

GENERAL CONDITIONS OF PURCHASE

1. APPLICATION OF CONDITIONS

These conditions govern the rights and obligations of the Supplier and Watpac Civil & Mining Pty Ltd under the Watpac Civil & Mining Pty Ltd Purchase Order Form (the Watpac Civil Mining Pty Ltd Purchase Order Form and these General Conditions of Purchase are collectively referred to as the "Purchase Order"). Under the Purchase Order Watpac Civil & Mining Pty Ltd is the Purchaser. No document or statement other than the Purchase Order shall form part of the contract between the Supplier and the Purchaser unless otherwise agreed in writing by the Purchaser. If there is a conflict between the General Conditions of Purchase (as varied with the Purchaser's written agreement) and any other document or statement forming part of the contract between the Supplier and the Purchaser, these General Conditions of Purchase (as varied) shall prevail. The acceptance by the Supplier of the Purchase Order or the supply of any goods or performance of any works shall be deemed to be acceptance of the terms of the Purchase Order and shall constitute a binding contract between the Supplier and the Purchaser. These conditions are governed by the laws in force in the State or Territory identified in the Watpac Civil & Mining Pty Ltd Purchase Order Form.

2. ELECTRONIC TRANSACTIONS

The *Electronic Transactions Act 2001(Qld)* or the *Electronic Transactions Act 2000 (SA)* or the *Electronic Transactions Act 2003 (WA)* (as applies in the State or Territory identified in the Watpac Civil & Mining Pty Ltd Purchase Order Form) applies to the Purchase Order. The Supplier has consented to the provision of these General Conditions of Purchase by means of electronic communication via the Purchaser's website, <http://www.watpac.com.au>. Refer to trading Terms & Conditions.

3. PRICE

The unit prices and values indicated on the Purchase Order for the goods and/or work the subject of the contract ("the Goods" and/or "the Work" (as the case may be) include, as appropriate, the cost of delivery free into the store to the address stated in the Purchase Order and any insurance, duty, taxes and packing costs and any other costs and expenses associated with manufacturing, delivering and/or supplying the Goods or the Work.

4. DELAYS

If the Supplier fails to make deliveries within the time specified, the Purchaser has the option to terminate this Purchase Order or such part or parts thereof to which there has been delay, without incurring cancellation or any other charges.

5. NON-WAIVER

Failure of the Purchaser to insist upon strict performance of any of the terms of the Purchase Order shall not be deemed a waiver of any subsequent default of them. The shipping or receiving of any article under the Purchase Order shall not be deemed a waiver of any rights for any prior failure by the Supplier to comply with any of the conditions for the Purchase Order.

6. NO ASSIGNMENT

The Purchase Order shall not be assigned by the Supplier in whole or in part without prior written consent of the Purchaser.

7. INFRINGEMENT

The Supplier warrants that the articles described in the Purchase Order and the sale or use of them will not infringe any patent or any other intellectual property right, and the Supplier covenants that it will defend at its own cost and expense every action which may be brought against the Purchaser or those selling or using the Purchaser's product for any alleged infringement of any patent or breach of any other intellectual property right by reason of the sale or use of such articles and the Supplier agrees to pay all costs, damages, fines and profits recoverable in any such action.

8. COMPLIANCE

In performing its obligations under this Purchase Order the Supplier agrees to comply with all laws and regulations applying to the Purchase Order, the Goods and the Works.

9. CHANGES

The Purchaser has the right at any time to make changes in quantities ordered or in specifications and drawings. If the Purchaser forwards an amended order changing the quantity so ordered or changing the specifications and drawings and such changes cause an increase or decrease in the amount due then a variation shall be made to allow remuneration on the basis of the unit prices or values stated on the Purchase Order for the work that has been completed but no cause of action for breach of contract or other right of action shall arise or be instituted by the Supplier as a result of the amended order and the only remedy for the Supplier will be the right to payment of the remuneration referred to in this clause for that part of the order that has been completed. If such changes result in an increase or decrease in the time required for performance a reasonable variation of the time shall be made. Any claim by the Supplier for adjustment under this provision

must be made within two (2) weeks from the date when the change is made.

