

AUSTRALIAN SAFETY ENGINEERS



Incorporating:

(ASG) Australian Safety Group (ASH) Australian Safety Hire



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PURCHASE ORDER TERMS AND CONDITIONS – GOODS & SERVICES

IT IS AGREED between Australian Safety Engineers (ASE) and the Vendor (respectively defined in the issuing purchase order) that, unless otherwise agreed between them in writing, the following terms and conditions (“ASE Standard Terms”) shall apply to all Purchase Orders issued by ASE and accepted by the Vendor (as set out in the issuing Purchase Order).

1. Each respective supply of Goods and/or Services by the Vendor to ASE shall be subject to the issue of a Purchase Order. For the purposes of these terms and conditions, the supply of Goods or Services or the supply of both Goods and Services is hereby defined as a "**Supply**". The Vendor is not authorised to make a Supply unless in receipt of an official ASE Purchase Order

The acceptance by the Vendor of an ASE Purchase Order constitutes a **contract** for the Supply detailed thereon, under these terms and conditions. The Vendor agrees to deliver or carry out the Supply to ASE in consideration of the Price.

If a Purchase Order contains provisions (the "**Special Conditions**") which are inconsistent with any term or condition herein, the Special Conditions shall prevail to the extent of the inconsistency.

To the extent that the Vendor's terms and conditions are supplied with or in the making of a Supply (including as printed on quotes, consignment notes, delivery dockets, time sheets or other documents) (notwithstanding the signing of any such document by a representative of ASE for any reason) and such Vendor terms and conditions are inconsistent with the ASE Standard Terms, then the ASE Standard Terms will prevail to the extent of the inconsistency.

All **variations** to a Supply must be the subject of a further Purchase Order.

2. These **terms shall remain valid** until otherwise notified. Due to the conditional nature of a Supply under the ASE Standard Terms, ASE at its sole discretion, is entitled to engage and disengage the Vendor or Vendor's personnel to perform or cease providing Services or not deliver any back ordered or un-manufactured Goods on an as required basis, giving little or no notice to the Vendor or the Vendor's personnel, regardless of the term or quantity set out on the Purchase Order. Payment will be made for all Services performed or Goods despatched up to the point of disengagement.
3. Unless indicated to the contrary on a Purchase Order, all Goods must be delivered to the Delivery Point, on the delivery date specified in the Purchase Order. On Delivery, Goods must be accompanied by a **delivery docket** / packing slip / consignment note or the like which clearly describes the Goods and includes the Purchase Order number, the ASE Site and the contact name on site and such other information required by ASE. Tax invoices must be forwarded in accordance with clause 9.
4. **Title** to and property in Goods immediately passes to ASE upon ASE paying the Price or upon delivery in accordance with clause 3 (whichever occurs first). Risk in the Goods remains with the Vendor until delivery. Adequate and safe packaging is the responsibility of the Vendor and must be in accordance with relevant laws and good trade practice.

5. In respect of **Goods**, the Vendor warrants:
- (i) it has the right to sell the Goods and to give good title to the Goods, free and clear of all interests (including royalties or Security Interests);
 - (ii) the Goods delivered will correspond in all respects with the specification and the representations made by the Vendor and any sample provided by or on behalf of the Vendor;
 - (iii) ASE shall have the full benefit of any manufacturer's warranties that may be applicable to the Goods;
 - (iv) the Goods will be of merchantable quality;
 - (v) Goods will be fit for any particular purpose which ASE has made known (whether expressly or by implication) to the Vendor and will be fit also for the purpose for which Goods of a similar nature are commonly supplied; and
 - (vi) the sale of the Goods will not infringe any Intellectual Property Rights.
6. ASE shall accept a Supply under the ASE Standard Terms subject to **inspection** by ASE either within a reasonable time after delivery or before delivery (at ASE's discretion). Signed delivery dockets shall not constitute acceptance by ASE of any Supply. Any monies paid by ASE to the Vendor prior to inspection shall be deemed to have been paid conditional upon, and subject to, the Supply being free of any defects, to the satisfaction of ASE, following inspection by it.
7. ASE shall pay the Vendor the **Price** for each Supply specified on the Purchase Order or as may be otherwise accepted by ASE. The Price is payable in Australian dollars unless otherwise provided in the Purchase Order. ASE shall pay the Price subject to the Vendor making each Supply in accordance with these term and conditions.
8. The Vendor shall **invoice** the respective ASE site, which ordered the Supply for each delivered or completed Supply and ASE will make payment of the Price within 30 days from the end of the month in which the Supply was made or performed. The invoice shall be in a form acceptable as a tax invoice for goods and services tax (GST) purposes under applicable legislation and MUST include the Purchase Order number, the ASE operation and the ASE Representative's name.
9. All **tax invoices** MUST be forwarded to the respective ASE operation Accounts Payable department at the address detailed below or such other address as is subsequently notified by ASE to the Vendor as soon as possible after completion of the Supply to ASE's satisfaction or as may be otherwise required by ASE and notified to the Vendor.
- Tax invoices MUST be forwarded to Accounts Payable at the respective ASE operation:
- 45 Catalano Circuit, Canning Vale, Western Australia, 6155 as appropriate, or such other address as may be notified to the Vendor by ASE.
- Each party undertakes to the other that it shall be registered for GST and shall immediately notify the other party if it ceases to be so registered.
- If any bona fide dispute arises as to the correctness of any invoiced item, ASE may withhold payment of that item until the parties have resolved the matter.
10. In making a Supply, the Vendor:
- (i) is to only use **competent** and properly qualified **personnel**. If directed by ASE, the Vendor shall remove specified personnel from any involvement in the Supply;
 - (ii) must utilise proper goods, equipment and materials of merchantable quality fit for their use or **intended use**; and
 - (iii) must ensure that its personnel act in a lawful, skilful, diligent, workmanlike, careful, safe and proper manner and in accordance with all reasonable directions of ASE and ASE's policies and procedures.
11. The **Total Price** shall be inclusive of all Taxes. The Vendor shall be solely responsible for and indemnify ASE against the payment of all Taxes imposed on the Vendor or ASE in relation to the Supply or in respect of the Price or in respect of acts or omissions of personnel used by the Vendor

