

## ADVANCED PROCUREMENTS AND SUPPLIES - CUSTOMER TERMS AND CONDITIONS (AUGUST 2021)

### 1. DEFINITIONS

- 1.1. **Acknowledgement Link** means a uniform resource locator on the Sales Confirmation, which allows the Customer to provide the acknowledgements set out in clause 2.6.
- 1.2. **APS** means Warbrook Enterprises Pty Ltd (ACN 159 673 015) as trustee for Warnock Family Trust trading as Advanced Procurement and Supplies (ABN 37 951 450 470).
- 1.3. **Business Day** means a day other than a Saturday, Sunday or gazetted public holiday in Western Australia.
- 1.4. **Contract** means the agreement between APS and the Customer, which consists of these Terms and the Sales Confirmation, for the supply of the Products to the Customer for the Purchase Price.
- 1.5. **Credit Limit** means the aggregate value of Products which the Customer may order under a commercial credit arrangement, as contemplated under clause 3.1, and which APS may vary from time to time, in its sole discretion.
- 1.6. **Customer** means the legal entity as described in the Customer Enquiry.
- 1.7. **Customer Enquiry** means a written initial enquiry from a Customer regarding the potential purchase of Products, which must set out any Product Specifications, the Supply Timeframe that is required by the Customer, and state the ABN and ACN (if applicable) of the Customer.
- 1.8. **Delivery Costs** means the end to end costs incurred or expected to be incurred by APS to deliver the Products from APS to the Customer.
- 1.9. **GST** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 1.10. **Guarantor** means:
  - a. where the Customer is a company or is a trading trust with a corporate trustee, each of the directors of the company, as at the date that the Acknowledgement Link is activated; and
  - b. where the Customer is a trust with a natural person or persons as the trustee, that natural person or persons.
- 1.11. **Invoice** means an invoice issued by APS to the Customer.
- 1.12. **Loss** means any claim, action, damage, loss, liability, cost, charge or expense.
- 1.13. **Products** means any and all products supplied by APS to the Customer.
- 1.14. **Product Specifications** means any physical, technical, material or other characteristics or specifications of the Products which are required by the Customer.
- 1.15. **Purchase Order** means a purchase order for the Products contained in the Quote, which shall include the Product Specifications, at the Purchase Price.
- 1.16. **Purchase Price** means the cost of the Products as set out in the Quote, including the Delivery Costs.
- 1.17. **Quote** means a quote issued by APS which sets out the cost for the provision of the Products to the Customer in accordance with a Customer Enquiry and the Product Specifications contained therein, including Delivery Costs and the Supply Timeframe.
- 1.18. **Sales Confirmation** means the confirmation of the sale of Products to the Customer, which sets out the Product Specifications, the Purchase Price and the Supply Timeframe, in accordance with the Quote.

- 1.19. **Supply Timeframe** means the estimated timeframe in which the Products are to be supplied by APS to the Customer.
- 1.20. **Terms** means these terms and conditions.
- 1.21. **Variation** means any requested variation or deviation from the Product Specifications which were set out in the Sales Confirmation, as contemplated under clause 6.
- 1.22. **Website** means <https://www.aps-group.com.au/> and any other website which APS may operate for its business from time to time.

### 2. ORDERS

- 2.1 Subject to clause 2.2, upon the receipt of a compliant Customer Enquiry, APS will use its best endeavours to issue the Customer with a Quote within 5 Business Days.
- 2.2 If the Customer Enquiry does not set out the Product Specifications, Supply Timeframe or the details required to identify the Customer, then APS will use its best endeavours to respond to the Customer within 5 Business Days, setting out to the Customer what further information is required in the Customer Enquiry.
- 2.3 In order for the Customer to accept the Quote, they must issue a Purchase Order to APS, within 30 days of the date of the Quote.
- 2.4 If the Customer issues a Purchase Order more than 30 days after the date of the Quote, APS reserves the right to reject the Purchase Order and issue a new Quote for the Customer Enquiry.
- 2.5 If the Purchase Order contains Products or Product Specifications which were not included in the Quote, then APS reserves the right to reject the Purchase Order and issue a new Quote.
- 2.6 Subject to clause 2.5, within 5 Business Days of receipt of the Purchase Order, APS will issue the Customer with a Sales Confirmation, and the Contract will not be binding on APS until the Customer has acknowledged acceptance of the Sales Confirmation and these Terms by activating the Acknowledgement Link.
- 2.7 If the Customer does not activate the Acknowledgement Link within 10 Business Days of the date of the Sales Confirmation, then APS reserves the right to cancel the Sales Confirmation, at its sole discretion.

