

# General Terms and Conditions of Purchase Order



## 1. DEFINITIONS: The following words shall, where the context permits, have the following meanings:

**Purchase Order** means this purchase order together with all documents attached hereto or incorporated herein by reference including but not limited to the documents identified in clause 3.

**Purchaser** means Hender Property Group (ABN 75 167 705 311) referred hereafter as HPG.

**Vendor** means the person, firm or corporation to whom the Purchase Order is addressed.

**Sub-Vendor** means any person, firm or corporation who is providing any part of the Goods on behalf of Vendor.

**Goods/Work** means all materials, labour, equipment, documentation, services and all other obligations, duties and responsibilities required to be furnished or performed by Vendor under the Purchase Order.

**Force Majeure Event** means the following:

- Breach of Contract by the Purchaser;
  - Any negligent act or omission solely attributable to the Purchaser;
  - Riot (except where solely restricted to or caused by Vendor or Sub-vendors or any employees or agents of either of them), war, invasion, acts of foreign enemies, hostilities (whether war is declared or not), acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power;
  - Earthquake, tsunami, cyclone, fire, flood, explosion and/or other natural physical disaster, but excluding otherwise inclement weather;
  - Strikes or industrial disputes (except where solely restricted to or caused by Vendor or Sub-vendors or any employees or agents of either of them);
  - Maritime or aviation disasters,
- but a **Force Majeure Event** shall not include the following (without limitation):
- Breakdown or damage to any item or equipment used by Vendor or Sub-vendors;
  - Contractual commitments made by Vendor to third parties which limit the ability of Vendor to perform its obligations under the Purchase Order;
  - Shortage of labour, materials or other resources unless caused by circumstances which constitute a Force Majeure Event.

**2. CONTRACT:** The Purchase Order together with all documents attached hereto or incorporated therein by reference, shall constitute the entire terms of the Purchase Order and supercedes all previous correspondence and communications. In the absence of a written acceptance by Vendor, the commencement of any work by Vendor in pursuance of the Purchase Order shall be deemed an acceptance hereof and a contract shall be formed upon the terms and conditions set forth in the Purchase Order.

**3. PRECEDENCE OF DOCUMENTS:** If the Vendor discovers any inconsistency between the documents comprising the Purchase Order, Vendor shall forthwith notify Purchaser. In the case of any such inconsistency, it is agreed that the order of precedence of documents shall be (1) its highest precedence:

- (1) Any Variation Orders, read in reverse chronological order from latest to the earliest.
- (2) The Purchase Order face sheet.
- (3) Special Terms and Conditions generally referred as Enclosure No. 2 of the Purchase Order.
- (4) General Terms and Conditions of Purchase Order.
- (5) Purchase Requisition, generally referred as Enclosure No. 1 of the Purchase Order.
- (6) Specifications.
- (7) Drawings.
- (8) Any Vendor Reference Documents and Attachments.

**4. WAIVER:** None of the terms and conditions of the Contract (as defined in clause 2 above) shall be considered to be waived by the Purchaser unless expressly agreed in writing. No failure by the Purchaser to enforce any of the terms and conditions of the Contract shall constitute a Waiver of such terms and conditions.

Any express waiver of a breach of any provision of the Purchase Order shall not constitute a waiver of any other breach of such provision or of any other provision of the Purchase Order.

**5. ASSIGNMENT:** Vendor may not assign or sublet the whole or any part of the Purchase Order without Purchaser's prior written consent. Purchaser may assign the Purchase Order without Vendor's consent.

**6. PRICES:** Unless otherwise stated, the Purchase Order value is in Australian currency and is fixed for the duration of the Purchase Order.

**7. TERMS OF PAYMENT:** Unless otherwise stated elsewhere in the Purchase Order and subject to this clause 7, the Purchase Order value will be paid 45 days following the end of the month of receipt of invoice.

The Purchase Order value includes compensation for all Work, including but not limited to all equipment, documentation, services, labour, travel expenses, shipping, subsistence, material, consumables, overheads and profit related to or associated with the Work or necessary to fulfill the requirements of this Purchase Order, whether or not specifically indicated herein.