10. WARRANTY

Notwithstanding the Purchaser's acceptance or right of inspection and/or other terms of the Purchase Order, the Supplier warrants that all articles furnished under the Purchase Order are free from any encumbrances, free from any defects in design, materials and workmanship and that the articles fully comply with any supplied or referenced specifications and drawings ("Technical Requirements") and where not specified that the articles are suitable and fit for the use intended and comply with all regulatory requirements. The Purchaser relies on this warranty by the Supplier in purchasing the articles covered by the Purchase Order. The Supplier must obtain and provide for the benefit of the Purchaser and the Principal the guarantees and warranties as may be required under the Purchase Order or as is advised by the Purchaser.

11. INSPECTION AND TESTING

The Purchaser, its insurers and the person who engaged the Purchaser ("the Principal") for whom the Goods or Work are intended shall be entitled to inspect and test the Goods or Work during manufacture, whether on the Supplier's premises or the premises of any subcontractor and the Supplier shall attend the inspection and provide any requested assistance to those conducting the inspection and testing. Such inspection and testing shall not release the Supplier from any obligation of the Supplier in the Purchase Order.

12. REJECTION

The Purchaser may at any time whether before or after delivery reject any Goods or Work found to be inferior or defective or damaged or not in accordance with the Purchase Order or any Technical Requirements and without limiting the liability of the Supplier, the Purchaser may require, at its option, a refund of payment by the Supplier within seven (7) days, replacement of the Goods or resupply of the Work. Risk in the rejected Goods immediately re-vests in the Supplier. The Supplier is liable for all loss or expenses incurred by the Purchaser due to the rejection of the Goods or Work. This condition shall apply notwithstanding that the Goods or Work have been inspected or tested or that the Purchaser has paid for the Goods or Work.

13. CANCELLATION

The Purchaser may by notice in writing to the Supplier cancel the Purchase Order in whole or in part if the Supplier fails to complete supply of the Goods or Work by the date and time specified in the Purchase Order; fails to replace defective Goods or Work in accordance with the Purchase Order; breaches any provision contained in the Purchase Order; becomes insolvent or subject to any kind of external administration, files or has filed against it a petition in bankruptcy, or makes an assignment for the benefit of creditors. If the Purchaser cancels the Purchase Order, then the Purchaser may also cease payment, recover from the Supplier all monies paid for undelivered Goods or uncompleted Work and purchase similar Goods or Work from an alternative supplier and the Supplier must indemnify the Purchaser for any additional cost it may incur in doing so.

The Purchaser may by notice in writing to the Supplier cancel the Purchase Order in whole or in part at any time for any reason and the Purchaser may then purchase similar Goods or Work from an alternative supplier. At the Purchaser's request, the Supplier must assign or hand over to the Purchaser any materials, plant, facilities, shop drawings, design documents and other things that were being used by the Supplier for the Purchase Order. Subject to and without prejudice to any other rights of the Purchaser, the Purchaser must pay the Supplier for Goods delivered and Work performed before the date of termination, being the amount which would have been payable if this Purchase Order had not been terminated and the Supplier had issued an invoice on the date of termination. The Supplier must make a claim for payment for any amount due to it within twenty eight (28) days after receiving the Purchaser's notice of cancellation. The Supplier's entitlement to payment under this paragraph is its sole right in connection with the Purchaser's exercise of its rights under this paragraph. Following the Purchaser's exercise of this right, the Supplier releases the Purchaser from any claim by it for any cost, expense, loss or damage on any basis whatsoever including under the Purchase Order, in tort (including negligence), under any statute, on a quantum meruit, under quasi contract, for unjust enrichment, for frustration or under any other principle of law, to the maximum extent permitted by Law. If the Purchaser terminates the Purchase Order, the Supplier must take all steps necessary to mitigate any expense, cost or loss incurred by it as a result of the termination.

