

**PURCHASER STANDARD ORDER CONDITIONS
FOR GOODS ONLY**

1. Defined Terms

In these Conditions:

Action means any claim, action, suit, proceeding or demand.

Company means the entity who has entered into the Head Contract with the Purchaser.

Conditions means these terms and conditions of sale and any additional terms and conditions stated in the Purchase Order, including any variations agreed by the Parties in writing.

Contract means the agreement between the Purchaser and the Supplier, evidenced by the Conditions and the Purchase Order.

Defect means any aspect of the Goods not in accordance with this Contract, or which is damaged, deficient, faulty, inadequate or incomplete in design, performance, workmanship, quality or makeup and Defective has an equivalent meaning.

Goods means the goods or the materials specified in the Purchase Order including, without limitation, manuals, operating instructions, reports and drawings.

GST has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Head Contract means the contract between the Company and the Purchaser.

Loss means any loss, damage, expense, cost, charge, payment or liability of any kind, whether indirect or direct. Loss includes any of the above things incurred in connection with:

- (a) the investigation of a breach of the Contract;
- (b) the rectification of a breach of the Contract; or

- (c) the Purchaser managing the effects of the breach under the Head Contract.

Party means the Purchaser or the Supplier, and a reference to Parties is a reference to both of them.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Purchaser means Everett-Smith & Co. Pty. Ltd.

Purchase Order means the written order signed by or on behalf of the Purchaser and accepted by the Supplier for the supply of the Goods.

Price has the meaning given in clause 3.1.

Site means the premises specified in the Purchase Order.

Supplier means the entity providing the Goods to the Purchaser pursuant to the Purchase Order.

Works means the scope of works being tendered for as detailed in the Supplier's offer and the Contract, which is inclusive of any Goods.

2. Contract and Precedence

2.1 The Purchase Order when properly signed and bearing an order number:

- (a) will be the only authority by the Purchaser for charging Goods to its account; and
- (b) must appear in full on all invoices and consignment notes included with the Goods.

2.2 The Conditions together with the Purchase Order constitute a legally binding contract between the Purchaser and the Supplier and set out the terms and conditions of the purchase of the Goods.

2.3 The Contract comes into existence on the issue of the Purchase Order, irrespective of whether the Supplier returns a signed copy of the Purchase Order to the Purchaser or expressly confirms its agreement of these Conditions.

2.4 To the extent the Supplier's terms and conditions are supplied to the Purchaser, including with the Goods or as printed on consignment notes or other documents (including quotations), those terms and conditions will be of no legal effect and will not constitute part of the Contract even if any of the Purchaser's personnel signs those terms and conditions or annexes the terms.

3. Price

3.1 The Price is in Australian Dollars (unless otherwise stated) and is the agreed amount for the whole of the Goods supplied, inclusive of testing, packing, documenting and freight to the place of delivery specified in the Purchase Order.

3.2 The Price is inclusive of GST and all other taxes and charges whatsoever and howsoever incurred (unless otherwise stated).

3.3 The Price cannot be varied unless agreed by the Parties in writing.

3.4 To the extent that rates for variations are specified, they must be used by the Supplier to calculate the cost of a variation, but otherwise the cost of the variation will be estimated by the Supplier at the lowest reasonable cost.

4. Payment

4.1 The Supplier must claim payment for the supply of the Goods by submitting to the Purchaser invoices monthly. Each such invoice must:

- (a) be a tax invoice;

