



## **IPD Group Limited (ABN 12 111 178 351)**

### **Trading Conditions**

#### **Application of Conditions**

1.1. In these Trading Conditions ("these Conditions"), IPD Group Limited is referred to as "We", and the terms "Us" and "Our" have a corresponding meaning. The other party to the contract of which these Conditions form a part (the "Contract") is referred to in these Conditions as "You", and the terms "Your" and "Yourself" have a corresponding meaning.

1.2. These Conditions apply to the Contract under which We supply the Goods and Services to You. Any terms or conditions in any order or other document from You that are inconsistent with these Conditions or Our Proposal are of no force or effect.

#### **1. Our Primary Obligations**

1.1. We must supply the Goods and perform the Services (the "Supply") by the final date for completion of the Supply set out in the Contract ("Date for Supply").

#### **2. Purchaser's Primary Obligations**

2.1. You must pay Us the price for the Supply (the "Price") as the same may be adjusted from time to time as provided for in the Contract.

#### **3. Payment**

3.1. We may extend credit to You. We reserve the right to withdraw credit and refuse to supply any Goods or Services on credit terms at any time for any reason in Our sole discretion.

3.2. Unless We have extended credit to You, Our invoices are payable by You upon receipt of invoice from Us. Where We have extended (and not withdrawn) credit to You, You must pay Us the amount invoiced within sixty (60) days of the date of invoice.

3.3. Where the Contract provides for stages in the Supply ("Milestones") in respect of which instalments of the Price ("Milestone Payments") are payable We may invoice You upon reaching each Milestone.

3.4. Where the Contract does not provide for Milestones, or where any of the Goods or Services We supply You under the Contract are not included in a Milestone, We may invoice You:

(a) for Goods, upon and from delivery of the Goods (We may despatch an order for Goods in one or more deliveries and You must pay separately the amounts invoiced for each delivery); and

(b) for Services, upon and from the end of the month in which the Services are performed.

3.5. Our invoices may include any amounts which We claim are payable under or in connection with the Contract, whether or not the subject of an earlier claim.

3.6. If the Contract comes into force after the expiry of the validity period stated in Our Proposal, if any, or otherwise after thirty (30) days after Our Proposal, We may adjust the Price and any prices or rates in the Contract for any increase in the cost of labour, materials or equipment, or for any variation in an exchange rate, or for any increase in or introduction of any new duty or tax, which occurs after the date of Our Proposal.

3.7. If any amount You owe to Us is not paid within seven (7) days of the due date then all of the monies that You owe Us on any account become immediately due and payable. You must also pay or reimburse Us for any reasonable costs or expenses We incur as a consequence of or in seeking to recover payment which is overdue or in respect of any cheque which is dishonoured or has to be re-presented, such costs and expenses to include but not be limited to – dishonour fees; re-presentation fees; fees and commission charged by debt recovery agents; and legal fees. Without limiting Our other rights, if at any time You default under any other agreement that We

have with You, We may suspend the Supply and defer or cancel any other outstanding orders.

3.8. Interest is payable on any moneys not paid when due under the Contract at the rate equal to the annual commercial overdraft rate determined by the Commonwealth Bank of Australia on overdrafts over \$100,000, plus 1.5%, calculated on daily balances commencing from the due date for payment.

3.9. Unless otherwise stated, the Price and all other amounts referred to in the Contract are exclusive of GST and are denominated in Australian dollars ("AUD").

#### **4. Delivery and Transfer of Risk**

4.1. Except as otherwise provided in the Contract, Our quoted prices include:

(a) Our standard packaging (We may invoice You additional charges for alternative packaging);

(b) delivery to You at Your premises (We may invoice You additional charges if We agree to arrange delivery elsewhere).

4.2. If delivery of the Goods is delayed by You for more than fourteen (14) days for any reason other than a breach of the Contract by Us:

(a) We will be entitled to submit a payment claim for and be paid the amount, if any, which would have been claimable upon delivery;

(b) We will be entitled, but not obliged, to put the relevant Goods into storage (including at Our premises) on behalf of You at Your expense, in which event:

(i) We will be deemed to have delivered such Goods to You on putting the Goods into storage;

(ii) the risk of loss of or damage to the Goods will pass to You during such storage.

