



**GSE Services Pty Ltd**  
**ACN 129 315 410 ("GSE")**  
Unit 2, Spencer Road, Carrara QLD 4211  
AUSTRALIA  
Phone: 61 7 5557 9770 Fax: 61 7 5557 9750

## GENERAL TERMS & CONDITIONS



### GENERAL TERMS AND CONDITIONS

#### 1. INTERPRETATION

- 1.1. For the purpose of these Terms and Conditions and unless the context otherwise requires:
- (a) **"Australian Standards"** means any Australian Standard (as amended or replaced) issued by Standards Australia applying directly or indirectly to the Goods.
  - (b) **"Conditions of Subcontract"** means any standing arrangements or conditions previously negotiated between the Seller and GSE and which have been agreed to apply to the supply of goods by the Seller to GSE.
  - (c) **"Conditions of Supply"** means these Purchase Order Terms and Conditions as modified, if at all, by any Conditions of Subcontract.
  - (d) **"Contract"** means the contract formed by the Seller's acceptance of this Order and includes the Order, and these Conditions of Supply together with any other documents attached to this Order or incorporated by reference in each case with the approval of GSE.
  - (e) **"Defective"** means Goods or Services (or any part of them) which are not in conformity with this Contract or breach any of the warranties in this Contract or are damaged, faulty or incomplete.
  - (f) **"Delivery Address"** means the location or address set out in the Order to which the Goods are to be delivered.
  - (g) **"Delivery Date"** means the date set out in the Order by which the Goods are to be delivered.
  - (h) **"Goods"** means the goods described in the Order and includes all manuals, spare parts and operating instructions needed by GSE for the proper use of the Goods and identified in the Order and any services incidental to the supply of the Goods, and all other things which can reasonably be inferred from the description of the Goods in the Order.
  - (i) **"Insolvent"** means that the Seller is bankrupt, unable to pay debts as and when they fall due (as reasonably determined by GSE), in receivership, in receivership and management, in liquidation, in provisional liquidation, under any form of administration, wound up, dissolved, subject to any arrangement, assignment, composition or deed of company arrangement, protected from creditors under any statute, or in receipt of protection under statute.
  - (j) **"GSE"** means GSE Services Pty Ltd ACN 071 999 132 as set out in the relevant Order.
  - (k) **"Order"** means Purchase Order document of which these Conditions of Supply are a part and bearing an order number or blanket order number.
  - (l) **"Seller"** means the person so described in the Order and includes sub-contractors and all other classes of persons performing any type of work for the Seller to fulfill the Order.
  - (m) **"Warranty Period"** means the period detailed in the Order or, if no period is detailed, two years from the date the Goods are delivered to GSE.
- 1.2. To the extent that the provisions of the Conditions of Sub-contract are inconsistent with these Conditions of Supply:
- (a) those provisions relating to payment terms and method of payment in the Conditions of Supply prevail; but otherwise
  - (b) the Conditions of Subcontract prevail to the extent of any other inconsistency.

#### 2. ACCEPTANCE OF ORDER

- 2.1. The Seller shall acknowledge receipt of the Order within 24 hours by email or facsimile;
- 2.2. Subject to clause 2.4, upon the Seller acknowledging receipt of an Order a binding agreement shall come into effect in the form of the Contract.
- 2.3. The Contract continues until such time as the Seller has performed its obligations under the Contract, including those in respect of Defective Goods.
- 2.4. GSE reserves the right to cancel an Order within a reasonable time prior to scheduled delivery without further liability.