### 3. CREDIT ARRANGEMENTS, DEPOSITS AND PROGRESS PAYMENTS

- 3.1 At its sole discretion, APS may agree in writing to the Customer being subject to a commercial credit arrangement, under which:
  - a. the Customer may make one or more orders for any Products, provided that the aggregate value of the unpaid orders does not exceed the Credit Limit at any given time;
  - b. the Customer must provide APS all and any information APS may require, from time to time, for the purposes of the commercial credit arrangement;
  - c. APS reserves its right to:
    - i. refuse to supply any Products if the Credit Limit has been exceeded; and
    - ii. refuse to continue to offer the commercial credit arrangement if APS believes any of the events set out in clause 10.1 may occur, or has occurred, or otherwise believes APS may be at risk if it continues to supply Products on the basis of a commercial credit arrangement; and

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- d. the Customer acknowledges and agrees that it must immediately notify APS in writing of any change in its financial position, including any change in Control (as that term is defined in the *Corporations Act 2001* (Cth)), which may impact APS' decision to offer a commercial credit arrangement.
- 3.2 If the Customer:
- has completed two or less transactions for the purchase of Products from APS prior to the current transaction; or
  - has a Credit Limit which is lower than the Purchase Price, then, prior to APS commencing any work in accordance with the Contract, the Customer must provide a deposit equal to 20% of the Purchase Price to APS, within 5 Business Days of accepting the Acknowledgement Link.
- 3.3 If the Customer does not provide the deposit contemplated in clause 3.2, then APS reserves the right to terminate this Contract, at its sole discretion, without being liable for any Loss suffered by the Customer.
- 3.4 Where the sum total of all outstanding orders for a Customer is equal to or greater than \$200,000.00 (inclusive of GST), APS reserves the right, in its sole discretion, to issue Invoices on completion of certain stages of the supply of the Products or otherwise as progress payments, prior to delivery of all of the Products..
- 4. PAYMENT**
- 4.1 All Invoices must be paid in full and without deduction within 30 days of the date of the Invoice, or as otherwise stated on the Invoice.
- 4.2 Unless expressly included, the Purchase Price excludes all GST which may be payable. If GST is applicable, then the Customer shall be liable to pay all GST payable in respect of a taxable supply in addition to the Purchase Price.
- 4.3 The Customer shall pay interest at the rate of 8% per annum on all outstanding monies owing to APS calculated on a daily basis from the due date for payment until the actual date of payment, compounding monthly.
- 4.4 If the Customer defaults in payment of an amount due under the Contract, the Customer shall indemnify APS from and against all costs and disbursements incurred by APS in pursuing the debt including all legal costs on a full indemnity basis.
- 5. INSPECTIONS AND SITE ACCESS**
- 5.1 Subject to clause 5.2, if the Customer wishes to inspect the Products prior to their delivery, then the Customer must provide APS written notice of their intention no less than 48 hours prior to the requested inspection time.
- 5.2 Unless agreed otherwise in writing by APS, the Customer can only inspect the Products on a Business Day during the hours of 9am and 5pm.
- 5.3 APS may, acting reasonably, refuse to provide the Customer with access to inspect the Products.
- 5.4 If APS requires access to the Customer's site in order to fulfil the Contract, then the Customer must use its best endeavours to facilitate APS' access within 10 Business Days of a written request from APS.
- 6. VARIATIONS AND CANCELLATIONS**
- 6.1 Any Variation requested by the Customer will be at an additional cost to the Customer.
- 6.2 Upon the receipt of a Variation, APS will use its best endeavours to issue the Customer with a Quote within 5 Business Days for that Variation.
- 6.3 If the Customer does not expressly reject the Quote contemplated in clause 6.2 above in writing within 5 Business Days of the date of the Quote, then the Customer will be deemed to have accepted its terms.
- 6.4 If the Customer rejects the Quote in clause 6.2, then APS is not required to comply with the Variation.
- 6.5 If the Customer terminates the Contract, then the Customer must pay APS' costs and any Loss suffered in complying with the Contract up until the date APS receives written notice of the cancellation, on a full indemnity basis.
- 6.6 Within 30 days of receipt of the written notice in clause 6.5, APS shall issue the Customer with an invoice for the costs incurred under clause 6.5.
- 6.7 The rights and obligations of the parties under these Terms shall survive the cancellation under clause 6.5.
- 7. DELIVERY AND COLLECTION**
- 7.1 Subject to clauses 7.2 and 7.3, APS will supply the Products to Customer at the address stated in the Purchase Order, for the sum of the Delivery Cost, within the Supply Timeframe.
- 7.2 If the Customer gives APS written notice that the Customer will collect the Products at the Customer's sole cost, then:
- the Customer will not be liable to pay the Delivery Cost, unless APS has already incurred costs towards the delivery of the Products; and
  - APS will not be liable for the Products from and including the date that they provide the Customer with written notice that the Products are ready for collection.
- 7.3 Where a Customer does not have a commercial credit arrangement under clause 3, or it has exceeded its Credit Limit, then APS reserves the right to refuse to supply the Products to the Customer until it has received payment of the Purchase Price in full.
- 7.4 APS shall not be liable for any Loss suffered by the Customer as a result of any act or omission of any freight carrier used to deliver the Products to the Customer.
- 8. RISK AND TITLE**
- 8.1 The Customer acknowledges and agrees that all risk in the Products passes to the Customer upon the Products being supplied to the Customer or the issue of a notice under clause 7.2.b., whichever occurs first.
- 8.2 Until payment of the Purchase Price is made in full and without deduction to APS:
- the Customer acknowledges and agrees that APS retains full title to the Products; and
  - the Customer shall not lease, hire, lend, encumber or part with possession of the Products without the express written consent of APS, in its absolute discretion.
- 9. REFUNDS AND REPAIRS**
- 9.1 Subject to the *Competition and Consumer Act 2010* (Cth), APS in its sole discretion reserves the right to refuse to refund the Purchase Price of any Products.
- 9.2 If any Products do not meet the Product Specifications of the Sales Confirmation upon their delivery to, or collection by, the Customer, then the Customer must issue APS with written notice

