaser all money paid in respect of the Non-conforming Goods.

B. (a) Without limiting any other clause of these Conditions or, if applicable, the Agreement, or any other remedy the Purchaser may have, if the Supplier fails to perform any of the Services in accordance with the requirements of a Purchase Order and the applicable Service Level Requirements, the Purchaser will not be required to pay for those Services and may, by notice in writing to the Supplier, require the Supplier to:

- (i) remedy any default (if the default is capable of being remedied) at the Supplier's own expense; or
- (ii) re-perform the Services (if the Services are capable of being re-performed by the Supplier),

Within the time specified in the notice (which must be reasonable having regard to the nature of the Services).

(b) If the remedied or re-performed Services are remedied or re-performed in accordance with the applicable Service Level Requirements and otherwise to the satisfaction of the Purchaser, then the Purchaser will pay the applicable Rates or Service Charges for those remedied or re-performed Services (which the parties acknowledge may be less than the cost to the Supplier of remedying or re-performing the Services).

(c) If the default referred to in clause 10.B(a) is not capable of being remedied or the Services are not capable of being re-performed, or the Supplier fails within the time specified to remedy the default or re-perform the Services, the Purchaser may either:

- (i) remedy that default or re-perform the Services itself; or
- (ii) have the Services remedied or re-performed by a third party,

and in either case, the Supplier must pay the reasonable costs incurred by the Purchaser in doing so.

## 12. Confidentiality, privacy and data protection

- (a) The Supplier and its employees, agents, directors, partners, shareholders and consultants must not disclose or otherwise make available any Confidential Information to any other person.
- (b) The supplier acknowledges that it will be bound by the Information Privacy Principles and any applicable Code of Practice with respect to any act done in connection with the provision of the services in the same way as the organisation would have been bound had the relevant act been done by the organisation.
- (c) The supplier acknowledges that it will be bound by the Protective Data Security Standards and will not do any act or engage in any practice that contravenes a Protective Data Security Standard in respect of any data collected, held, used, managed, disclosed or transferred by the supplier, on behalf of the organisation, under or in connection with a Purchase Order Contract or the Agreement.

## 13. Access to premises and audit rights

- (a) When entering the premises of the Purchaser, the Supplier must use reasonable endeavours to protect people and property, prevent nuisance and act in a safe and lawful manner and comply with the safety standards and policies of the Purchaser (as notified to the Supplier).

- (b) The Purchaser or its duly authorised representatives will have the right, after giving reasonable notice at any time during business hours, to inspect and/or audit the accounts and records of the Supplier relating to the supply of the Goods or provision of Services, and of all other matters relevant to the calculation of the Product Price and the Purchase Price. Such representatives will be entitled (at the expense of the Purchaser) to take copies of or extracts from any such records.
- (c) The right of access and audit granted under clause 13.2(b) may be exercised by the Purchaser at any time during the Term or in the seven year period following the expiry of the Term.
- (d) For the avoidance of doubt, the Purchaser will be solely responsible for the costs of conducting any audit under clause 13.2(b).

## 14. Sub-contracting

- (a) The Supplier must not sub-contract to any third person any of its obligations in relation to the supply of the Goods and or provision of Services without the prior written consent of the Purchaser (which may be given or withheld in its absolute discretion).
- (b) The Supplier will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under the Agreement and will be liable for all acts and omissions of a sub-contractor as though they were the actions of the Supplier itself.

## 15. Compliance with Law and Policy

- (a) The Supplier must, in performing its obligations under these conditions, comply with the Laws affecting or applicable to the provision of the Goods and or Services by the Supplier under a Purchase Order Contract.