The Vendor shall not be entitled to claim advance payment or progress payments nor will such claims be accepted unless prior agreement in writing is given by Purchaser.

Payment is subject to the following:

- Agreed Terms of Payment stated in the Special Terms and Conditions, where applicable.
- Satisfactory receipt of the Goods at the delivery point stated on the Purchase Order.
- Satisfactory discharge of Vendor's obligations under the Purchase Order.
- Provision of Vendor Data listed on the Vendor Data Requirements Form, where applicable.
- Provision of a tax invoice in accordance with the GST law (otherwise withholding tax shall be deducted).
- If any of the Vendor or Sub-Vendor employees engaged in the provision of the goods/work are employed in New South Wales, each claim for payment must be accompanied by a "subcontractor's statement" in the form attached, regarding Workers Compensation, Pay-Roll Tax and Remuneration.
- If the contract is a construction contract for the purposes of the Construction Contracts Act 2004 (WA) or of any similar Security of Payments legislation in any other jurisdiction.
  - (a) any certificate issued by Purchaser in response to a payment claim is deemed to be a payment schedule for the purposes of that Act; and,
  - (b) the authorised nominating authority to whom any adjudication application may be made is the Institute of Arbitrators and Mediators Australia.
- Any amount paid by Purchaser to any sub-Vendor of the Vendor pursuant to any notice of claim served on Purchaser by such sub-Vendor under the Construction Contracts Act 2004 (WA) or any similar Security of Payment legislation in any other jurisdiction, shall be a debt due and payable by the Vendor to Purchaser.

**8. DELIVERY:** Vendor shall take adequate measures to effect delivery of the Goods by the dates stipulated herein. Such measures shall include the expediting of Sub-Vendors as necessary. If for any reason Vendor is unable to deliver the Goods by the dates stipulated in the Purchase Order Vendor shall immediately notify Purchaser, in writing stating the reasons for the delay and the anticipated duration of the delay.

Failure by Vendor to maintain progress in order to meet the stipulated delivery dates shall be a material breach by Vendor of its obligations under the Purchase Order.

If required by Purchaser, Vendor shall furnish progress reports that will show the scheduled start and completion dates and the percentage complete for each of the following basic activities; engineering, drawings and technical data (required for approval), purchase of materials and equipment, production and delivery.

Unless otherwise stated in the Purchase Order progress reports shall be submitted monthly.

**9. INSPECTION / EXPEDITING:** Vendor shall provide access to Vendor's and Sub-Vendors premises as may be required by Purchaser or Purchaser's representative. Vendor shall provide such information as Purchaser or Purchaser's representative may request concerning Vendor's or Sub-Vendors program of works. Vendor shall make this a condition of any work placed with Sub-Vendors.

Purchaser or Purchaser's representative shall have the right of inspection of Goods during the course of the Purchase Order. Vendor shall make this a condition of any work placed with Sub-Vendors.

Purchaser or Purchaser's representative shall have the right to reject any work that does not conform to the requirements of the Purchase Order whereupon the work rejected shall be rectified by Vendor at Vendor's cost, and within the specified time.

**10. ENGINEERING DATA:** Drawings and data issued by Purchaser in connection with the Purchase Order shall remain the property of Purchaser. Vendor shall use the drawings and data only in connection with the Purchase Order and shall return them forthwith if requested to do so by Purchaser.

All drawings and data provided by Purchaser are to be maintained in strict confidence and shall not be revealed to third parties without the prior written approval of Purchaser.

It is Vendor's responsibility to ensure that drawings used during manufacture bear a signed "certified for construction" status marking and that Goods are manufactured according to such drawings or any subsequent revision thereof.

Where a Vendor Data Requirements Form is included with the Purchase Order, Vendor shall furnish certified data and documents stated thereon and by the dates stipulated. Failure to provide this information in a timely manner will be considered a breach of contract and will affect payment.

**11. PACKING & DELIVERY:** Vendor shall notify Purchaser in writing when Goods are ready for delivery and shall provide the following information; Purchase Order number, description of Goods to be delivered, destination and Carrier details and, if applicable, a full set of shipping documents including Bills of Lading.