14. DELIVERY OF GOODS

Delivery shall occur when the Goods have been delivered in good condition at the address stated in the Purchase Order at a point stipulated by the Purchaser's representative and receipt of the Goods has been given by the Purchaser's representative. All the Goods shall remain at the Supplier's risk until delivery is effected. Title to the Goods passes to the Purchaser on delivery unless payment has been made prior to delivery and then title to the Goods passes upon payment.

15. WORK ON PURCHASER'S PREMISES

If any Work is to be performed at the Purchaser's or Principal's premises, then the Supplier must comply with all applicable environmental and safety laws in the performance of the work and, where required by the Purchaser, the Supplier must ensure each of its employees who will be working on or near the Purchaser's premises holds a current and valid Blue Card for the purpose of the *Commission for Children and Young People and Child Guardian Act 2000* (Qld) or a current and valid Criminal History Report for the purpose of the *Children's Protection Act 1993* (SA) or a current assessment notice for the purpose of the *Working with Children (Criminal Record Checking) Act 2004* (WA) (as applies in the State or Territory identified in the Watpac Civil & Mining Pty Ltd Purchase Order Form).

16. INSURANCE

Unless the Purchaser has provided evidence in writing to the Supplier of insurance cover for:

- (1) damage to vehicles, plant and equipment of the Supplier used or supplied under the Purchase Order, including liability cover for property damage and death or bodily injury ("Plant and Equipment Insurance");
- (2) liability at common law in accordance with statutory requirements for the Supplier's employees ("Worker's Compensation Insurance"); or
- (3) the Supplier's liability to third parties for loss or damage to property (including any indirect or consequential loss) and death of or injury to any person ("Public Liability Insurance").

The Supplier shall have in place its own Plant and Equipment Insurance, Worker's Compensation Insurance and Public Liability Insurance. If requested by the Purchaser, the Supplier shall produce evidence of the currency of the Supplier's Worker's Compensation, Public Liability and Plant and Equipment Insurance Policies.

17. TERMS OF PAYMENT

Unless otherwise specified, payment shall be due to the Supplier within thirty (30) days of the end of the month in which the Supplier's invoice for the Goods or Works is received by the Purchaser, provided that all other terms of the Purchase Order have been observed.

18. GST

Unless this Purchase Order provides otherwise, and subject to this clause, any consideration that may be provided for under the Purchase Order is exclusive of GST. If a party makes a taxable supply in connection with this Purchase Order for a consideration which represents its value, then the recipient of the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply subject to the provision to the recipient of a valid tax invoice.

19. PRICE VARIATION

Unless stated in the body of the Purchase Order the cost of the Goods or Works shall be fixed and not subject to escalation.

20. HEALTH AND SAFETY

The Supplier must ensure that the Goods and/or Works are supplied in accordance with safe practices applicable in the relevant industry and as required by all applicable laws, including the provisions of the *Workplace Safety and Health Act 1995* (Qld) or the *Occupational Health, Safety and Welfare Act 1986* (SA) or the *Occupational Safety and Health Act 1984* (WA) (as applies in the State or Territory identified in the Watpac Civil Mining Pty Ltd Purchase Order Form) and any regulations and/or relevant codes of practice prescribed thereunder.

21. HEALTH AND SAFETY - MINING

Clause 20 does not apply to Goods and/or Works being supplied to:

- (1) (in Queensland) a coal mine to which the *Coal Mining Safety and Health Act 1999* (Qld) applies, a mine to which the *Mining and Quarrying Safety and Health Act 1999* (Qld) applies, an operating plant to which the *Petroleum and Gas (Production and Safety) Act 2004* (Qld) applies, or a facility or plant used for geothermal exploration within the meaning of the *Geothermal Exploration Act 2004* (Qld);
- (2) (in Western Australia) a mine, petroleum well or petroleum pipeline to which the *Mining Act 1978* (WA), the *Mines Safety and Inspection Act 1994* (WA), the *Petroleum and Geothermal Energy Resources Act 1967* (WA), the *Petroleum (Submerged Lands) Act 1982* (WA) or the *Petroleum Pipelines Act 1969* (WA) applies.