to make the Supply. ASE may deduct from the whole or part of the Price due to the Vendor any amount, which ASE is required to withhold or deduct by any taxing authority. If any exemptions, reductions, allowances, rebates or other privileges in relation to Taxes may be available to the Vendor or ASE, the Vendor shall adjust any amount due to reflect any such savings or refunds (including interest awarded) to the maximum allowable extent.

12. The Vendor shall **indemnify** and keep indemnified and hold harmless ASE and its directors, officers, and employees (collectively "ASE Team") against any liability, loss, damage, claim, suit, action, demand, expense or proceedings of whatsoever nature whether arising under statute, at common law or in equity ("Claims") in respect of:-

- (i) personal injury, illness or disability, or death of any persons; and
- (ii) loss or destruction of or damage to or loss of use of all property real or personal (including property of any of the ASE Team) -

arising out of, in the course of or caused by the Supply or other obligations hereunder directly or indirectly associated therewith, provided that this indemnity is only to the extent of negligence of the Vendor its invitees, agents, employees and subcontractors and the invitees, agents and employees of the subcontractors.

13. Where the Vendor accepts a Purchase Order to provide Services on a ASE operation it must, at its own expense, procure and maintain the following **insurances**:

- (i) worker's compensation insurance including common law liability and cover for industrial disease, to cover employees of the Vendor and which shall comply with the relevant laws;
- (ii) insurance which is compulsory under relevant laws governing the use of registered motor vehicles;
- (iii) comprehensive and third party insurance covering all mechanically-propelled vehicles owned, operated or controlled by the Vendor (whether or not licensed) coming on to the ASE operation, for an amount of \$5,000,000 in respect of any one accident or series of accidents arising out of one event;
- (iv) public liability insurance for an amount of \$10,000,000 to cover the Vendor's liability in respect of occurrences resulting in:
 - (a) death of or bodily injury (including illness) to any third party; or
 - (b) damage to property not belonging to nor held in trust by nor in the care, custody or control of the Vendor,

arising out of or in the course of or caused by the making or purported making of the Supply;

- (v) where the Vendor is required to carry out construction work – insurance for mobile equipment, constructional plant and equipment, tools, tackle, employee's effects, temporary hutments and their contents, scaffolding and all other property for which the Vendor is responsible or brings to site for the purpose of making the Supply, for an amount of not less than market value (unless otherwise insured to the satisfaction of ASE);
 - (vi) where the Vendor is required to carry out design or provide advice, professional indemnity insurance for an amount of \$5,000,000; and
 - (vii) any other insurance, which is required by relevant laws.
14. The policies of insurance referred to in clause 13 shall, where relevant, be **endorsed** to:-
- (i) in the case of workers compensation, contain a principal's indemnity extension under the applicable workers' compensation legislation for Act benefits and at common law;
 - (ii) extend to cover worker to worker injury liability risks;
 - (iii) extend to cover goods in the Vendor's care, custody and control for amount not less than the market value of all plant and equipment that will be supplied by ASE to the Vendor to perform the Supply;
 - (iv) extend to include liability arising out of the use of unregistered motor vehicles; and
 - (i) extend to include bodily injury gap cover in respect of registered motor vehicles.