4.3. Where the Contract provides for delivery of the Goods to You, except as otherwise provided in the Contract, (i) We are responsible for transport of the Goods to the stated delivery place and for any loss of or damage to the Goods until delivery, (ii) all risk of loss or damage to the Goods shall transfer to You on delivery, (iii) You shall be responsible for off-loading the Goods upon delivery and for the risk of loss of or damage to the Goods caused by or in any way connected with off-loading.

4.4. We are not liable for any claim for a shortage in a delivery or for any Goods being delivered in a damaged state unless You submit a claim to Us within seven (7) days of delivery. When You sign any delivery or consignment note or similar document on receipt of a delivery it is conclusive evidence that You received the delivery without any shortage or damage that would have been visible on taking delivery without unpacking the Goods.

4.5. You must notify Us in writing, with reasons, if You are of the opinion that the delivery of any Goods by Us does not constitute valid delivery for the purposes of the Contract. Where You give such a notice, the Date for Supply will be extended by the number of days from the date on which the Goods were physically delivered until We receive Your notice.

#### **5. Cancellation**

5.1. You do not have the right to cancel the Contract or to return any Goods for credit. However, We may at Your request agree to You cancelling a Contract for, or returning, stock Goods (meaning Goods which are not produced to order). If We agree to You cancelling a Contract for, or returning, stock Goods, You must pay a cancellation/ re-stocking fee of 20% of the amount which represents the invoice value of the subject Goods. We will only

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give You credit for Goods that are returned in original condition, packaging and configuration. We will not accept cancellations or returns in respect of Goods which are produced to order or indent Goods.

## 6. Transfer of Title

6.1. Title in the Goods shall not pass until You have paid Us the relevant part of the Price in respect thereof.

6.2. Until title passes You must:

(a) store, mark and keep appropriate records for the Goods so they can at all times be identified and distinguished as Our property and in particular must refrain from mixing the Goods with any goods owned by You or any other person;

(b) not cause or allow the Goods to be modified or used in any way that would materially affect the marketability or realizable value of the Goods;

(c) not sell or otherwise dispose of the Goods other than with Our prior written approval and to a bona fide purchaser for full value in the ordinary course of Your business;

(d) in the event of any sale or disposal of the Goods, or the receipt of any insurance proceeds in respect thereof, You shall hold such money received on account of the Goods as represents the amounts owing to Us for such Goods in trust for Us in a separate bank account identified as Our account and hold that money on trust for Us until the full amount due for the Goods has been paid;

(e) maintain and allow Us to inspect records of the Goods, and of the persons to whom You sell or otherwise dispose any of the Goods and of payments made by such persons.

6.3. If payment for any Goods is overdue by thirty (30) days or more, or if You suffer, commit or are subject to an Insolvency Event, We are entitled, without prejudice to any of Our other rights and remedies, to disconnect, remove and take possession of those Goods and to enter into any premises upon which they are located, without notice, for these purposes.

6.4. Unless the context requires otherwise, terms and expressions used in clauses 7.5 to 7.7 have the meanings given to them in, or by virtue of, the Personal Property Securities Act 2009 (Cth) ("PPSA").

6.5. You acknowledge that the Contract is a security agreement for the purposes of the PPSA. You grant Us a security interest in all Goods to which We retain title under clause 7.1. The security interest continues in the proceeds of any sale, disposition or insurance of or in respect of such Goods.

6.6. You must promptly do all things reasonably required by Us to register Our security interest under the PPSA and to enforce and perfect the same, including obtaining consents, getting documents completed and signed, giving notices and supplying information.

6.7. In relation to such security interest and to the extent that the PPSA permits, You waive Your right to receive a copy of any verification statement or financing change statement, any notice required under the PPSA, and Your rights and any otherwise existing obligations of Us under sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132(3)(d), 132(4), 135, 142, 143 and 157 of the PPSA.

