

## PURCHASE ORDER TERMS AND CONDITIONS

(effective as of 1 October 2014)

### 1. Definitions and Interpretation

In these Terms and Conditions and any Contract, unless the context otherwise requires:

- 1.1 **“AIMS”** means the Australian Institute of Marine Science (ABN 78 961 616 230) a body corporate established under the *Australian Institute of Marine Science Act 1972* (Cth) of PMB 3, Townsville, Queensland 4810, Australia.
- 1.2 **“Background IP”** means in relation to a party all Intellectual Property rights owned by or licensed to that party at the date of the relevant Contract.
- 1.3 **“Business Day”** means any day that is not a Saturday, Sunday or public holiday at the Delivery Address.
- 1.4 **“Confidential Information”** means all know-how, Intellectual Property, financial information and other commercially valuable or sensitive information in whatever form, including inventions (whether or not reduced to practice), trade secrets, methodologies, formulae, graphs, drawings, samples, biological materials, devices, models, business plans, policies, information regarding future supplies and any other materials or information which AIMS regards as confidential, proprietary or of a commercially sensitive nature that may be in the possession of AIMS or its employees or officers, whether transmitted orally, in writing or by electronic means, directly or indirectly or via a third party associated with AIMS, and whether disclosed before or after the date of the relevant Contract, provided that Confidential Information does not include information which:
  - (a) is in the public domain at the date of the relevant Contract, or enters the public domain after the date of the relevant Contract, through no fault of the Supplier;
  - (b) can be shown by contemporaneous records of the Supplier to have been known to the Supplier at the time it is received pursuant to the relevant Contract;
  - (c) is provided to the Supplier by a third party after the date of the relevant Contract, lawfully and without violating any restriction on its disclosure; or
  - (d) is independently developed by the Supplier without using any Confidential Information.
- 1.5 **“Contract”** means a contract for sale as referred to in clause 2.4.
- 1.6 **“Defective”** means Products (or any aspect of them) which are not in accordance with the Purchase Order or which are damaged, deficient, Defective, faulty, inadequate or incomplete.
- 1.7 **“Delivery Address”** the location at which the Services or Supplies will be provided to AIMS.
- 1.8 **“Delivery Date”** means the date specified in the Purchase Order for the delivery of the Products. If a date is not specified in the Purchase Order, the Products must be delivered within 20 Business Days from the date of the Purchase Order.
- 1.9 **“Foreground IP”** means Intellectual Property which is created under or otherwise in connection with a relevant Contract.
- 1.10 **“GST”** means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time (“GST Act”) or any replacement or other relevant legislation and regulations, and words used in clauses 5.3 to 5.5 which have a particular meaning in the “GST law” (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires.
- 1.11 **“Intellectual Property”** means statutory and other proprietary rights in respect of copyright and neighbouring rights, all rights in relation to inventions, patents, plant varieties, registered and unregistered trade marks, registered and unregistered designs, circuit layouts and rights to require information to be kept confidential, but does not include moral rights that are not transferable.
- 1.12 **“Price”** means the price for the Supplies payable by AIMS to the Supplier under clause 5.1 as specified in the relevant Purchase Order.
- 1.13 **“Products”** means the Products to be supplied by the Supplier to AIMS under a Contract as specified in the relevant Purchase Order.
- 1.14 **“Purchase Order”** means a purchase order for Supplies given by AIMS in accordance with clause 2.1 and which has been accepted or is deemed to have been accepted by the Supplier.
- 1.15 **“Services”** means the Services, if any, specified in a relevant Purchase Order to be performed by the Supplier to AIMS under a Contract.
- 1.16 **“Site Standards and Procedures”** means any standards, guidelines, rules, procedures, requirements or site specific conditions which AIMS makes available to the Supplier from time to time.

- 1.17 **“Supplies”** means the Products and/or Services to be supplied by the Supplier to AIMS under a Contract as specified in the relevant Purchase Order.
- 1.18 **“Specified Personnel”** means the names and position of any particular Supplier personnel identified in a Purchase Order required to perform the Supplies.
- 1.19 **“Terms and Conditions”** means these purchase order terms and conditions.
- 1.20 **“Warranty Period”** means the period of 12 months from delivery or such other period as specified in the relevant Purchase Order.
- 1.21 In these Terms and Conditions and any Contract:
- (a) Headings are for convenience only and do not affect interpretation.
  - (b) The singular includes the plural and conversely, and a gender includes all genders.
  - (c) “Including” is not a word of limitation.
  - (d) If there is any inconsistency between the provisions contained in the Purchase Order and these Terms and Conditions, the provision contained in the Purchase Order will prevail to the extent of the inconsistency.
  - (e) references to statutes, regulations, ordinances or by-laws include all amendments, consolidations, or replacements of them and all proclamations, rules, regulations, orders or notices issued under them.
  - (f) if a time period referred to expires other than on a Business Day, it is extended until the next Business Day.