Where these Acts apply the Subcontractor must ensure that the Subcontract Works are delivered in accordance with safe practices applicable to the relevant industry and as required by all applicable laws, including the provisions of the Acts listed above and any regulations and/or relevant codes of practice prescribed thereunder.

22. JURISDICTION AND NATIONAL CODE OF PRACTICE

Alternative 1 – Orders up to \$25,000

The National Code of Practice for the Construction Industry (the **Code**) and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, revised September 2005, reissued June 2006 or successor instrument (the Implementation Guidelines), apply to this project. By entering into the Purchase Order the Supplier is deemed to have read and agreed to comply with the Code and Implementation Guidelines.

Alternative 2 – Purchase Orders over \$25,000

22.1 The Supplier must, and must ensure that its Related Entities ("Related Entities" in this clause means as that term is defined in the Implementation Guidelines), employees, secondary subcontractors and agents comply with the Code and the Implementation Guidelines. Copies of the Code and the Implementation Guidelines are available at www.workplace.gov.au/building.

22.2 Compliance with the Code or the Implementation Guidelines shall not relieve the Supplier from responsibility to perform the Purchase Order, or from liability for any defect in the works arising from compliance with the Code or the Implementation Guidelines.

22.3 Where a change in the Purchase Order is proposed and that change would affect compliance with the Code or the Implementation Guidelines, the Supplier shall submit a report to the Purchaser and the Commonwealth specifying the extent to which the Supplier's compliance with the Code or the Implementation Guidelines will be affected.

22.4 The Supplier shall maintain adequate records of the compliance with the Code and Implementation Guidelines by:

- (1) the Supplier;
- (2) its employees and agents;
- (3) its subcontractors; and
- (4) its Related Entities.

22.5 The Supplier shall permit the Commonwealth, or any person authorised by the Commonwealth including a person occupying a position in the Office of the Australian Building and Construction Commission (or any successor), full access to construction sites or places covered by the Code and Implementation Guidelines to:

- (1) inspect any work, material, machinery, appliance, article or facility;
- (2) inspect and copy any record relevant to the goods and works the subject of this Purchase Order;
- (3) interview any person; and
- (4) request a party to this Purchase Order to produce a specified document within a specified period, being not less than 14 days in person, by fax or by post, as is necessary to allow validation of its progress in complying with the Code and implementation Guidelines.

22.6 For the avoidance of doubt, clause 22.5 applies in relation to the Supplier's work performed on privately funded construction site, and that of its Related Entities.

22.7 The Supplier agrees to require that its employees, agents, subcontractors and Related Entities provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner (or any successor), with access to:

- (1) inspect any work, material, machinery, appliance, article or facility;
- (2) inspect and copy any record relevant to the goods and works the subject of this Purchase Order;
- (3) interview any person; and
- (4) request a party to this Purchase Order to produce a specified document within a specified period, being not less than 14 days, in person, by fax or by post, as is necessary to allow validation of its progress in complying with the Code and Implementation Guidelines.

22.8 The Supplier shall not appoint a subcontractor, consultant or supplier in relation to the Purchase Order where the appointment would breach a sanction imposed by the Code Monitoring Group as that term is defined in the Implementation Guidelines.

22.9 The Supplier shall ensure that all subcontracts impose obligation on its subcontractors equivalent to the obligations under this clause.

23. CONSTRUCTION CONTRACTS ACT 2004 (WA)

This clause 23 applies in Western Australia only.

The parties agree that for the purposes of any adjudication under the *Construction Contracts Act 2004* (WA) in relation to the Purchase Order or the work to be done pursuant to the Purchase Order, the prescribed appointor shall be the Institute of Arbitrators and Mediators Australia.

24. CIVIL LIABILITY ACT 2002 (WA)

This clause 24 applies in Western Australia only.

The parties agree that Parts 1B to 1F of the *Civil Liability Act 2002* (WA) are excluded.