## 7. Work at the Site

7.1. You must take reasonable measures to avoid interference to Our work at the location where the Supply is to be carried out (the "Site") including, without limitation, by co-ordinating Your operations and the activities of Your employees and other contractors with Our work.

7.2. Except as otherwise stated in the Contract, You must by the times stated in the Contract and otherwise so as not to delay the Supply:

(a) provide information reasonably required by Us regarding the Site including relating to designs, dimensions, layouts, plant, equipment, services, bearing capacities, functionality and subsurface conditions;

(b) perform and provide those things and complete any preliminary works which are stated in the Contract to be Your responsibility;

(c) provide and permit clear and unimpeded access to the Site (including any plant, equipment, services, cabling and structures) in the condition required for the performance of the Services (e.g. shut-down, de-energised);

(d) provide the use of Site facilities including power, lighting, messing

and water, and where stated in the Contract, lifting equipment, fencing and on-site storage;

(e) procure any approvals, permits, authorisations and licences for the Services which are required to be in Your name.

7.3. The Price and the rates and prices in the Contract are based on Us being able to perform Our work at the Site consecutively for 8 hours between 6.00a.m. and 6.00p.m., Monday through Friday. The Price will be adjusted for any additional cost of over time if the Services are required to be carried out at other times (i) at Your request or direction, (ii) as a result of a Variation, or (iii) to avoid or make up for delay for which We would be otherwise entitled to an extension of time, valued in accordance with award or EBA provisions applicable to Our employees and those of Our contractors.

7.4. The Price does not include any Site-related fees, payments for allowances, or any induction or competency or medical assessments, any training or site access authorisations or any site superannuation payments. The Price will be increased for the cost to Us if any of these are required.

## 8. Testing

8.1. We must carry out any testing required by the Contract, otherwise We will carry out Our standard tests. We must give You reasonable notice of any testing required by the Contract. You will be deemed to have attended and accepted the results of such tests.

8.2. Where a Performance Variance is discovered You will afford Us reasonable opportunity to investigate and carry out remedial work and to reperform testing. We are not responsible to the extent the cause of any Performance Variance is outside the scope of Our obligations under the Contract. The Price will be adjusted to include the cost of investigation and remediation of any such cause, and We may claim an extension of time for any delay caused thereby.

8.3. Where the Contract provides for Performance LDs they are Our sole liability to You in respect of the Performance Variance to which they relate.

## 9. Suspension and Deferral

9.1. If You suspend or defer performance of the Contract by Us, other than under clause 10.2, the Price will be adjusted to include any additional costs incurred by Us, including any increase in the cost of Our labour and materials, demobilisation and remobilisation costs, and storage, handling and transport costs. You will be deemed to be in breach of the Contract if one or more suspensions or deferrals by You, other than under clause 10.2, exceed sixty (60) days in aggregate in any 12 month period.

9.2. A party may suspend performance of the Contract as may be necessary for the protection of people and property, or by reason of Force Majeure, or to comply with a court order. Any such suspension shall be lifted once the reason for suspension no longer exists.

## 10. Time for Performance

10.1. We must complete the Supply by the Date for Supply. With the exception of the Date for Supply, dates or times in the Contract for the performance of any obligation on Our part shall be considered approximate only and We shall have no liability to You in respect of those dates or times.

10.2. Where the Supply includes only the supply of Goods, the Supply is complete upon delivery of those Goods in accordance with the Contract.

10.3. Where the Supply includes Services:

(a) We will notify You when We believe the Supply is complete. Minor omissions and defects that do not prevent any works to which the Supply relates being put into use will not prevent the Supply being considered complete;

(b) You must notify Us of any reasons why You believe the Supply is not complete within seven (7) days of Our notice. The Date for Supply will be extended by the number of days between Our notice and receipt of any such notice from You. If You do not provide such notice within fourteen (14) days of Our notice the Supply will be deemed to have been complete at the time notified by Us;

(c) We must remedy any outstanding omissions and defects after the Supply is complete;

(d) You must take over any works to which the Supply relates when the Supply is complete. The Supply shall be deemed to be complete if You

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take over such works or put them into use beforehand.