#### 3. PRICES AND TERMS OF PAYMENT

- 3.1. No extra charges of any kind including but not limited to packing, boxing, crating, delivery freight or insurance will be paid by GSE unless so provided in the Order.
- 3.2. Prices shown on an Order are not subject to escalation or variation for any reason whatsoever unless agreed to in writing by a director of GSE or someone approved by such director. The price will not be varied for any reason except where expressly agreed in writing, signed by an authorised representative of GSE.
- 3.3. The Seller represents and warrants that the prices quoted in an Order (including cash or credit discounts or rebate) shall not be:
  - (a) in excess of Seller's list, catalogue or published prices; and
  - (b) higher than prices quoted or currently being charged by the Seller to any other customer of the Seller for similar goods or services.
- 3.4. Invoices for the Goods are to be mailed to the address set out in the Order the day following dispatch or collection of the Goods, unless otherwise agreed in writing. Accounts will normally be settled by cheque or telegraphic transfer within the agreed term unless there is a prior arrangement in writing with GSE's director. GSE shall not be responsible for delay in receipt of the Seller's invoice.
- 3.5. GSE will not be responsible for any delay in payment due to the Seller failing to quote the relevant Order on all invoices, packing notes and other correspondence or in the event of any disparity between an invoice and an Order.
- 3.6. Except as otherwise specified in an Order, the price includes all federal, state, local or foreign taxes (including any goods and services or value added tax), duties and other governmental charges upon the manufacture, sale or transportation of the Goods or on the provision of services. Any invoice for goods must include an invoice which complies with the legislation under which goods and services or value added tax is imposed. Where a tax invoice must be produced in the country of supply then the provision of a tax invoice which complies with the requirements of the local legislation is a precondition to payment of any invoice.
- 3.7. GSE is entitled to set off any amount owing at any time by the Seller or any of its affiliates. Without limitation, credits due to rejection or non-conformances will be set off from the amount on the invoice or will be deducted from subsequent payments.

#### 4. SUPPLY OF GOODS

- 4.1. The Seller agrees to supply the Goods in accordance with this Contract.



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- 4.2. The Seller must not sub-contract the provision of the Goods or assign the Contract without the consent of GSE (acting reasonably) which may be withheld or may be subject to conditions. It will be a condition of GSE's consent that the subcontractor must comply with the relevant terms and conditions of this Contract and that the Seller supply to GSE such details of the subcontractor as GSE requires.
- 4.3. The Seller is taken to have carefully examined all documents and other information furnished by GSE relating to the supply of the Goods, and to have fully satisfied itself of all conditions, risks, contingencies and other circumstances which might affect the supply of the Goods, including conditions at the Delivery Address, and to have made due allowance for these in the Price. The Goods must be delivered in the condition detailed in the Order. This includes any preparation such as cleaning and fumigation as required by quarantine regulations, if stated in the Order.
- 4.4. The Seller agrees to deliver the Goods by the Delivery Date and to the Delivery Address or otherwise as reasonably specified by GSE in writing to the Seller.
- 4.5. The Seller must package the Goods to ensure maximum protection against theft or damage during transit, storage, delivery, loading and unloading.
- 4.6. The cost of delivery of the Goods to the Delivery Address (including all transport costs and reasonably insurance cover and all packing, loading and unloading) is included in the price for the Goods.
- 4.7. The Order number must appear on all documentation, including invoices and delivery documents, and on the outside of any packages.
- 4.8. The Seller represents and warrants that:
  - (a) when the Goods are delivered to GSE the Goods will:
    - (i) be of merchantable quality and, unless agreed otherwise, new in every respect and in good order and condition;
    - (ii) comply in all respects with the Order, including any specifications or other requirements included with the Order;
    - (iii) be fit for the purpose made known to the Seller by GSE or, if none was made known to the Seller, be fit for the purpose for which goods of that kind are ordinarily used and which should reasonably have been inferred by the Seller having regard to the nature of the Goods, the Services, the Order and any communications with GSE;
    - (iv) comply with all applicable legislation and relevant standards of the Australian Standards or where there is no applicable Australian Standard then all applicable International Standards and must be supplied with copies of all material safety data sheets for dangerous goods;
    - (v) comply with the provisions of any law or legislation applicable to them;
    - (vi) be free from defects for the Warranty Period.
  - (b) any and all data, information, manuals, and the like, provided by the Seller concerning the Goods are complete, consistent and in compliance with the agreed specifications;
  - (c) the supply of the Goods (including but not limited to any documentation) does not infringe the rights of third parties, including, without limitation, intellectual property and other intangible rights; and
  - (d) all necessary licences or rights of use are obtained from third parties at the Seller's own costs.
- 4.9. The warranties in clause 4.8 are in addition to any warranties which are or may be implied under any legislation applicable to the Goods and Services that has not been expressly excluded in this Order.
- 4.10. If, at any time prior to GSE paying for the Goods, GSE becomes aware that any of them are Defective, GSE may accept or reject them and either return such Goods to the Seller or require the Seller to collect such Goods at the Seller's risk and expense. GSE will not be liable to pay for any Defective Goods returned to or collected by the Seller under this clause. If GSE accepts Defective Goods, the Seller agrees to negotiate in good faith with GSE to reduce the Price.
- 4.11. Any costs related to the remedy of any defects shall be borne by the Seller and, if necessary, reimbursed to GSE, including but not limited to transportation costs, repair costs and costs of replacement parts.
- 4.12. The Seller must refund to GSE, when requested, any payments made by GSE in respect of Defective Goods which GSE reject.
- 4.13. Unless otherwise expressly stated, GSE are under no obligation to purchase any minimum volume of Goods or Services from the Seller.