- of the Products' faults within 5 Business Days of receiving the Product.
- 9.3 Upon receipt of the notice in clause 9.2, APS will, at its cost, undertake the required repairs to the Products within a reasonable timeframe.
- 9.4 A Customer must not undertake repairs to the Products under clause 9.2, unless within 20 Business Days of APS receiving notice under clause 9.2, APS has not provided written confirmation that they will undertake the repairs.
- 9.5 APS will pay the reasonable costs incurred by the Customer under clause 9.4, within 20 Business Days of receipt of an itemised invoice and any other information reasonably requested by APS.
- 10 TERMINATION**
- 10.1 APS reserves the right to terminate the Contract on the occurrence of any of the following events:
- the Customer breaching a term of the Contract and remaining non-compliant for a period of 7 days or more after receipt of a written notice of breach from APS;
  - the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors, or becomes a bankrupt; or
  - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 10.2 APS will not be liable to the Customer for any Loss suffered as a result of APS exercising its rights under this clause.
- 11. LIMITATION OF LIABILITY**
- 11.1 APS will not be liable for any Loss suffered:
- by the Customer:
    - for Products which are supplied in accordance with the Product Specifications contained in the Sales Confirmation but do not meet the Customer's requirements or needs;
    - for payments made into an incorrect bank account, where the Customer uses the incorrect details for payment. The Customer acknowledges and agrees it is solely responsible to satisfy itself that it is paying to the correct bank account details, including (but not limited to) telephoning APS to confirm correct bank account details; or
  - as a result of the delivery of the Products outside of the Supply Timeframe, where the delay is not directly caused by APS.
- 11.2 The Customer acknowledges and agrees APS' liability under the Contract is limited to the Purchase Price.
- 12. PPSA**
- 12.1 For the purposes of this clause 12, "PPSA" means the *Personal Property Securities Act 2009* (Cth) and any subsidiary legislation to it, as amended from time to time.
- 12.2 All capitalised terms in this clause 12 have the same meaning as in the PPSA, unless otherwise defined in these Terms.
- 12.3 APS may effect and maintain registration of a Security Interest in the Products.
- 12.4 The Customer must do all things necessary, such as obtaining consents and signing documents which APS requires, for the purpose of:
- creating and registering APS' Security Interest including (but not limited to) providing details of any item of collateral sufficient to complete registration of the security interest in accordance with the PPSA;
  - ensuring that APS' Security Interest is and remains enforceable, Perfected and otherwise effective under the PPSA;
  - enabling APS to gain first priority (or any other priority agreed to by APS in writing for its Security Interest); and
  - enabling APS to exercise its rights in connection with the Security Interest or the PPSA.
- 12.5 APS's rights under this Contract are in addition to and not in substitution for APS' rights under any other law (including the PPSA) and APS may choose whether to exercise rights under this Contract, and/or under such other law, in its discretion.
- 12.6 To the extent that Chapter 4 of the PPSA applies to any Security Interest under this Contract, the following provisions of the PPSA are contracted out of in accordance with section 115 of the PPSA and shall not apply: sections 95, 96, 121(4), 125, 129(2), 129(3), 130, 132(3)(d), 132(4), 135, 142 and 143.
- 12.7 In addition to any rights conferred upon APS under the PPSA, the Customer acknowledges and agrees that APS shall, if the Customer is in default of this Contract, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods (including the Products), not only under those provisions under the PPSA but also, as additional and independent rights under this Contract. The Customer agrees that APS may exercise any of its rights under this clause 12.7 in any way it deems fit including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 12.8 Pursuant to section 157(3) of the PPSA, the Customer waives its rights to receive a verification statement in relation to registration events under section 157(1) of the PPSA.
- 12.9 The Customer must not dispose or purpose to dispose of, or create or purpose to create or permit to be created any Security Interest in the Products without the express written consent of APS.
- 12.10 The Customer acknowledges that APS may recover from the Customer the cost of doing anything under this clause 12 on a full indemnity basis, including any registration fees.
- 13. GUARANTEE**
- 13.1 In consideration of APS supplying the Products, the Guarantor (or where there is more than one Guarantor, each of the Guarantors jointly and severally):
- unconditionally and irrevocably guarantees and continues to guarantee to APS that the Customer will:
    - pay the Purchase Price and all other amounts to be paid under this Contract in accordance with the Terms; and
    - comply with all the other Terms on its part to be complied with; and
  - as separate undertakings:
    - agree to indemnify and keep indemnified APS against any Loss, including all legal costs and expenses, suffered or incurred by APS arising from or in connection with any breach of this Contract; and
    - agree to pay to APS on demand an amount equal to any Loss referred to in clause 13.1.b.i.
- 13.2 The guarantee and indemnity specified in clause 13.1 continues in force until the Customer complies with all of its obligations under this Contract.
- 13.3 The Guarantor agrees to pay to APS on demand APS' costs and expenses, including legal costs, relating to any action taken under this guarantee and indemnity.
- 14. CHARGE**
- Despite anything to the contrary contained herein or any other rights which APS may have, each of the Guarantors charge their interest in any property in the name of the Guarantor with the due