## 2. Orders of Supplies

- 2.1 AIMS may from time to time order Supplies from the Supplier. All orders for Supplies will be placed by AIMS in writing using its standard purchase order form or such other form as may be reasonably required by AIMS from time to time.
- 2.2 The Supplier must confirm acceptance of each order or notify any reason for non-acceptance in writing within 7 days of receipt. All orders which are not responded to within this period will be deemed to have been accepted by the Supplier.
- 2.3 Once accepted or deemed accepted by the Supplier, a Purchase Order is final and binding upon the parties.
- 2.4 Upon the acceptance or deemed acceptance of a Purchase Order by the Supplier, a separate contract of sale will arise (**Contract**), which will comprise the relevant Purchase Order and these Terms and Conditions.
- 2.5 To the extent that the Supplier’s terms and conditions have been supplied with the Supplies (including as printed on the consignment note or other documents) those terms and conditions will be of no legal effect and will not constitute part of this Purchase Order (even if a representative of AIMS signs the Supplier’s documents or annexes them to the terms and conditions of this Purchase Order).
- 2.6 The Supplier must supply the Supplies to AIMS:
- (a) in accordance with the relevant Purchase Order; and
  - (b) in a manner that does not interfere with the activities of any other person at the Delivery Address.
- 2.7 The Supplier must keep AIMS fully informed on all aspects of delivery of the Supplies as required by AIMS from time to time.
- 2.8 Unless specified otherwise, the Supplier must provide, at its own cost, all labour, plant, equipment, tools, appliances and all other property and items required to fulfil the Supplier’s obligations under this Purchase Order.

## 3. Delivery of Products (if applicable)

- 3.1 The Supplier must deliver the Products to the Delivery Address by the Delivery Date in accordance with the relevant Purchase Order and all applicable laws, regulations, codes of practice, national standards and applicable ethics, Site Standards and Procedures (if applicable) and other regulatory approvals.
- 3.2 The Supplier must deliver the Products:
- (a) properly labelled and packaged so as to ensure no damage occurs during transportation and delivery to AIMS;
  - (b) in the quantities and by the date specified in the relevant Purchase Order; and
  - (c) in accordance with all specifications and descriptions of the Products provided by the Supplier.
- 3.3 The Supplier may deliver the Products by separate instalments only with AIMS’ prior written consent.
- 3.4 AIMS has no obligation to inspect the Products upon delivery. AIMS’ acceptance of Products upon delivery does not constitute any waiver of any of AIMS’ rights under a Contract and is without prejudice to any right or remedy it may have in respect of Defective Products.
- 3.5 The Supplier must immediately advise AIMS in writing of any circumstances that may cause delay in the delivery of the Products, the action taken to avoid or minimise the delay and the estimated period of delay.
- 3.6 The Supplier must at its cost replace any Product which is not accepted by AIMS within 20 Business Days.
- 3.7 Risk in and title to the Products passes to AIMS on delivery. The Supplier must fully insure the Products against loss, destruction and damage until such time as risk passes to AIMS.
- 3.8 AIMS may at any time, on giving one Business Day’s prior written notice, enter the Supplier’s premises and inspect the Products being manufactured and the quality of such Products.

3.9 The Supplier must provide copies of the relevant material safety data sheets to AIMS prior to delivering any substance which may create a risk to the health or safety of persons and anything which is a dangerous or hazardous substance.