### 5. PACKING AND DELIVERY

- 5.1. The Seller shall, at its own expense, crate, package or otherwise prepare the Goods for shipment in accordance with GSE's instructions and otherwise in a fashion which will ensure safe and secure delivery to GSE unless otherwise stated in the Order. All labelling of documentation and supplies shall include as a minimum, but not be limited to, Part Number, Receipt Number, Quantity, Serial Number, Batch Number and Order Number.
- 5.2. The Delivery Date shall be of the essence. If for any reason the Seller does not deliver the Goods on the Delivery Date, GSE may cancel the Order without further liability.
- 5.3. GSE is not obliged to accept early Delivery of the Goods. If GSE does not accept early Delivery of the Goods, the Seller must, at its cost, hold the Goods in store until the Delivery Date.
- 5.4. GSE is not obliged to accept any Goods in excess of the quantity specified in this Order. Goods not ordered will be returned at the Seller's expense.
- 5.5. If GSE or any of its representatives signs a delivery docket or other document required by the Seller to acknowledge delivery, GSE will not be taken to have accepted the Goods as being in accordance with this Order (whether as to quality or quantity). This applies notwithstanding any terms and conditions appearing on any such acknowledgment of delivery.
- 5.6. The Seller must provide detailed delivery dockets with every delivery. The Seller acknowledges that failure to comply with the delivery docket requirements may delay or preclude acceptance and payment for the Goods.
- 5.7. If the Seller reasonably believes that the Goods or Services (or part thereof) will not be delivered by the Delivery Date, the Seller must give GSE immediate notice of that fact.
- 5.8. If the Seller gives notice under clause 5.7 GSE may, and without limiting its rights at law:
  - (a) extend the time for Delivery of the Goods or the Date for Completion, by notifying the Seller of a later Delivery Date or Date for Completion (but is not required to do so for the benefit of the Seller);
  - (b) refuse to take Delivery of the Goods; or
  - (c) cancel the relevant Order without liability to the Seller.