15. The Vendor shall:
- (i) ensure that every **sub-contractor** engaged by the Vendor maintains insurance in the same manner as the Vendor;
 - (ii) if requested by ASE, promptly lodge with ASE certificates of currency to evidence the existence of the policies required to be arranged by the Vendor and its sub-contractors in respect of such insurance;
 - (iii) at all times be responsible for complying with and abiding by the terms and conditions of the insurances arranged by it and for the payment of all excesses or deductibles under the terms of such insurances; and
 - (iv) immediately advise ASE of any change or cancellation of any insurance.
16. The insurances arranged by the Vendor and its sub-contractors shall be subject to approval by ASE as to the **adequacy** and terms of insurance protection required and their continued existence and, if requested by ASE, the Vendor shall provide all such documentation, information and assistance as may be required by ASE in this regard. The sole responsibility for ensuring that insurance to be arranged by the Vendor and any sub-contractor is actually effected and at all times remains current, shall at all times remain with the Vendor. No approval by ASE as to the adequacy in terms of insurance protection nor sighting by ASE of certificates of currency or copies of policies shall be taken as a representation by ASE, that such insurance is adequate or be raised or pleaded in bar to any action against the Vendor for default in performing in any of the requirements under this clause.
17. Where the Vendor is supplying Goods the Vendor shall be responsible for effecting and maintaining, at its expense, a policy of **marine insurance** against all normally insurable risks of physical loss or damage including cover for war, strikes, riots and civil commotion, to the Goods or any part thereof and no charge will be made by the Vendor to ASE attributable to the Vendor's own marine insurance in respect of the Goods. ASE makes no warranty regarding the extent or the validity of the insurance for the Vendor and the Vendor remains liable for loss or damage to the Goods to the extent that the policy does not indemnify the Vendor in respect of any loss of or damage to the Goods. The Vendor remains liable for loss of or damage to the Goods should it do, omit to do, permit or suffer to be done anything which in any way vitiates, renders void or voidable the policy. Such policy shall extend to cover:
- (i) the full insurable value of the Goods; and
 - (ii) the Goods ex the Vendor's works through to Delivery (including transit).
18. All **Intellectual Property Rights** in designs, drawings, specifications, data, deliverables and any material created by or for the Vendor for the specific purpose of making the Supply ("**IP Material**") shall, unless otherwise specified in the Special Conditions, belong to ASE absolutely for ASE's own use and benefit in any manner ASE sees fit. The Vendor is deemed to (upon creation of the IP Material) have assigned to ASE and shall procure that its personnel assign or transfer all intellectual property rights and moral rights in and ownership of such IP Material.
19. The Vendor must keep **confidential** and must not disclose to any third party (or use to the detriment of ASE) without ASE's prior written consent any information created or acquired (directly or indirectly) by the Vendor in connection with the ASE Standard Terms or the making of the Supply except:
- (i) where the relevant information is in or enters the public domain through no fault of the Vendor;
 - (ii) to the extent disclosure is required by law; or
 - (iii) where the Vendor can prove that it obtained the relevant information from sources other than ASE or that it otherwise possessed the information prior to the date of the relevant Purchase Order.
- ASE may at any time request the return or destruction of any part of the information in whatever form it then exists and the Vendor shall comply with such request. The Vendor shall ensure that its personnel maintain the confidentiality of the information in the same manner as the Vendor is required to do.
20. ASE has, for a period of 2 years after the date of a Purchase Order pursuant to a Supply under these terms and conditions, the right of access to and the **right to audit** all books, records, vouchers, receipts and other documents relating to the Supply which are in the possession, power or custody of the Vendor.

21. **Time is of the essence** with respect to any Supply and the Vendor must make the Supply strictly by such due dates as may be specified on the Purchase Order. The Vendor must notify the ASE Representative immediately the Vendor is aware that they will be unable to meet the due date.
22. Without limiting any other provision of the ASE Standard Terms or the Vendor's liability pursuant to any law, the Vendor shall promptly **rectify any defects** in a Supply notified by ASE to the Vendor within 12 months of the Vendor delivering the Goods or completing the Services. ASE may notify the Vendor that rectification shall be effected by repair, re-supply or replacement of the Supply (as the case may be) and the Vendor must carryout such rectification with 30 days of receiving such notice other wise ASE may:
- (i) return the Goods at the Vendor's expense and risk;
 - (ii) sell the Goods on behalf of the Vendor and forward the proceeds of the sale, after making due deductions for ASE's costs in effecting the sale, to the Vendor;
 - (iii) have the rectification work carried out by others and claim reimbursement from the Vendor; or
 - (iv) at ASE's election, undertake a combination of (a), (b) and (c) in the proportion determined by ASE.

and any expense incurred by ASE by such action will constitute a debt due and payable forthwith to ASE, by the Vendor or recoverable by ASE in a court of competent jurisdiction, or may be set off by ASE against any moneys otherwise due by ASE to the Vendor or recovered by ASE.