- (b) be correctly dated;
- (c) refer to the Purchase Order; and
- (d) list the particular Goods to be supplied.
- 4.2 Compliance by the Supplier with clause 4.1 is a condition precedent to the Supplier's entitlement to claim the amount stated in an invoice submitted by the Supplier to the Purchaser.
- 4.3 Save to the extent provided for in these Conditions, the Purchaser will not be liable to pay for the Goods until the Goods have been supplied in accordance with, and as specified in, the Contract.
- 4.4 The Purchaser may, within 7 days of receiving a Supplier invoice, request by written notice that the Supplier provides the Purchaser with all additional relevant records to calculate and verify the amount set out in any Supplier invoice, by the time stated in the notice or, whether no time is specified, within 48 hours.
- 4.5 Subject to clause 4.2, the Purchaser must pay the Supplier the amount claimed in an invoice within 30 days of the end of the month in which the invoice was submitted.
- 4.6 Unless otherwise agreed, the Supplier acknowledges and agrees that:
- (a) the Purchaser only processes invoices for payment at the end of each month;
- (b) the submission of an invoice earlier than the time for submission of that invoice must not be taken to have been submitted until that time; and
- (c) all invoices received after the 20th day of the month may be processed as being received in the following month.
- 4.7 Duty, excise or other government charges required to be charged by the Supplier must be stated separately on the invoice.
- 4.8 Invoices which do not comply with clauses 4.1 and 4.2 will be returned to the Supplier and must not be treated as giving rise to any entitlement under clause 4.2 until such time as re-submitted in a complying form.
- 5. Time**
- 5.1 Time is of the essence as to the Supplier's performance under the Purchase Order. The delivery of the Goods to the place of delivery specified in the Purchase Order must be achieved by the delivery date specified in the Purchase Order unless an extension of time has been agreed to in writing by the Purchaser.
- 5.2 The Supplier must immediately report to the Purchaser any actual or likely delay in delivery of the Goods and its cause. The Supplier must take all reasonable steps to prevent delay.
- 5.3 The Purchaser reserves the right to cancel the Purchase Order:
- (a) if the full amount of the Goods ordered is not delivered to the place of delivery; or
- (b) if a delivery date has been specified, if the Goods are not delivered to the place of delivery by the delivery date.
- 6. Conformance to Purchase Order and Specifications**
- 6.1 The Supplier must ensure that the Goods are in accordance with, and comply strictly with the Purchase Order, and every aspect of specifications, drawings, samples or other description (if any) furnished by the Purchaser to the Supplier with the Purchase Order and must promptly notify the Purchaser in writing of any ambiguity, discrepancy or inconsistency in any information set out in the Purchase Order.
- 6.2 After receipt of a notice from the Supplier, the Purchaser must within 10 days of receipt of the notice instruct the Supplier as to the course it must adopt.
- 7. Cancellation**
- 7.1 In addition to its rights under this clause, the Purchaser may cancel all or any part of the Purchase Order at any time for any reason, in its absolute discretion by written notice of cancellation to the Supplier but:
- (a) subject to clause 5.3, the Purchaser will pay for any Goods delivered prior to the cancellation;
- (b) if Goods have been shipped, but not delivered, at the time of cancellation the Purchaser must either:
- (i) accept those Goods when delivered, and pay the Price for them; or
- (ii) return those Goods to the Supplier at the Purchaser's expense;
- (c) if the Goods have not been shipped at the time of cancellation, on receiving the cancellation notice the Supplier must stop manufacturing (or cancel any third party supply of) the Goods in accordance with and to the extent specified in the cancellation notice, and do everything possible to mitigate any costs incurred in relation to the Goods; and
- (d) if clause 7.1(b)(ii) or clause 7.1(c) applies:
- (i) to the extent that the Goods were manufactured or fabricated in accordance with its specifications, the Purchaser must pay costs reasonably incurred by the Supplier prior to the

date of the cancellation which is directly attributable to the placing of the Purchase Order and which the Supplier is not able to recoup in some other way;

(ii) the Supplier is not entitled to the Price of those Goods or to any compensation for that cancellation other than as specified in clause 7.1(d)(i); and

(iii) the maximum compensation payable under clause 7.1(d)(i) must not exceed the Price.

8. Warranties

8.1 The Supplier warrants:

(a) it will exercise the skill, care and diligence to the standard acceptable to the trade, industry or profession of a similar nature;

(b) it will perform the Works in a timely and professional manner using appropriately trained and experienced personnel;

(c) all applicable standards will be applied to the Goods;

(d) the Goods will be fit for purpose;

(e) it will supply the Goods in accordance with the Purchase Order and any of the Supplier's documents; and

(f) further, in respect of the Goods supplied:

(i) the Goods are free of all liens and encumbrances and the Supplier has good and marketable title to the Goods;

(ii) the Goods will be of merchantable quality and be free from substantial defect in workmanship;

(iii) the Supplier has ensured that the Purchaser has been assigned all the usual and customary trade warranties and/or has the benefit of such warranties upon supply of the Goods and that copies of such warranties will be supplied to the Purchaser with invoices for payment; and

(iv) any Goods manufactured or fabricated will perform to the standard agreed by the Parties and in accordance with clause 8.

9. Warranty Period and Rectification of Defective Goods

9.1 The Supplier must immediately rectify or replace at the Purchaser's option and at the Supplier's absolute cost, any Defective Goods discovered within 15 months after delivery or 12 months after the Goods are first used or enter into the service for which they are purchased, whichever occurs first.