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- 5.9. GSE may, at any time, and for any reason whatsoever, by notice in writing to the Seller extend the Delivery Date but is not required to do so for the benefit of the Seller.
- 5.10. The Seller must take all reasonable steps necessary to minimise the effect of any delay on the supply of the Goods.
- 5.11. GSE shall be entitled to reject any late delivery. In addition to such remedy, GSE shall be entitled to claim compensation for any costs, damages or third party claims caused, whether directly or indirectly, by such delay.
- 6. INSPECTION AND ACCEPTANCE**
- 6.1. Goods shall not be deemed to have been accepted until GSE, or its previously approved delegate, has inspected the Goods and signified their acceptance.
- 6.2. If GSE, in its sole discretion, determines that the Goods in whole or in part do not conform to the requirements of the Order it may (at its election) and without prejudice to any other remedies available to it:
- (a) return (at the Seller's expense) the whole or any part of the Goods for repair or replacement within the time specified by GSE or for credit or refund; or
  - (b) repair the goods, in which case all costs of such repair must be reimbursed to GSE by the Seller;
- 6.3. Where the Seller is supplying Goods to specifications, GSE reserves the right to inspect these items and the Seller's plant facilities at reasonable times during any stage of manufacturing.
- 6.4. All Goods must be accompanied by an original manufacturer's certificate of conformity (or legally certified true copy) or other relevant release documentation as stated in the Order.
- 7. TITLE AND RISK**
- 7.1. Risk of loss of the Goods, and title to the Goods shall only pass to GSE upon safe physical delivery of the Goods to the Delivery Address.
- 8. TERMINATION**
- 8.1. GSE may immediately terminate the Order and this Contract if the Seller:
- (a) becomes Insolvent;
  - (b) commits a material breach of any term of this Contract which is incapable of remedy;
  - (c) commits a material breach of any term of this Contract which is capable of remedy, but then fails to remedy the breach within a reasonable time after receiving notice to do so; or
  - (d) is involved in any conduct or activity that harms or is likely to harm GSE's business or reputation.
- 8.2. If GSE terminates the Order then the Seller:
- (a) will be responsible for any costs associated with any returned Goods (such as freight, packing and other such costs) which is not completed.
  - (b) shall deliver at its sole expense all Goods which have already been paid for by GSE (whether wholly or partly manufactured) and then in its possession or to such other person or persons as GSE may direct.
  - (a) must reimburse GSE for any direct loss or damage sustained as a result of the termination; and
  - (b) discharges GSE from any further obligations under the Order or this Contract.
- 9. WARRANTY and NON-CONFORMING PRODUCT**
- 9.1. The Seller warrants that the Goods are free and clear of all liens, charges and encumbrances and that the Seller has a good and marketable title to the Goods, and all Goods (including repaired or replacement items):
- (a) shall be free from defects in materials and workmanship and be of merchantable quality and fit for the purpose contemplated by GSE;
  - (b) shall strictly conform to the requirements of the Order.
- 9.2. All Goods supplied are deemed to be covered by a warranty for the Warranty Period or such period as may be stated or referenced in the Seller's quotation.
- 9.3. Goods shall be deemed by the GSE to be non-conforming if:
- (a) the part number or description of the item ordered is not the part number or description of the item delivered to the GSE; or
  - (b) the Seller has not provided an Original Equipment Manufacturers Certificate of Conformance, or other relevant release documentation as stated in the Order; or
  - (c) if they do not comply with the requirements of the Order.
- 10. PROPRIETARY RIGHTS AND CONFIDENTIALITY**
- 10.1. All information, including know-how, software, trademarks, trade secrets, plans, drawings, specifications, designs, goods, materials and patterns furnished by GSE, its agents or contractors ("GSE Property"), to the Seller for the purposes of this Order and all property rights embodied therein, remain the property of GSE, shall be treated by the Seller as confidential and shall not in whole or in part be used, communicated, copied, disclosed, sold or reproduced for any purpose whatsoever, except in the performance of the Order, or with the express written permission of GSE.
- 10.2. On completion, cancellation or termination of the Order, or the Contract, the Seller must immediately return to GSE all documents, equipment and any other material supplied by GSE to the Seller for purposes of the performance of the Order.
- 10.3. The Seller shall be liable in the event of any loss, damage or theft of GSE Property howsoever caused and the Seller must, at GSE's option, either replace the property or reimburse GSE for its value (as determined by GSE) at the time of the loss, damage or theft.
- 10.4. This clause 10 shall survive the termination of the Order or of the Contract.
- 11. PATENT, TRADEMARK & COPYRIGHT INDEMNITY**
- 11.1. The Seller shall indemnify and forever hold GSE harmless from action, claim or demand, costs or expenses, arising from or incurred by reason of any infringement or alleged infringement of any patent, design, trademark, copyright, trade secret or other protected right in respect of any of the Goods supplied by the Seller, except where infringement or alleged infringement is directly caused by designs originally furnished to the Seller by GSE.



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### 12. INSURANCE AND INDEMNITY

- 12.1. The Seller shall indemnify GSE from and against any proceedings, claims, demands, losses, costs, damage and expenses arising out of or in respect of any act, omission or negligence of the Seller or any of its officers, employees, agents or representatives in connection with the Goods supplied under this Order or otherwise in connection with the Seller's performance or breach of this Order or the Contract.
- 12.2. The Seller shall, if requested by GSE, at its sole expense, effect proper insurance against all risks, including product liability and shall, if required by GSE and, on request, produce evidence of the currency and validity of any such policy.