10.4. We will be entitled to a reasonable extension to the Date for Supply where any of the following cause delay to the performance of Our obligations under the Contract:

- (a) an act, default or omission of You or any of Your contractors, consultants, representatives or agents;
- (b) a Variation;
- (c) a Latent Condition;
- (d) suspension or deferral of performance of the Contract by You other than for breach of the Contract by Us;
- (e) grounds described elsewhere in these Conditions for which We may claim an extension of time;
- (f) industrial conditions not limited to Our employees;
- (g) inclement weather outside the range of normal weather conditions for the relevant time and place;
- (h) Force Majeure.

10.5. The Price will be adjusted to include any costs reasonably incurred by Us as a result of delay by any of the causes referred to in clauses 11.4(a), (b), (c), (d) or (e).

10.6. If the Supply is not complete by the Date for Supply, We must pay You Delay LDs at the rate of 0.1% of the Price per day (or such other amount as is specified in the Contract) for each day after the Date for Supply to and including the date on which the Supply is complete PROVIDED THAT Delay LDs shall not, in aggregate, exceed the amount equal to 5% of the Price. Delay LDs are Our sole liability to You in respect of all and any delay in performing Our obligations by the date or time required by the Contract.

#### 11. Variations

11.1. A change to the scope of the Supply ("Variation") may be proposed by You provided it is within the general scope of the Contract. We will advise You whether We are prepared to execute the proposed Variation. We are only bound to execute a Variation which is agreed by You and Us. We may agree to execute a Variation subject to conditions including regarding the price of the Variation. Our obligations regarding the performance or durability of any Goods, including any guarantees, will be modified to the extent reasonably required to take into account the effect of a Variation.

11.2. The Price shall be adjusted to include the price of Variations, which shall be priced using the following methodology and order of precedence:

- (a) prior agreement between You and Us;
- (b) to the extent they reasonably apply, rates or prices in the Contract (N.B. unit prices for Goods are not "take out" prices);
- (c) to the extent they may reasonably apply, rates or prices in Our current price lists or schedules of rates (copies of which may be inspected at Our office and shall be issued to You on request);
- (d) reasonable rates and prices, which shall in the case of Services include 15% for profit and overheads (provided deductions shall include 12% for profit but nothing for overheads).

11.3. If, in order to perform Our obligations under the Contract, We are reasonably required to supply any goods, materials or equipment or perform any work or services:

- (a) due to a Latent Condition; or
- (b) which, in view of any information provided by You, or any condition, assumption, allowance, limit, exclusion or qualification stated in Our Proposal, We would not reasonably be expected to have allowed for,

the supply of those goods, materials or equipment and the performance of that work or those services shall be deemed to be a Variation.

11.4. You may not direct a Variation that omits any part of the Supply for which a substitute is to be supplied by others. We reserve the right to vary the specifications or performance criteria of any Goods from time to time and to substitute Goods from different sources provided We have reasonable grounds for believing that the alternative Goods are substantially similar to or an improvement on those previously offered. We may, at Our expense, make such minor Variations as We deem necessary, in Our sole discretion, to conform the Supply to applicable specifications, standards and codes and/or

to pass tests and/or satisfy performance criteria.

#### 12. Warranty

12.1. You are deemed to have satisfied Yourself as to the suitability of the Goods and Services for Your intended purposes. You have not relied upon, and We shall not be bound by, any representation concerning the scope of the Supply, or the performance or other characteristics of the Goods or Services except those expressly stated in the Contract. Any descriptive or shipping specifications, illustrations, drawings, data, dimensions and weights contained in Our catalogues, price lists or publicity material or submitted or disclosed in Our Proposal are illustrative and approximate only unless certified otherwise by Us in writing, in which event they will be subject to generally recognised tolerances.