9.2 If the Purchaser reasonably considers that it is necessary to immediately rectify or replace Defective Goods then the Purchaser is not obliged to give the Supplier an opportunity to rectify or replace such Goods before the Purchaser does so or causes a third party to do so. The Supplier must reimburse the Purchaser for the full cost of such removal, replacement or rectification of such Defective Goods.

9.3 The Supplier's obligation to replace or rectify Defective Goods is cumulative of other

remedies available to the Purchaser.

9.4 The Supplier must ensure that the Purchaser has the full benefit of any manufacturer's warranties that may be applicable to the Goods and the Supplier must pursue any manufacturer's warranties on the Purchaser's behalf if the Purchaser requests.

9.5 If the Supplier has removed, replaced or rectified Defective Goods, the rectified or replacement Goods must be subject to the same warranty period as the original Goods, from the date of removal, rectification or replacement.

9.6 If the Purchaser elects to accept Defective Goods, such election does not bind the Purchaser to accept any other Defective Goods and does not affect any of the Purchaser's other rights under the Contract in respect of those replacement Goods.

9.7 The Purchaser may assign any or all of the above warranties to any of its clients or related companies and the Supplier consents to such assignment.

10. Inspection and Access

10.1 The Purchaser or its nominated representative will be afforded free access to the Supplier's premises, including but not limited to during manufacture of the Goods, to:

(a) expedite the manufacture of;

(b) inspect; or

(c) examine testing, workmanship and performance of,

the Goods.

10.2 The Supplier is not relieved of any of its obligations under the Contract because the Purchaser has inspected the Goods or witnessed any testing prior to delivery of the Goods.

10.3 The Purchaser will be entitled to

reject Goods that do not comply with the specifications.

11. Liability and Indemnity

11.1 The Supplier is liable for, indemnifies and will indemnify and keep the Purchaser indemnified against all Loss, and hereby releases and will release the Purchaser from any Action arising directly or indirectly from any breach of any warranty or obligation of the Supplier under the Purchase Order, except to the extent caused or contributed to by any wrongful act or omission of the Purchaser.

11.2 The rights and obligations under clause 11.1 survive termination of the Purchase Order.

12. Insurance

12.1 The Supplier must, for as long as it has obligations outstanding in connection with the supply of the Goods, effect and maintain, at its own expense, the following insurances to cover its obligations to the Purchaser under this Purchase Order (unless otherwise specified), including:

- (a) workers' compensation as required under law;
- (b) professional indemnity insurance for an amount not less than \$5,000,000 per claim and in the aggregate and if no amount is stated, \$5,000,000 per claim and in the aggregate;
- (c) product liability insurance of not less than \$20,000,000 per occurrence;
- (d) public liability insurance of not less than \$20,000,000 per occurrence;
- (e) motor vehicle insurance of not less than \$10,000,000 per occurrence; and
- (f) transit insurance for the replacement value of the Goods.

12.2 Compliance by the Supplier with this clause 12 is a condition precedent to the Supplier being entitled to:

- (a) make a claim for payment for the supply of Goods; and
- (b) payment for the supply of the Goods.

12.3 To the extent permissible under any written or unwritten law, the Supplier must ensure that all insurances to be taken out pursuant to clause 12.1 and such other insurances which the Supplier considers necessary must:

- (a) extend indemnification in favour of the Purchaser; and
- (b) include a cross liability clause which includes a waiver by insurers or underwriters of all expressed or implied rights of subrogation against the Purchaser and its officers, employees and agents.

13. Licenses

Unless otherwise specified in the Purchase Order, the Supplier must, at its cost, obtain all requisite licences, permits and authorities required in performance of the Purchase Order and will comply with all applicable laws and regulations in relation to the Goods. No variation to this Agreement will be of any force or effect unless it is in writing and signed by both Parties.

14. Intellectual Property

14.1 The Supplier warrants to the Purchaser and its successors in interest that the manufacture, sale or use of the Goods will not infringe or contribute to the infringements of any patents, trademarks, designs, copyrights, or the disclosure of confidential information.

14.2 The Supplier will indemnify the Purchaser and its successors in title against all actions, claims, demands, costs (including but not limited to legal costs), charges, damages and expense arising from or incurred by

reason of any infringement of letters patent, registered designs, trademarks, copyright or disclosure of confidential information resulting from the use or sale or intended use of sale of the Goods supplied by the Supplier to the Purchaser.