- (b) The Supplier agrees that it will, at the request of the Purchaser, certify that, in relation to a Purchase Order Contract or, if applicable, the Agreement, that it has not and to the Supplier's knowledge no other person, including but not limited to every employee, representative, and agent of the Supplier made,

offered to make, or agreed to make any loan, gift, donation or other payment, directly or indirectly, whether in cash or in kind to or for the benefit of any government official, political party, party official or candidate for political office in order to secure or retain business. The Supplier further agrees that, if it learns of, or has reason to know of any such payment or offer it will immediately advise the Purchaser of such knowledge or suspicion.

## 16. GST

- (a) Terms used in this clause have the same meanings given to them in the GST Act.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with the Agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with these conditions, the Purchaser must pay to the Supplier an amount equal to the GST payable on or for the taxable supply subject to the recipient receiving a valid tax invoice in respect of the supply at or before the time of payment. Payment of the GST amount will be made at the same time as payment for the taxable supply is required to be made.

## 17. General

- (a) The Purchase Order Contract and the Agreement are governed by and is to be construed in accordance the Laws. Each party irrevocably and unconditionally submits to the non exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
- (b) Time is of the essence in relation to the supply of the Goods and or the provision of the Services.

## 18. Variation, waiver and invalidity

- (a) Any modification of or addition to these Conditions or a Purchase Order Contract (of which these Conditions form a part) will be valid only if expressly agreed to in writing by the Purchaser.
- (b) Notwithstanding clause 18(a), these

Conditions may be varied at any time by the Purchaser and the Supplier agrees to be bound by these Conditions as amended, subject to clause 18(c).

- (c) The Purchaser may give notice of any change to these Conditions by publishing the amended Conditions on its Website, but the Purchaser is not required to give the Supplier separate notice of any change in these Conditions.
- (d) A single or partial exercise or waiver by a party of a right relating to the Agreement or a Purchase Order Contract does not prevent any other exercise of that right or the exercise of any other right.
- (e) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.
- (f) Any provision of a Purchase Order Contract which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and, if that is not possible, the provision shall, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.

## 19. Assignment

- (a) Neither the Purchaser nor the Supplier may assign any right under a Purchase Order Contract without the prior written consent of the other party.
- (b) The Supplier will not, as a result of any assignment pursuant to clause 19.1(a), be relieved from the performance of any obligation under a Purchase Order Contract or the Agreement, and will be responsible for acts and omissions of any assignee.

## 20. Termination and force majeure

### 20.1 Grounds for termination by the Purchaser

The Purchaser may terminate a Purchase Order Contract by notice in writing to the Supplier (such termination to take effect at any nominated time within the immediately succeeding 12 months) if:

- (a) the Supplier fails to supply the Goods in accordance with the Specifications or perform the Services in accordance with Service Level Requirements, or otherwise in accordance with the requirements of the Purchase Order Contract;
- (b) the Supplier fails to remedy, to the satisfaction of the Purchaser, any breach of the Purchase Order Contract (which in the reasonable opinion of the Purchaser is able to be remedied) within 14 days after the date on which the Purchaser issues the Supplier a written notice requiring the Supplier to remedy the breach;
- (c) the Supplier breaches any material provision of the Purchase Order Contract and in the reasonable opinion of the Purchaser such breach cannot be remedied;
- (d) the Supplier or any of its employees, agents or sub-contractors are guilty of fraud, dishonesty or any other serious misconduct;
- (e) the Supplier commits any act or does any thing that is contrary to prevailing community standards, or is otherwise regarded by the public as unacceptable or which brings the reputation of the Supplier into disrepute and as a consequence the Purchaser believes that its continued association with the Supplier will be prejudicial or otherwise detrimental to its reputation; or
- (f) the Supplier:
  - (i) being a partnership, company or other composite body undergoes a change in its structure which, in the reasonable opinion of the Purchaser, limits the capacity of the Supplier to supply the Goods or otherwise precludes or adversely affects the Supplier's ability to carry out its obligations and duties under the Purchase Order Contract; or
  - (ii) goes into liquidation or a receiver and manager or mortgagee's or chargee's agent is appointed or becomes subject to any form of insolvency administration or arrangement, or in

the case of an individual, becomes bankrupt or enters into a scheme or arrangement with creditors.