12.2. We warrant that the Goods shall be free from Defects and that We will perform the Services with reasonable care and skill and in accordance with the standard acceptable amongst skilled persons providing for reward services of a similar kind.

12.3. We must rectify any Defect which becomes apparent prior to the expiry of 12 months from completion of the Supply (the "Defects Liability Period").

12.4. We will have no liability in connection with breach of any of the warranties in clause 13.2, or any Defect, unless:

- (a) the alleged breach or Defect arises from the failure of Us to comply with Our obligations under the Contract;
- (b) You give Us prompt written notice of the alleged breach or Defect together with any available information and a reasonable opportunity to investigate and take such action as is appropriate to rectify and/or otherwise deal with it as may be appropriate in the circumstances;
- (c) such notice is given prior to the expiry of the Defects Liability Period.

12.5. The warranties and remedies in this clause 13 do not extend to, and We are not liable for, any Defect caused by repairs or modifications which have been made without Our approval or by fair wear and tear, incorrect specification, connection or application by You, plant or equipment outside Our scope of supply, accident, misuse, neglect or lack of proper care.

12.6. Where We rectify a Defect which We are liable for under this clause 13, the Defects Liability Period in respect of that part of the Goods that is repaired or replaced will expire not less than twelve (12) months from the date of such rectification. Replaced items are Our property.

12.7. The Competition and Consumer Act 2010, implies warranties, terms and conditions in consumer contracts for goods and services which cannot be excluded or modified except as permitted under that Act. In the event We are in breach of any such warranty, term or condition in relation to goods, Our liability shall be limited to, at Our option, the repair or replacement of the goods or the supply of equivalent goods or the cost of repairing or replacing the goods or acquiring equivalent goods. In the event We are in breach of any such warranty, term or condition in relation to services, Our liability shall be limited to, at Our option, the supply of the services again or the cost of having the services supplied again.

12.8. The warranties and remedies in this clause 13 are in place of and exclude to the fullest extent permitted by law all other warranties and conditions, whether oral, written, statutory, express or implied. IMPLIED WARRANTIES AND CONDITIONS OF FITNESS FOR PURPOSE AND MERCHANTABILITY ARE HEREBY EXCLUDED TO THE FULL EXTENT PERMITTED BY LAW.

#### 13. Limitation of Liability

13.1. Notwithstanding any other provision of the Contract, Our liability to You, whether arising under or in connection with the Contract or the performance or non-performance thereof or anything incidental thereto, and whether in contract, by way of indemnity, by statute (to the extent that it is possible to exclude such liability), in tort (for negligence or otherwise), for restitution or on any other basis in law or equity is hereby limited and excluded as follows:

- (a) We shall have no liability whatsoever to You for or in respect of:
  - (i) loss of actual or anticipated revenue or profit, failure to realise anticipated savings, loss of financial opportunity, loss of investment return,

increase in financing or operating costs, loss of business, loss of business opportunity, loss of contract, loss of goodwill, loss of data, loss of use, loss by reason of business interruption, loss of production, loss of power or cost of replacement power;

- (ii) claims arising from Your third-party contracts; or
- (iii) special, indirect or consequential loss or damage;
- (b) if, notwithstanding clause 11.6, We have any liability to You in respect of delay in performing any obligation under the Contract by the time or date required by the Contract other than to pay Delay LDs, such liability will not exceed the amount equal to 0.1% of the Price for each day of delay, and is limited in aggregate to the amount equal to 5% of the Price;
- (c) Our total aggregate liability to You is limited to the amount equal to the Price.

#### **14. Insurance**

14.1. We shall effect and maintain the following insurance:

- (a) Public and Products Liability insurance for the amount of \$10 million, covering Our liability for injury to persons and loss or damage to property in the course of the Supply, which insurance shall cover You for Your respective rights and interests as principal under the Contract for vicarious liability You may incur for Our acts or omissions;
- (b) Third party liability motor vehicle insurance;
- (c) Workers compensation insurance in accordance with the laws of the relevant state or territory.