Notwithstanding all other terms and conditions, in the case of defective or damaged Goods to which this clause applies, acceptance and ownership of and title to the Goods will not pass to ASE, ASE shall be under no liability to accept or to pay for the Goods or their costs of delivery and risk in respect of those Goods shall remain with the Vendor and ASE reserves the right to make a claim against the Vendor in respect of any such Goods.

The **Vendor shall not be liable** to ASE for any loss of profits or other consequential loss

23. The **Vendor shall comply** with the requirements of all statutes, ordinances, regulations, by-laws, orders and proclamations made or issued thereunder and with the lawful requirements of public, municipal and other authorities in any way affecting or applicable to the Agreement, or the Vendors presence on any ASE premises.
24. The Vendor acknowledges that **no minimum commitment or guarantee** of value or volume of Supply will be required under the ASE Standard Terms and that ASE, at its discretion, shall be entitled to engage other vendors for similar Supply if it so chooses.
25. ASE may **assign** or transfer all or any part of its rights or obligations under the ASE Standard Terms without the consent of the Vendor. The Vendor may not assign, otherwise transfer or subcontract any part of its rights or obligations under the ASE Standard Terms without the written consent of ASE (which shall not be unreasonably withheld).
26. The Vendor shall provide **reports** to (as required and in approved format) and liaise with that person (or their delegate(s)) originating a Purchase Order or any other person notified to the Vendor by ASE from time to time ("ASE's Representative") for instructions, notifications and authorisations relating to performance of the Vendor under these terms and conditions. The Vendor shall also provide regular updates on the progress of each Supply as directed by ASE's Representative.
27. **No waiver** of or variation to the ASE Standard Terms shall be binding on the parties unless in writing signed by the parties.
28. The **relationship** between ASE and the Vendor is that of principal and independent vendor and nothing in the ASE Standard Terms shall be construed so as to create a relationship of employment, agency or partnership. The Vendor does not have any authority to contract with third parties on behalf of ASE or to otherwise bind ASE, without ASE's prior written agreement.
29. The ASE Standard Terms are governed by the laws of the State of **Western Australia** and each party submits irrevocably to the jurisdiction of the courts of the above State and where applicable the courts of the Commonwealth of Australia.
30. The Agreement contains the **entire final agreement** between the parties relating to any Supply

under any and all Purchase Orders. All prior negotiations, communications, quotations, agreements and understandings (whether written or verbal, expressed or implied), any letters of intent or award and all other documents in relation to the subject matter of the ASE Standard Terms and Purchase Orders, are superseded by the ASE Standard Terms.

31. If any **dispute** arises between ASE and the Vendor in respect of a Supply or otherwise relating to any matter arising under these terms and conditions, the parties shall first use their respective best endeavours to ensure that such dispute is discussed at a mediation meeting between the senior management of each party, before either party may commence legal proceedings in respect of such dispute.
32. The Vendor shall, at least seven (7) days prior to any **Vendor personnel** entering on or adjacent to ASE premises, provide to the ASE site Human Resources Manager:
- (i) an outline of all personnel numbers, rosters and associated agreements to be used by the Vendor for personnel whilst performing Services on site under the Agreement;
 - (ii) for approval of site access for Vendor personnel; the name of each person, a copy of their application form for employment with the Vendor, particulars of the person's duties and qualifications, confirmation of medical clearance (including drug clearance) and a completed "GSDU" (Gold Stealing Detection Unit) Consent Form; and
 - (iii) such other information as personnel reasonably requested from time to time by the ASE Site Human Resources Manager.

ASE reserves the right to deny access to site to any Vendor personnel it so deems as unsuitable.

33. If requested by ASE, the Vendor shall in a timely manner develop and implement an **employee relations management plan**, in a form and of substance satisfactory to ASE and in accordance with guidelines provided by ASE, that deals with the deployment and/or use of any Vendor personnel on ASE premises for the purposes of making the Supply, or for the purposes of transporting goods to or from a site. Mobilisation on ASE premises of any Vendor personnel shall be subject to the approval of ASE and the requirements of the approved employee relations management plan. Any proposed alterations to the approved employee relations management plan shall be discussed and agreed between the Vendor and ASE prior to implementation.