## 20.2 Grounds for Termination by Supplier

The Supplier may immediately terminate any Purchase Order Contract by notice in writing to the Purchaser if the Purchaser fails to remedy, to the satisfaction of the Supplier, any breach of the Purchase Order Contract (which in the reasonable opinion of the Supplier is able to be remedied) within 14 days after the date on which the Supplier issues the Purchaser a written notice requiring the Purchaser to remedy the breach.

## 20.3 Consequences of termination or expiry

- (a) Termination or expiry of a Purchase Order Contract will not prejudice any right of action or remedy which may have accrued to either party to it prior to termination or expiry (as the case may be).
- (b) Upon termination or expiry of a Purchase Order Contract, the Purchaser must pay to the Supplier all amounts owing in respect of that Purchase Order Contract if it has been completed but not billed as at the date of termination or expiry (provided that such Goods have been supplied in accordance with the Specifications or such Services have been provided in accordance with the Service Level Requirements, any applicable performance standards and otherwise in accordance with the terms of the Purchase Order Contract).

## 20.4 Force Majeure

- (a) In the event that the delivery of the Goods or performance of the Services under a Purchase Order Contract is affected by a Force Majeure Event, the Supplier must immediately inform the Purchaser in writing and provide reasonable evidence of the Force Majeure Event.
- (b) Where there is a delay in the delivery of Goods or performance of the Services because of a Force Majeure Event, the Delivery Date and or Performance Time will be extended in accordance with the length of time lost by reason of such delay.
- (c) If the Force Majeure Event continues for more than two months, both the Supplier and the Purchaser may terminate a Purchase Order Contract with 7 days' notice in writing to the other party.

- (d) No event will be considered to be a Force Majeure Event to the extent that such circumstance or event is due to the neglect or breach of these Conditions, the Agreement, or other duty whether under general law or statute.
- (e) The following cannot be a Force Majeure Event:
  - (i) any shortage of materials or utilities, unless the shortage is caused primarily by Force Majeure;
  - (ii) a lack of funds;
  - (iii) any breakdown or equipment or machinery unless such breakdown was caused by Force Majeure;
  - (iv) any strike or similar industrial or labour dispute which involves the employees of the Supplier and any sub-supplier unless the Supplier can reasonably demonstrate that such strike or dispute did not arise out of any act or omission of the Supplier or sub-supplier.

## 21. Entire Understanding

- (a) These Conditions, together with any other provisions incorporated in a Purchase Order Contract, and if applicable, the Agreement, contain the entire understanding between the parties as to the subject matter of the Purchase Order Contract.
- (b) (i) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of Purchase Order Contract are merged in and superseded and are of no effect; and
  - (ii) no oral explanation or information provided by any party to another:
    - A. affects the meaning or interpretation of or Purchase Order Contract (as the case requires), and if applicable, the Agreement; or
    - B. constitutes any collateral agreement, warranty or understanding between any of the parties.
  - (iii) any terms which the Supplier seeks to apply expressly or impliedly will be of effect to the extent that they are inconsistent with any term of these Conditions or the Agreement, if any.

## 22. Interpretation

In these conditions, unless the context otherwise requires:

**Agreement** means a written agreement for the supply of the Goods or Services over an agreed term in a form first approved by the Purchaser which has been executed the Purchaser and Supplier and which provides that these Conditions form part of that agreement.

**Conditions** mean these General Purchase Conditions.

**Confidential Information** means any technical, scientific, commercial, financial or other information of, about or in any way related to, the Purchaser, including any information designated by the Purchaser as confidential, which is disclosed, made available, communicated or delivered to the Supplier, but excludes information:

- (a) which is in or which subsequently enters the public domain other than as a result of a breach of these conditions;
- (b) which the Supplier can demonstrate was in its possession prior to the date of the Agreement;
- (c) which the Supplier can demonstrate was independently developed by the Supplier; or
- (d) which is lawfully obtained by the Supplier from another person entitled to disclose such information.