### 13. ASSIGNMENT

- 13.1. The Seller shall not, without the previous consent in writing of GSE assign or transfer this Order or sub-contract any part of the work required to be done under this Order unless GSE have provided prior written approval.

### 14. DISPUTE RESOLUTION

- 14.1. The parties agree that if a dispute arises out of or relates to this Order, a party claiming that a dispute has arisen must provide written notice to the other party specifying the nature of the dispute ("Dispute Notice").
- 14.2. Following the giving of a Dispute Notice, a representative of each party, with authority to settle the dispute must meet (either face-to-face or virtually) and use reasonable efforts to resolve the dispute within 14 days of the giving of the Dispute Notice.
- 14.3. If the Dispute is not resolved within 21 days from the date that the written Dispute Notice was received, then either party may submit the dispute to mediation in accordance with, and subject to, the Resolution Institute Rules. The mediation must take place on the Gold Coast, Australia and be administered by the Resolution Institute.
- 14.4. If the dispute remains unresolved after a further 30 days, then either party shall be at liberty to apply to the Court for a remedy.
- 14.5. This clause does not prevent either party seeking urgent injunctive or similar interim relief from a Court where a party considers that is necessary to properly protect its interests.

### 15. EXCUSABLE DELAY

- 15.1. The obligations of either party hereunder shall be excused or suspended to the extent performance is prevented or delayed by any future event, which is:
- (a) beyond the reasonable control and without the fault or negligence of the party affected thereby,
  - (b) was not foreseeable by such party at the time this Contract is entered into; and
  - (c) could not have been prevented by such party taking reasonable steps;
- provided that written notice of such delay, including the anticipated duration of such delay, shall be given by such party to the affected party within ten (10) days of the occurrence of such event.
- Such events shall include, but not be limited to, war, riots, fire, explosion, flood, currency restriction, and acts or omission of governments in their sovereign capacity.

### 16. OCCUPATIONAL HEALTH & SAFETY

- 16.1. The Seller warrants and represents that in connection with the supply of the Goods or services performed under this Order, the Seller will comply with any relevant occupational health and safety legislation applicable in the jurisdiction in which the Goods might be manufactured, and applicable in each and every location in which work is performed or services provided under this Order.

### 17. VARIATION

- 17.1. This Contract may only be amended with the mutual written consent of both parties.
- 17.2. The Contract is the entire agreement between the parties and supersedes all previous correspondence, contracts and arrangements between the parties relating to the Goods except to the extent the Contract specifically incorporates them.

### 18. GOVERNING LAW

- 18.1. The laws of Queensland, Australia, govern this Contract. The parties agree to submit to the jurisdiction of the Courts of Queensland Australia.

### 19. RECORDS AND RIGHT TO AUDIT

- 19.1. At all times during the term of this Agreement, the Seller must maintain complete and accurate records, together with all supporting or underlying documents and materials, relating to or in connection with the goods and/or services and the Seller's obligations under this Agreement (and the Seller must ensure that the Seller's employees, agents, contractors and subcontractors maintain the same).
- 19.2. GSE may at any time by reasonable notice in writing to the Seller request that the Seller make available the records required to be maintained under this clause. Upon such request, the Seller must make such records available for inspection and audit (including copies and extracts of records if required) to GSE.

### 20. PRIVACY

- 20.1. Each party agrees to comply with their obligations under the Privacy Act 1988 (Cth) in respect of personal information obtained by or disclosed to them pursuant to this Agreement.
- 20.2. Each party warrants to the other that it has complied with the Privacy Act 1988 (Cth) in obtaining any personal information disclosed by it pursuant to the Agreement.

### 21. SUPPLIER CODE OF CONDUCT

- 21.1 The Seller acknowledges that the Supplier Code of Conduct applies to the supply of the Goods and that the Seller, by accepting this Order, acknowledges GSE requires the Seller to comply in each and every respect with this Supplier Code of Conduct. Found at "[GSEservices.com.au](http://GSEservices.com.au)"