The Goods shall be suitably packed, marked and delivered by Vendor to ensure that the Goods arrive at the delivery point in an undamaged condition. Goods shall be subject to inspection by Purchaser within a reasonable time after receipt. Goods that are found to be defective or of inferior quality may be returned to Vendor for rectification and the cost of rectification shall be to Vendor's account.

Payment for Goods shall not be construed to be an acceptance of unsatisfactory or defective Goods.

**12. RISK & TITLE:** Vendor shall bear all risk of loss or damage to the Goods until they are received at the delivery point specified in the Purchase Order and have been inspected by the Purchaser. Hidden defects which become apparent subsequent to initial inspection, shall be made good by the vendor or at their expense.

Title to and ownership of Goods shall pass to Purchaser after they are received and accepted at the delivery point.

Where Purchaser makes a part payment for Goods the title to and property of those Goods shall pass to Purchaser and the Goods shall be appropriately marked as Purchaser's property. The risk therein shall remain with Vendor until the Goods are delivered to and accepted at the delivery point.

**13. SAFETY, QUALITY & ENVIRONMENTAL IMPACT ASSURANCE:** All products and services supplied are to conform to the relevant Australian and International Standards and with any specifications supplied with the purchase order.

If required by Purchaser, Vendor shall submit an Inspection and Test Plan for approval by Purchaser before commencing work. Test Certificates for material and equipment and other Safety, Environmental and Quality Assurance documentation as specified to be supplied under the Purchase Order must be forwarded to Purchaser in the form of a Manufacturer's Data Report

**14. TERMINATION FOR DEFAULT:** In the event of a breach by Vendor of any of the conditions of the Purchase Order, Purchaser has the right, and without prejudice to any of its other rights, to terminate the Purchase Order in whole or in part in which case the following provisions shall apply:

- Purchaser may procure substitute goods of a like nature and quality to the Goods to be provided under the Purchase Order and Vendor shall be liable for any costs for such substitute goods in excess of the price or prices specified herein.
- Vendor shall continue the performance of the Purchase Order to the extent not terminated by Purchaser.
- Purchaser may exercise any other rights or remedies provided by law or under the Purchase Order for any such default or breach by Vendor.
- Purchaser shall have the right to terminate for default at any time prior to delivery of the Goods regardless of the time when the default is discovered.

**In the event Vendor;**

- Becomes subject to bankruptcy, insolvency or receivership proceedings or,
- Has received a judicial declaration of a suspension of payments or,
- Passes a resolution for winding up (other than a members' voluntary winding up for the purpose of amalgamation or reconstruction) or a Court makes an order to that effect against it or,
- Enters into any composition or arrangement with its creditors or any of them, then,
- Purchaser may without prejudice to its other rights and remedies terminate the Purchase Order forthwith for default.

**15. TERMINATION FOR CONVENIENCE:** Purchaser may terminate the Purchase Order at any time in accordance with the following provisions:

- Purchaser shall notify Vendor of the termination in writing.
- Immediately upon receipt of such notice of termination or upon such other date as may be specified in said notice, Vendor shall cease all work in connection with the Purchase Order except as otherwise directed by Purchaser.
- Purchaser shall pay and Vendor shall accept as full compensation Vendor's actual direct out-of-pocket costs, incurred to the date of termination, including Vendor's reasonable expenses in connection with termination of work being undertaken by Sub-Vendors, all as approved by Purchaser plus 5% of such costs.
- The total cost payable by Purchaser shall not exceed the Purchase Order value or that part of the Purchase Order value that relates to the terminated portion of the Goods.
- Completed / part-completed Goods shall remain the property of Purchaser and Vendor shall safely hold the Goods subject to receipt of Purchaser's written delivery or other disposition instructions.
- If Goods or any part of the Goods are standard stock then Purchaser may terminate all or any part of the unshipped portion of the Purchase Order at any time by written notice to Vendor and cancellation charges shall not apply.

In case of such termination, Purchaser may have the remaining Goods/Work carried out, completed or supplied by itself or any person.