#### 4. Performance of Services (if applicable)

- 4.1 The Supplier agrees to perform the Services:
- (a) in accordance with the Delivery Date;
  - (b) with due care, skill and diligence and to a standard recognised as a high professional standard by the industry to which the Supplier belongs, and
  - (c) to meet or exceed the requirements set out in the Purchase Order and these Terms and Conditions.
- 4.2 If the Supplier has demonstrated the Services before AIMS issued the Purchase Order, the Services provided must be of the same nature and quality as the sample or demonstration given.
- 4.3 The Supplier agrees to liaise with AIMS as reasonably required in relation to the performance of the Services and to comply with any directions that are consistent with these Terms and Conditions.
- 4.4 The Supplier agrees that appropriately qualified and trained Specified Personnel will perform work in relation to the Services in accordance with the Purchase Order.
- 4.5 The Supplier agrees not to subcontract the performance of any part of the Services without the prior written consent of AIMS.
- 4.6 The Supplier agrees that any Services that are re-performed or made good by the Supplier will be subject to the same warranty as the original Services, from the date of the re-performance or when the Services were made good.

#### 5. Price and Payment

- 5.1 Subject to the Supplier's compliance with the requirements of this contract, AIMS must pay the Price for Supplies supplied to it within 30 Business Days of the date of the Supplier's invoice.
- 5.2 The Price and any other payments by AIMS to the Supplier under a Contract are to be made in Australian currency and will be made by direct deposit into an Australian bank account notified by the Supplier in writing at the point of issuance of the Supplier's tax invoice.
- 5.3 Unless GST is expressly stated in the Purchase Order to be included in the Price, the consideration expressed to be payable under a Contract for any supply made under or in connection with the Contract does not include GST.
- 5.4 Each party agrees to do all things, including providing tax invoices and other documentation, that may be reasonably necessary or desirable to enable or assist the

other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with a Contract. A party is not obliged to make a payment under a Contract if the other party does not provide a tax invoice.

- 5.5 If a payment to a party under a Contract is a payment by way of reimbursement or indemnity and is calculated by reference to the GST inclusive amount of a Loss, cost or expense incurred by that party, then the payment is to be reduced by the amount of any input tax credit to which that party is entitled in respect of that Loss, cost or expense before any adjustment is made for GST.

#### 6. Product Warranties (if applicable)

- 6.1 The Supplier warrants that all Products supplied by it to AIMS will:
- (a) be of merchantable quality
  - (b) be new (unless otherwise specified in the Purchase Order);
  - (c) be of sound workmanship and free from defects and faulty materials;
  - (d) conform with all specifications and descriptions of the Products provided by the Supplier; and
  - (e) be fit for any purpose specified by AIMS or for which AIMS might reasonably be expected to use the Products.
- 6.2 During the Warranty Period, without prejudice to any other rights AIMS may have, upon the Supplier receiving written notice from AIMS that any Product does not comply with the Supplier's warranties, the Supplier must, at AIMS' option:
- (a) collect or make alternative transport arrangements for any such Defective Product, repair or replace the Defective Product, and return the repaired or replacement Product to AIMS within 10 Business Days of the Defective Product being returned to the Supplier; or
  - (b) pay or reimburse to AIMS all costs and expenses required for or incurred by AIMS to repair or replace all or part of any such Defective Product,
- provided that the Supplier will not be liable for a Defective Product to the extent the defect arose as a direct result of the improper use or handling of the Product by AIMS.
- 6.3 Any repairs or replacement Products provided to AIMS under this clause 6 will be subject to the same warranty as the original Products from the date of the repair or replacement.

#### 7. Quality of Products

- 7.1 If the Supplier has provided AIMS with a sample of the Products before AIMS issued the Purchase Order, the Products must be of the same nature and quality as the sample or demonstration given.

- 7.2 The Products must not be substituted unless AIMS provides written authorisation for the substitution after proper testing has been completed, as required.
- 7.3 The Products must be clearly marked with the identification marks specified in the Purchase Order. The identification marks must be also shown on the drawings and on the despatch documents.
- 7.4 Any computer software or hardware supplied in connection with the Products must operate properly and in accordance with the specifications detailed in the Purchase Order.

### 8. Right of Inspection

- 8.1 The Supplier agrees that AIMS has the right to inspect, examine and witness tests on the Products, performance of the Products, the Services and to carry out site inspections at the Supplier's premises. AIMS will provide reasonable notice prior to any requested entry.

### 9. Intellectual Property

- 9.1 Each party acknowledges that all Background IP remains the sole property of its owner and that it acquires no right, title or interest in or to the Background IP of the other party by virtue of any Contract other than as expressly set out in the relevant Contract.
- 9.2 The Supplier grants to AIMS a royalty-free, irrevocable, world-wide, perpetual, non-exclusive licence of its Background IP (including the right to sublicense) to use, reproduce, adapt, modify, perform, distribute, communicate and exploit the Supplies for any purpose.
- 9.3 Ownership of all Foreground IP vests on its creation in AIMS.
- 9.4 AIMS shall grant to the Supplier a royalty-free, irrevocable, world-wide, perpetual, non-exclusive licence in respect of all Foreground IP, including the right to sub-licence, to use, reproduce, adapt, modify, perform, distribute, communicate and exploit the Supplies for the purpose of the relevant Contract.