15. Packing Costs and Standards

15.1 The Supplier must:

- (a) suitably pack the Goods to avoid damage during loading, transit, delivery, unloading or storage;
- (b) pack and transport the Goods in accordance with any applicable regulations and industry codes; and
- (c) clearly mark all packages of the Goods for delivery and the delivery documents for the Goods with the order number and ensure that the delivery documents accompany the Goods to the place of delivery specified in the Purchase Order.

15.2 The Supplier will be liable for any difference in freight charges arising from its failure to:

- (a) follow any transport instruction in the Purchase Order;
- (b) properly describe the Goods transported; or
- (c) suitably pack or otherwise prepare the Goods for transportation.

16. Installation

16.1 If the Supplier is required to be present, or is required to perform work on or near the Site specified by the Purchaser, then the Supplier acknowledges and agrees that the Supplier:

- (a) is deemed to have examined the Purchaser's Site, the means of access to the Site prior to the delivery of Goods to the Purchaser's Site;

- (b) will supply all labour, tools, equipment, materials and such other things as may be required by Supplier to comply with its obligations under the Purchase Order;
- (c) will not impede or hinder work in progress by the Purchaser or third parties;
- (d) its employees, agents, subcontractors, and invitees will comply with all safety and other regulations applicable to the Purchaser's Site; and
- (e) must obey all instructions of the Purchaser or its nominated representative.

17. Default and Termination

- 17.1 The Contract may be terminated by the Purchaser immediately on giving written notice of termination to the Supplier if the Supplier:
- (a) fails to remedy any breach of its obligations under these Conditions within 7 days after receiving written notice from the Purchaser requiring it to do so;
 - (b) is unable to pay its debts when they fall due;
 - (c) ceases to hold any licence, qualification, approval, authority or consent required to supply the Goods;
 - (d) threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvent administration;
 - (e) being a company, goes into liquidation, whether voluntary or compulsory, or has a receiver or receiver and manager or administrator appointed or an application is made for the Supplier to be wound up;
 - (f) ceases or threatens to cease to carry on business; or

- (g) assigns or subcontracts the Purchase Order or any part of the Supplier's obligations under the Conditions without the prior written consent of the Purchaser, in which case the Purchaser's liability to the Supplier must be limited to payment of the Price for Goods delivered prior to such termination.

- 17.2 Termination of the Contract does not affect or prejudice any rights of the Purchaser's which have accrued prior to the termination. The Purchaser's exercise of its rights under this clause does not affect or limit its ability to exercise any other rights under the Conditions, under any written or unwritten law.

18. Title and Risk

- 18.1 Property and ownership of any Goods supplied will pass to the Purchaser from the Supplier on the earlier of payment by the Purchaser for those Goods or receipt of the Goods at the place of delivery as specified in the Purchase Order.
- 18.2 Risk in the Goods passes to the Purchaser upon acceptance of the Goods at the place of delivery as specified in the Purchase Order.

19. Confidentiality

- 19.1 The Supplier must keep secret and confidential and will not disclose to any third party without the prior written consent of the Purchaser (except as required by any written or unwritten law) any engineering data, information, specifications, drawings, reports, accounts or other documents supplied or made available by the Purchaser to the Supplier on completion of the Purchase Order.
- 19.2 Unless otherwise provided in the Purchase Order all plans, drawings and specifications prepared or supplied by or on behalf of the Purchaser and any patterns made there from will be, and remain the property of

the Purchaser and must be used by the Supplier only in the performance of the Purchase Order, and will be returned to the Purchaser by the Supplier on completion of the Purchase Order.

- 19.3 Clause 19 will survive the termination of the Purchase Order.

20. Dispute Resolution

- 20.1 If a difference or dispute between the Parties arises in connection with the subject matter or interpretation of this Purchase Order, including a dispute concerning a claim under any written or unwritten law (**Dispute**), either Party may by hand or registered post give the other Party written notice of the dispute identifying and providing details of the dispute and titled Dispute Notice (**Dispute Notice**).
- 20.2 Within seven (7) days of receipt of a Dispute Notice, representatives of the Parties having authority to bind the Parties must confer to seek to resolve the Dispute or agree on a method of doing so and whether that method will be binding.
- 20.3 If a resolution or method of resolution has not been agreed within twenty one (21) days of the receipt of the Dispute Notice, the General Manager of the Parties must confer for the same purpose as the Parties' representatives. All aspects of such conference(s) will be privileged.
- 20.4 Neither Party may institute legal proceedings in respect of any Dispute unless a Dispute Notice in respect thereof has first been given and then only after a period of twenty eight (28) days from receipt of such Dispute Notice has elapsed.