**16. VARIATIONS:** Purchaser may vary the work under the Purchase Order and the following provisions shall apply:

- The Vendor shall proceed with the variation immediately upon being directed to do so by Purchaser.
- If the Vendor wishes to make a claim for any extension of time to the delivery dates(s) or claim any additional costs, then notification shall be given to the Purchaser within 48 hours of the event that the Vendor is claiming and provide to the Purchaser full details of such claims within seven (7) calendar days of the notification and advise any other implications due to the variation.
- The Vendor will not be entitled to any extensions of time or additional costs if the Vendor has not notified the Purchaser and provided details of the claim within the times specified.
- Purchaser will advise Vendor if the claim is accepted or rejected.
- If Purchaser rejects the claim and no agreement can be reached on a fair cost for the work then Vendor agrees to undertake the variation for the actual cost plus 10%. In this event Vendor shall submit supporting documentation to substantiate the cost of the work.
- Purchaser will issue a Purchase Order amendment to cover the cost of the variation.

**17. WARRANTY:** Vendor warrants that the Goods will conform to the requirements of the Purchase Order and shall be of good quality and fit for the purpose for which they are intended. The Vendor shall, at its sole cost and expense, replace Goods found to be defective during the warranty period. Unless otherwise stated the warranty period shall be twelve (12) months from the date when the Goods are put into use or operation.

This warranty is in addition to any and all warranties offered by the Vendor and/or arising by operation of law and nothing contained herein shall be construed as limiting or restricting such warranties.

**18. PATENTS, TRADEMARKS AND COPYRIGHT:** Vendor represents that it has fully investigated all specifications, including any furnished by Purchaser in connection with the Goods, and based on its past experience and superior knowledge warrants that production of the Goods will not infringe any patent, trademark, trade secret or copyright.

Vendor shall defend, indemnify and hold Purchaser and its successors harmless from and against any and all claims, demands, costs and liabilities including legal expenses, arising out of any such infringement.

**19. FORCE MAJEURE:** In the event of delay to Vendor resulting from a Force Majeure Event, the following provisions shall apply:

- Within five (5) days of such event Vendor shall notify Purchaser in writing providing details of the claim and the probable duration of the delay.
- Purchaser will consider the claim and, if approved, an appropriate extension of time will be granted which will be notified to Vendor in writing.
- Vendor will not be entitled to an increase in compensation as a result of any claim for extension of time.

**20. INDEMNITY:** Vendor shall indemnify and hold harmless Purchaser from any claims, demands, costs, expenses, damages and liabilities arising from or connected with Vendor's performance of the Purchase Order or breach of any of its obligations under the Purchase Order.

**21. ADVERTISING:** Vendor shall not in any manner advertise or release for publication any information related to the Purchase Order without first obtaining the written consent of Purchaser.

**22. LAWS, PERMITS & TAXES:** Vendor shall comply with all applicable laws, statutes, rules, regulations or orders of any government or public authority having jurisdiction over any aspect of the Purchase Order. Vendor shall at its expense, obtain all applicable licenses and permits and shall pay all taxes or fees in connection with the Purchase Order.

**23. APPLICABLE LAW:** The Purchase Order and the rights and obligations of the parties hereto shall be construed to be in accordance with and be governed by the laws of the State of Western Australia. Any dispute arising out of the interpretation or fulfillment of the Purchase Order shall be heard in Perth, Western Australia.

**24. SUSPENSION:** Purchaser may, by notice in writing suspend performance of the Purchase Order for such period as appears in the notice. To the extent reasonably possible, Vendor shall mitigate costs in the event of such suspension. The extent to which Vendor fails to use all reasonable endeavours to mitigate costs associated with a suspension under this clause 24 shall be taken into account by Purchaser in assessing any costs claimed by Vendor as a result of such suspension.

**25. ASSIGNMENT OF THE PURCHASE ORDER**

The Purchaser may assign, transfer or otherwise dispose of the whole or any part of their rights and obligations under the Contract to any person without the consent of the Vendor, but must ensure that the proposed assignee has, in the reasonable opinion of the assigning Purchaser, the financial capability to perform the obligations of the Purchaser under the Contract.

In the event of an assignment, transfer or disposal of an interest by the Purchaser under this clause 25 the Purchaser shall give the Vendor written notice of the change and that a novation of contract is required to reflect the changes in the meaning of "Purchaser" and in the Purchaser's interests and liabilities, and the Vendor shall execute a deed of novation accordingly.