**Delivery Date** means the date specified in the Purchase Order (or such other date or time as may be agreed in writing) by or on which delivery of the Goods must be effected by the Supplier.

**Delivery Location** means the location or address to which the Goods are to be delivered, as specified in the Purchase Order.

**Encumbrance** means any interest in the Goods which provides security for, or protects against default by, a person for the payment or satisfaction of a debt, obligation or liability including a mortgage, charge, bill of sale, pledge, lien or hypothecation, including a security interest as defined in the *Personal Property Securities Act 2009* (Cth).

**Force Majeure** means an incident or circumstance which is beyond the control and without the fault or negligence of the party affected and which by the exercise of reasonable diligence the party affected was unable to prevent provided that event or circumstance is limited to the following: (a) riot, war,

invasion, act of foreign enemies, hostilities (whether war be declared or not) acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent authority; (b) ionising radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radio active toxic explosive or other hazardous properties of any explosive assembly or nuclear component; (c) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; (d) earthquakes, flood, fire or other physical natural disaster, but excluding weather conditions regardless of severity.

**Force Majeure Event** means an event of Force Majeure.

**Goods** means the goods (or any of them) specified in the Purchase Order.

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

**Information Privacy Principles** means the information privacy principles set out in the *Privacy and Data Protection Act 2014* (Vic).

**Intellectual Property Rights** means all rights resulting from intellectual activity whether capable of protection by statute, common law, or in equity, and including copyright, discoveries, inventions, patent rights, registered or unregistered trademarks, design rights, circuit layouts and plant varieties and all rights and interests of a like nature including but not limited to methods and techniques, together with any documentation relating to such rights and interests.

**Laws** means: the law in force in Australia and Victoria, including common law, legislation and subordinate legislation; and ordinances, regulations and by-laws of relevant government, semi-government or local authorities.

**Performance Time** means the date and time specified in the relevant Purchase Order (or such other date or time as may be agreed in writing) by or on which the performance of the Services must be effected by the Supplier.

**Performance** means the location or address at which the Services are to be performed, as specified in the relevant Purchase Order (or such other location or address as may be agreed in writing).

**PPAP** has the meaning set out in clause 4(c).

**Product Price** means the price per item of each of the Goods, as specified in the Purchase Order.

**Protective Data Security Standard** means any standard issued under Part 4 of the *Privacy and Data Protection Act 2014* (Vic).

**Purchaser** means AME Systems (Vic) Pty Ltd ACN 605 571 220.

**Purchase Order** means any form of order or acceptance from the Purchaser for the supply of the Goods and or Services which incorporates these conditions.

**Purchase Price** means the sum ascertained by multiplying the Product Price for the applicable Goods by the number of items delivered.

**Rates** means the rates (whether charged on an hourly, daily, weekly or other time-related basis) payable to the Supplier for the provision of specified Services under a Purchase Order Contract, determined in accordance with the price schedule annexed to a Purchase Order or the Agreement.

**Services** means the services specified in the Purchase Order.

**Service Charges** means a fixed fee payable to the Supplier for the provision of specified Services under a Purchase Order Contract, determined in accordance with the price schedule annexed to a Purchase Order or the Agreement.

**Service Level Requirements** means the service level, as set out in a Purchase Order or the Agreement, that the Supplier must comply with in performing its obligations to supply Goods and or Services.

**Specification** means the specifications to which the Goods must comply, as set out in the Purchase Order or as otherwise incorporated in the Agreement.

**Supplier** means the entity supplying the Goods and or the Services under these conditions.

**Term** means the term of the Agreement.

**Website** means the website [www.amesystems.com.au](http://www.amesystems.com.au) or such other website used by the Purchaser from time to time.