21. Security of Payment

- 21.1 The Parties agree that for the purposes of any adjudication under the Construction Contracts Act 2004 (WA) in relation to the Purchase Order

	or the Goods:		of a financing statement or a financing change statement in respect of the Goods.		Order (and which the Supplier must comply with irrespective of whether it has knowledge or a means of knowledge of the Company Requirements).
	(a) the prescribed appointor will be the Chairperson from time to time of The National Electrical and Communications Association in the State of Western Australia; and	22.6	If section 95 or chapter 4 of the PPSA would otherwise apply to the enforcement of any security interests then those provisions are excluded, to the extent possible.	23.3	The Supplier warrants that it will comply with all the Company Requirements required by the Purchaser and it will ensure that any of the Supplier's officers, employees or agents comply with the requirements of the Purchaser in connection with the Company Requirements.
	(b) the amount set out in a payment certificate given by the Purchaser is the amount of the 'progress payment' calculated in accordance with the terms of the Contract to which the Supplier is entitled.	22.7	The Supplier must take any steps (including the provision of information) the Purchaser reasonably requires to perfect or otherwise ensure the enforceability and priority of any security interest.	23.4	The Supplier acknowledges that a breach of the Purchase Order may cause the Purchaser to be in breach of the Head Contract for which the Purchaser will or may be liable for damages at the election of the Company (including but not limited to any indemnities or liquidated damages).
22. Personal Properties Security Act		22.8	Neither the Supplier nor the Purchaser will disclose information of the kind described in PPSA section 275(1), unless section 275(7) of the PPSA applies.	24. General	
22.1	In this clause 22 words and expressions which are not defined in these Conditions but which have a defined meaning in the PPSA have the same meaning as in the PPSA.	22.9	Until the Purchaser security interest (whether perfected or not) is satisfied, the Supplier agrees not to cause or allow a security interest of higher priority to be created in the Goods. If the Supplier breaches this subclause, the Supplier must indemnify the Purchaser for any Loss suffered.	24.1	Waiver: Failure of the Purchaser to exercise any of its rights pursuant to these Conditions will in no way constitute a waiver of those rights nor will such failure excuse the Supplier from any of its obligations under the Purchase Order.
22.2	The Supplier acknowledges that the Purchaser has a purchase money security interest in the Goods including, but not limited to, where the Purchaser has paid the Supplier (in whole or in part) for the Goods prior to delivery.	23. Head Contract Acknowledgement and Operation		24.2	Severance: If any term or provision of these Conditions become invalid or unenforceable at law for any reason, the validity and enforceability of the remainder of the Conditions will be unaffected.
22.3	The Supplier acknowledges that if the Purchaser has rights and interests in proceeds derived from the Goods such rights and interests constitute a security interest in such proceeds.	23.1	The Supplier acknowledges that the Head Contract imposes requirements on the Purchaser which must be complied with by the Purchaser and each of its suppliers in the performance of the Head Contract (including but not limited to):	24.3	Variation: An amendment or variation to the Purchase Order or these Conditions is not effective unless it is in writing and signed by the Parties.
22.4	The Purchaser may register any security interest on the PPSA register in any manner it chooses (including by registering one or more financing statements in relation to its interest in the Goods, with such expiry dates as the Purchaser determines in its absolute discretion). The Supplier must provide the Purchaser with any information it requires for the purposes of giving effect to such registration.	(a)	documentation; or	24.4	Assignment: The Supplier must not assign the Purchase Order or any part of the Supplier's obligations under these Conditions without the prior consent of the Purchaser, which must not be unreasonably withheld.
22.5	For the purposes of section 157(3) of the PPSA, the Supplier irrevocably and unconditionally waives its right to receive any notice from the Purchaser in connection with the registration	(b)	discretionary directions, given by the Company, under or in connection with the Head Contract (Company Requirements).	24.5	Subcontracting: The Supplier must not subcontract all or any of its obligations under the Purchase Order or these Conditions without the prior
		23.2	The Company Requirements, in so far as they relate to the Supplier, are acknowledged and agreed by the Supplier to be implemented by the powers and discretions provided to the Purchaser in this Purchase		

consent of the Purchaser, which must not be unreasonably withheld.

24.6 **Governing Law and Jurisdiction:** The law of the State of Western Australia will

be the governing law of this Purchase Order. The Parties hereby submit to the exclusive jurisdiction of the Courts of Western Australia.

24.7 **Relationship:** The Supplier

acknowledges that it supplies the Goods for the Purchaser as an independent contractor and not as an employee, officer or agent of the Purchaser.