payment of any monies and interest owing to APS by the Customer, and in the case of real property consents to APS registering an absolute caveat against the interest in any such property or properties to further secure the repayment of those monies and interest payable to APS pursuant to this Contract.

**15. INTELLECTUAL PROPERTY**

15.1 The Customer acknowledges and agrees that it does not acquire any rights, including registered and unregistered intellectual property rights, in any of the Products.

15.2 The Customer must not:

- a. register or apply to register any rights in respect of the intellectual property related to the Products; or
- b. seek to reproduce the Products in any way.

15.3 This clause 15 shall survive the expiry or termination of this Contract.

**16. PRIVACY POLICY**

16.1 This clause 16 is a privacy policy for the purposes of the Australian Privacy Principles contained in Schedule 1 of the *Privacy Act 1988* (Cth) (Act). A full version of the Australian Privacy Principles can be found at the Office of the Australian Information Commissioner website – <http://www.oaic.gov.au/>.

16.2 With respect to the collection and use of information:

- a. APS only collects personal information that is necessary or directly related to its business functions or activities with its Customers;
- b. examples of the personal information which APS collects may include, where applicable, the Customer's:
  - i. name;
  - ii. contact details (including mail, electronic mail and telephone details);
  - iii. date of birth;
  - iv. Australian Company Number and Australian Business Number;
  - v. credit rating;
  - vi. payment information, including credit card or bank details; and
  - vii. any other information pertaining to APS' business;
- c. if APS receives personal information from the Customer that it did not ask for, and that personal information is sensitive information or is not reasonably necessary for APS' functions or activities, APS will destroy or de-identify the information;
- d. it is unlikely that APS will use the services of an overseas data centre, however if APS does store a Customer's information in an overseas data centre, APS will inform its Customers prior to any storage of data overseas;
- e. APS may disclose a Customer's information to third parties outside of APS with express permission from the relevant Customer, or if APS is required to do so by law;
- f. APS may disclose Customers' information to third parties who work directly with APS to provide the Products, which for the avoidance of doubt, includes both suppliers and employees of APS;
- g. APS will only use a Customer's personal information for the purposes of:
  - i. providing the Products to the Customer;
  - ii. invoicing and collection of monies;
  - iii. providing customer service and to obtain feedback;
  - iii. improving the services offered by APS;

- iv. marketing the Products;
- v. notifying credit rating agents of a default by the Customer;
- vi. to obtain credit reports in respect of the Customer; and
- vii. meeting legal requirements, including complying with court orders and valid subpoenas;

h. APS will store all emails, invoices, statements and correspondence, and endeavour to keep records of all verbal and written communications with Customers in order to have a history of all interactions between APS and each Customer to provide services in an accurate and efficient manner; and

i. in the event the Customer wishes to amend the personal information held by APS, the Customer may contact APS and advise of the requested amendment. APS will amend the information it holds within 10 business days.