34. Where the Vendor must enter ASE premises to provide the Supply the Vendor must comply and ensure all the Vendor's personnel, visitors, agents, sub-contractors and directors comply with all Site safety, environmental, security, fitness for work and indigenous people requirements, **policies and procedures** as may be amended and directed from time to time.

The compliance by the Vendor of these requirements is mandatory and provided for within the Price. These site specific requirements include, but are not limited to, the following:

- (i) All Vendor personnel entering an ASE site must be approved by the ASE operation prior to their commencement on site.
- (ii) Approved Vendor personnel shall be required to attend and meet the requirements of site safety inductions which include (as are relevant):
 - Surface Workers
 - Underground Workers
 - Site/Area/Mine-specific Inductions
- (iii) All incidents and/or accidents must be reported to the ASE Representative immediately after the Vendor or its personnel becomes aware of, or is advised of, any incident or accident on ASE premises. All injured personnel must present to the gatehouse before leaving site.
- (iv) The Vendor must obtain specific Safe Work Permits from the ASE Representative or delegate for applicable work activities on site prior to commencing any such work. The Vendor shall, upon arrival at site, investigate which safe work permits must be obtained prior to any work commencing.
- (v) The Vendor must strictly follow the ASE procedure for the placement and removal of Personal Danger Tags. Failure of the Vendor or its Personnel to strictly adhere to ASE's policy and procedures in respect of the issue and removal of Personal Danger Tags will be considered a serious breach of the Agreement.

- (vi) The removal from the ASE premises by Vendor's personnel of any item, not the sole property of the person removing the item or of the person's employer, will be treated as theft and subject to Police investigation.

35. In the ASE Standard Terms unless the context otherwise requires:

"Accounting Period" means the period in which Vendor invoices may cumulate to form a statement of transactions for that period and, if acceptable to the Vendor (but which must be nominated by the Vendor on Tax Invoices), should commence on the 24th of each month and end on the 23rd of each following month otherwise it shall be each calendar month.

"Agreement" means the agreement constituted by the Purchase Order accepted by the Vendor, incorporating these terms and conditions;

"Delivery" means the delivery of the Goods and/or Services to the Delivery Point;

"Delivery Point" means the place of Delivery set out in the Purchase Order or if no place is specified, the ASE Supply Department located at the relevant ASE operation;

"Delivery Reference Document" is defined in clause 3;

"Goods" means a product, part or material, not being a service, specified in the Purchase Order;

"Incoterms 2000" means the publication called "Incoterms" published by the International Chamber of Commerce, 2000 Edition;

"Intellectual Property Rights" includes letters patent, a pending patent, trade marks, copyright, design, moral rights, confidential information or similar protection whether granted by the Commonwealth of Australia or any foreign state or the common law.

"Price" means the pricing or rates specified in the Purchase Order for each Supply;

"Purchase Order" means the document issued by ASE to the Vendor to order the Supply and includes any specifications, drawings or other documents that may be contained therein or annexed thereto;

"Security Interest" means:

- (i) a mortgage, pledge, lien, charge, assignment by way of security, hypothecation, secured interest, title retention arrangement, preferential right, trust arrangement or other arrangement (including any set-off or "flawed-asset" arrangement) having the same or equivalent commercial effect as a grant of security; or
- (ii) an agreement to create or give an arrangement referred to in paragraph (a) of this definition;

"Services" means a service provided by the Vendor, not being a product, part or material, specified in the Purchase Order;

"Specification" means the specification for the Supply as set out in the Purchase Order;

"Supply" is defined in clause 1;

"Taxes" means all taxes, fees, levies, duties and charges imposed or assessed in respect of the Goods and Services by all local, state or national government authorities including income tax, sales tax, customs duty, excise tax, stamp duty, payroll tax and goods and services tax ("GST"); and

"Vendor" means the Vendor identified in a Purchase Order and as defined in the Notice which issued these terms and conditions.

In the ASE Standard Terms unless the context otherwise requires:

- (i) the singular shall include the plural and vice versa;
- (ii) words importing persons shall include corporations and words importing the masculine gender shall include the feminine gender;
- (iii) the headings shall not affect the interpretation or construction of these terms and conditions;
- (iv) reference to any statute shall mean that statute as amended, modified or replaced from time to time and includes orders, ordinances, regulations and rules and by-laws made in terms of or pursuant to the relevant legislation;
- (v) reference to a party or parties includes a reference to its successors and permitted assigns in accordance with these terms and conditions; and
- (vi) "including" means "including (without limitation)"