### 10. Confidentiality

- 10.1 The Supplier may use and disclose the Confidential Information to the extent necessary for the supply of the Supplies in accordance with a Contract.
- 10.2 Subject to clauses 10.1 and 10.3, the Supplier must:
- (a) not use, and ensure that its officers, employees and agents do not use, any Confidential Information for any purpose other than compliance with its obligations under a Contract;
  - (b) take all action necessary to maintain the confidential nature of the Confidential Information, including keeping all records of the Confidential Information under lock and key or password protection;
  - (c) not disclose any of the Confidential Information to any person other than those of its officers and employees who need to have access to the Confidential Information for the supply of the

Supplies in accordance with a Contract, who are aware of the requirements of this clause 10, and who are bound by an enforceable obligation of confidentiality; and

- (d) return or destroy (at AIMS' option) all documents and other materials in whatever form in its possession, power or control which contain or refer to any Confidential Information, on the earlier of demand by AIMS or the time they are no longer required for the supply of the Supplies in accordance with any Contract.

10.3 The Supplier may disclose Confidential Information if legally compelled to do so by a judicial or administrative body provided it takes all reasonably available legal measures to avoid such disclosure and notifies AIMS as soon as practicable after such disclosure is ordered, so that AIMS may seek an appropriate protective order or other remedy.

10.4 The Supplier must not use the name or logo of AIMS without AIMS' prior written consent.

### 11. Warranties, Indemnity and Insurance

11.1 The Supplier warrants that:

- (a) it will supply the Supplies in accordance with all applicable laws, regulations, codes of practice, national standards and applicable ethics and other regulatory approvals;
- (b) it has all necessary licences, approvals, permits and consents to enter into each Contract and to supply the Supplies;
- (c) no conflict of interest exists or is likely to arise in the performance of its obligations under any Contract;
- (d) in undertaking the obligations under any Contract it will not be in breach of any obligation owed to any other person; and
- (e) the supply or use of the Supplies will not infringe the Intellectual Property rights of any person and upon delivery AIMS will obtain absolute and unencumbered legal and beneficial ownership of the Supplies.

11.2 The Supplier releases and indemnifies AIMS, its officers, employees, consultants and agents from and against all actions, claims, proceedings and demands (including those brought by third parties) which may be brought against it or them, whether on their own or jointly with the Supplier and whether at common law, under tort (including negligence), in equity, pursuant to statute or otherwise, in respect of any loss, death, injury, illness or damage (whether personal or property, and whether direct or consequential, including consequential financial loss) arising out of:

- (a) a breach of the Supplier's warranties or obligations contained in any Contract;
- (b) the failure of any officer, employee, consultant or agent of the Supplier to use reasonable care in

carrying out the Supplier's obligations under any Contract; or

- (c) the death of or personal injury to persons or property damage, or the breach of Intellectual Property rights of any person, arising out of the supply or use of the Supplies,

and from and against all damages, reasonable costs and expenses incurred in defending, satisfying or settling any such action, claim, proceeding or demand.

11.3 The Supplier must at its cost take out and maintain all necessary or prudent insurances in relation to the supply of the Supplies to the reasonable satisfaction of AIMS, including professional indemnity insurance and/or product liability insurance with a commercially reasonable limit of liability for each and every event to cover risk arising from its manufacture or supply of the Supplies under each Contract.

11.4 The Supplier must at any time on request provide to AIMS written evidence of all insurances required to be taken out under clause 11.3 (including certificates of currency from the insurer).

### 12. Term and Termination

12.1 Either party may terminate a Contract by giving 5 Business Days' written notice to the other party if:

- (a) the other party is in breach (other than a trivial breach causing no material harm) of any provision of the Contract and (where the breach is capable of remedy) the party in breach has failed to remedy the breach within 20 Business Days of receipt of written notice from the other party describing the breach and calling for it to be remedied; or

- (b) the other party is unable to pay its debts as they fall due, makes or commences negotiations with a view to making a general re-scheduling of its indebtedness, a general assignment, scheme of arrangement or composition with its creditors, or seeks or is granted protection from its creditors, under any applicable legislation.