16.3 The Customer acknowledges that:

- a. the use of cookies and tracking technology on the Website and the Acknowledgement Link:
  - i. may record information such as domain and host names, Internet protocol addresses, browser software and operating system types, click-stream patterns, and dates and times that they are accessed; and
  - ii. allows APS to improve its Website and the Customer's browsing experiences;
- b. APS may evaluate information that does not contain personal information for trend analysis;
- c. it may be able to access other sites by clicking on links that APS has provided on any part of its Website. APS shall not be responsible for the privacy practices or the content of any of those linked websites;
- d. every effort will be made by APS to ensure the security of Customer's personal information to protect it from misuse, interference, loss or unauthorised access, and to ensure that Customers' personal information is complete and accurate. If a Customer's data changes, then the Customer is responsible for notifying APS of those changes so that Customers' information is up-to-date and accurate;
- e. when personal information is no longer needed, APS will take reasonable steps to ensure that the relevant Customer's personal information is destroyed, de-identified, or both; and
- f. unless an exemption under the Act applies, APS will, at a Customer's written request, provide that Customer with a copy of any personal information APS holds regarding that Customer. APS will advise the Customer of any costs which may apply for this and obtain the Customer's agreement to those costs before providing any information.

16.4 Any changes to this privacy policy will be posted to APS' Website, and will become effective as of the date APS posts those changes to its Website.

16.5 In order to access, correct or update its personal information, or to raise a question or concern or complaint regarding APS' collection and use of personal information, the Customer may email APS at [admin@aps-group.com.au](mailto:admin@aps-group.com.au).

- 16.6 For the purposes of any complaints regarding APS' collection or use of a Customer's personal information (**Privacy Complaint**), the following applies:
- a. a Privacy Complaint must be made in writing, and sent in accordance with clause 16.5 above;
  - b. a Privacy Complaint should set out the type of personal information that is the subject of the Privacy Complaint, and details of the alleged improper collection or use;
  - c. within 5 Business Days of receiving a Privacy Complaint, APS shall respond to the Customer acknowledging receipt of the Privacy Complaint, and advise of the contact details of the person responsible for reviewing the Privacy Complaint and an estimated substantive response time, which shall be no more than 20 business days of receipt of the Privacy Complaint;
  - d. the substantive response shall include information regarding how the Customer may make a complaint to the Australian Information Commissioner, should the Customer not be satisfied with APS' substantive response;
  - e. more information on complaints may be found at the website for the Office of the Australian Information Commissioner website – <http://www.oaic.gov.au/>.
- 16.8 If APS identifies reasonable grounds to believe that unauthorised access or disclosure of any Customers' personal information has occurred, or that Customers' personal information has been lost and is at risk of being subject to unauthorised access or disclosure, then APS will notify the relevant Customers in writing and provide a copy of its written statement to the Australian Information Commissioner. The following information shall be included in the written statement:
- a. a description of the possible data breach that may have occurred;
  - b. what kind of personal information has potentially been affected;
  - c. recommended steps the Customers should take in order to protect themselves; and
  - d. if applicable, the details of the source of the data breach if APS has reasonable grounds to believe the data breach was constituted by a third party.
17. **GENERAL**
- 17.1 If any provision of this Contract shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.2 A party to this Contract includes the party's executors, administrators, successors and permitted transferees and assigns.
- 17.3 This Contract shall be governed by the laws of Western Australia and APS and the Customer agree to submit to the exclusive jurisdiction of the courts of Western Australia.
- 17.4 The Customer agrees that APS in its sole discretion may review these Terms at any time. If, following any such review, there is to be any change to these Terms, then that change will take effect 14 days from the date on which APS notifies the Customer of such change. Should the Customer not wish to accept any changes made by APS to these Terms, then they can terminate this Contract by notice in writing, upon which all of the Purchase Price and interest (as contemplated in clause 4.3) become immediately payable to APS without deduction or set-off.
- 17.5 The failure by APS to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect APS' right to subsequently enforce that provision.
- 17.6 This Contract is the entire agreement between the parties in respect of its subject matter and supersedes all prior and contemporaneous understandings and agreements relating to its subject matter.
- 17.7 Subject to clause 2.7, this Contract is binding on the Parties immediately upon the Customer's activation of the Acknowledgement Link.