#### **15. Intellectual Property Rights**

15.1. As between You and Us, We are the owner of all intellectual property rights in the Goods, including copyright, patentable rights and trademarks in any designs, drawings, specifications, materials, inventions, devices, methods of working and procedures. You must not copy, replicate, reverse engineer, manufacture, or sublicense the manufacture or use of the whole or any part of the Goods including the software provided therewith.

15.2. We grant You a perpetual, non-transferrable, non-exclusive licence to use the Goods including any software provided therewith to own, operate and maintain the Goods for the purposes permitted by the manufacturer of those Goods and by the licensor or of that software. Such software must not be transferred onto any device other than the device used to operate the Goods or a secure back-up system. It must not be made accessible via the internet.

15.3. You agree to notify us immediately if there is any allegation or apprehension that any Goods you infringe the rights of others, and to give us a reasonable period of time to modify, alter or substitute the allegedly infringing item.

15.4. You may only refer to the Goods by their given product names and designations, including associated trademarks and logos. You may not remove or alter any serial numbers, trademarks or other markings or get-up, nor may you co-brand or co-logo any Goods. You must not use or incorporate any of Our trademarks in your documents, product names, trademarks, business names, Internet addresses, domain names or any other material.

#### **16. Contract**

16.1. The Contract constitutes the entire contract between You and Us. Any conditions, warranties and representations express or implied other than those expressly set out in the Contract are of no force or effect.

16.2. All notices under the Contract must be in writing.

16.3. Without limiting the survival of any other provision of the Contract, clauses 11.6, 13 and 14 shall continue to apply notwithstanding fundamental breach, breach of a fundamental term, rescission, repudiation or termination for any reason.

16.4. If any provision or part of any provision of these Conditions is invalid, illegal or unenforceable, such provision or part thereof shall be severed herefrom and the remainder will continue in full force and effect.

16.5. The Contract shall be governed by the laws of the State of New South Wales, and You agree to submit to the jurisdiction of the courts of that State and any courts having appellate jurisdiction from them.

#### **17. Interpretation**

17.1. In these Conditions:

"day" means a calendar day.

"Defect" means any defect (including any omission) in the materials or workmanship of the Goods or any non-conformity of the Goods with the Contract despite installation, operation and maintenance in accordance with the relevant manufacturer's documentation and operation and maintenance best practices.

"Delay LDs" means liquidated damages in respect of a failure by Us to perform an obligation by the date or time required by the Contract.

"Force Majeure" means act of God, act or omission of government, war, blockade, embargo, hostilities, terrorism, hijacking, piracy, fire, earthquake, flood, explosion, accident at sea, unseasonal inclement weather, sabotage or commotion, or any cause (whether similar or not to any of the above events) beyond the reasonable control of the party whose performance is affected.

"Goods" means the goods, materials and equipment, if any, which We are required to supply under the Contract. Where the Services include assembly and/or installation of any Goods, "Goods" includes the Goods so assembled or installed.

"Latent Conditions" means physical conditions on the Site or its surrounds including artificial things and the conditions in which the Supply must be carried out, including subsurface conditions and the condition, dimensions and performance of plant and equipment, but excluding weather, which differ from those conditions expressly described, assumed or allowed for in the Contract, or from those conditions which a competent contractor should reasonably have anticipated if it had visually inspected the Site and reviewed the written information provided by You.

"Performance LDs" means a liquidated amount specified in or calculated in accordance with the Contract in respect of a Performance Variance which We must pay or allow You and/or which is to be deducted from the Price and/or by which the Price is to be adjusted.

"Performance Variance" means a failure of the Goods to comply with performance criteria or meet performance guarantees or pass performance tests stated in or required by the Contract.

"Proposal" means Our tender, submission, proposal, offer or quotation for the Goods and Services.

"Services" means the work and services, if any, which We are required to perform under the Contract, and includes any work and services incidental thereto.

Clause headings shall not form part of, and shall not be used in the interpretation of, the Contract.

Words in the singular include the plural and words in the plural include the singular, according to the requirements of the context.

The words "include", "includes" and "including" are not words of limitation.