12.2 AIMS may terminate a Contract at any time by giving 20 Business Days written notice to the Supplier subject to payment of reasonable compensation based upon the Supplies supplied at the date of notice.

12.3 A breach of a Contract by the Supplier will constitute a breach of all other Contracts by the Supplier.

12.4 Upon termination or expiry of a Contract for any reason, the Supplier must fulfil any outstanding Purchase Orders for Supplies from AIMS under that Contract existing at the date of expiry or termination unless AIMS cancels such Purchase Orders in writing prior to delivery of the Supplies.

12.5 Clauses 6, 7, 10, 11, 12.4 and 13 survive the expiry or termination of a Contract for any reason.

### 13. Dispute Resolution

13.1 If a dispute arises out of or related to a Contract, no party may commence court or arbitration proceedings

(other than proceedings for urgent interlocutory relief) unless it has complied with this clause 13.

13.2 A party to a Contract claiming that a dispute has arisen under or in relation to the Contract must give written notice to the other party specifying the nature of the dispute. On receipt of that notice by the other party, the parties' representatives must endeavour in good faith to resolve the dispute expeditiously and failing agreement within 5 Business Days must use informal dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques agreed to by them.

13.3 If the parties do not agree within 5 Business Days of receipt of the notice referred to in clause 13.2 as to the dispute resolution technique, procedures and time table to be adopted, and the selection and compensation of the independent person required for such a technique, then the parties must mediate the dispute and the President of the Law Society of Queensland or the President's nominee will select the mediator and determine the mediator's compensation. The mediator will determine the procedure for the mediation, provided that the mediation will take place in Townsville, Queensland in the English language.

### 14. Work health and safety

14.1 The Supplier agrees, in carrying out this contract, to comply with:

- (a) All relevant legislation, codes of practice and national standards relating to work health and safety, including in relation to consultation, representation and participation; and
- (b) All application policies and procedures relating to work health and safety including those that apply to AIMS's premises when using those premises.

### 15. Privacy

15.1 The Supplier must not do any act or engage in any practice which, if done by AIMS, would be a breach of an Australian Privacy Principle.

15.2 Australian Privacy Principle has the same meaning that it has in the *Privacy Act 1988* (Cth).

### 16. General

16.1 Any notice under a Contract may be delivered by hand or sent by prepaid post (airmail if international) or facsimile transmission to the address of the recipient set out in the relevant Purchase Order or to such other address as may be notified in writing by the recipient from time to time. A notice is deemed to be received:

- (a) if hand delivered, at the time of delivery;
- (b) if sent by post 3 Business Days after posting (7 Business Days if international); or
- (c) if sent by facsimile transmission, on receipt by the sender of a transmission report generated by the machine from which the facsimile was sent.

- 16.2 These Terms and Conditions together with the relevant Purchase Order contain the entire agreement of the parties with respect to the subject matter of the relevant Contract. They set out the only conduct relied on by the parties and supersede all earlier conduct by the parties with respect to the subject matter of the relevant Contract.
- 16.3 The rights and obligations of each party under a Contract are personal and may not be assigned, sublicensed or transferred without the prior written consent of the other party.
- 16.4 A Contract may only be amended in writing signed by both parties.
- 16.5 The relationship of the parties under a Contract is one of independent contractors and not of employment, partnership, joint venture, trustee and beneficiary or principal and agent.
- 16.6 No waiver by a party of any right or remedy of the party will be effective unless it is in writing signed by the party.
- 16.7 No delay or indulgence by a party in enforcing any Contract will prejudice or restrict the rights of that party, nor will a waiver of those rights operate as a waiver of a subsequent breach.
- 16.8 Each party agrees, at its own expense, on the request of the other party, to do everything reasonably necessary to give effect to each Contract and the transactions contemplated by it, including, but not limited to, the execution of documents.
- 16.9 If any provision of a Contract offends any law or is invalid or unenforceable for any reason, then, where the provision can be read down so as to be valid and enforceable, it must be read down to that extent, or otherwise will be deemed to be severed from the other provisions of the Contract.
- 16.10 No part of any Contract is to be construed to the disadvantage of a party because that party was responsible for its preparation.
- 16.11 Each Contract is governed by the laws of Queensland, Australia without regard to conflicts of laws principles, and the parties submit to the non-exclusive jurisdiction of the courts of Queensland and the Commonwealth of Australia.