

PEDCO ENGINEERING TERMS AND CONDITIONS OF SALE

Definitions

“The Company” means Pedco Engineering Pty Ltd (ABN 97 114 345 881).

“Company’s Premises” means the Company’s premises located at 118 Dowd Street, Welshpool 6106 in the state of Western Australia

“Conditions” means the Terms and Conditions contained within this document.

“Goods” means the Goods or Services the Company is contracted to supply.

“GST” means the Goods and Services Tax in Australia as determined in accordance with the GST Act

“GST Act” means the A New Tax System (Goods and Services Act) 1999

“Materials” means the material supplied by the Purchaser in accordance with the Quotation.

“New Goods” means the goods acquired from the Company, with services or material added by the Purchaser.

“Order” means the official purchase order received in writing from the Purchaser.

“Parties” means the Company and the Purchaser:

“Purchaser” means the person to whom the Goods or Services” are being supplied.

“Quotation” means any written quotation supplied by the Company.

“Specification” means any written specification contained in any Quotation or Purchaser’s Order.

Acceptance of a Quotation

- (a) The Purchaser shall provide the Company with written notification that it has accepted the Company’s Quotation for the supply of the specified Goods and Services.
- (b) In the event that the Purchaser’s written notification of acceptance purports to add different conditions, such conditions shall be deemed void and unenforceable, unless the Company gives notice in writing expressly accepting the amendments proposed by the Purchaser. Acceptance of the Quotation by the Purchaser shall be deemed to be solely on the basis of the Conditions contained within this document.
- (c) The Company shall be entitled to amend any clerical, mathematical or typographical error notwithstanding the prior acceptance of a Quotation and the Conditions are deemed to be subject to any such correction.
- (d) The Company may in its absolute discretion elect to terminate any Quotation that it may have already accepted
- (e) Once a Quotation is accepted by the Purchaser, and the Purchaser provides the Company with an Order, or alternatively provides the Company with oral acceptance if written acceptance is waived by the Company, the Purchaser is liable for all costs and losses suffered by the Company, whether foreseeable by the Purchaser or not, including loss of profits or any other form of loss directly or indirectly resulting from such cancellation or suspension. The Purchaser shall be liable to pay the Company all costs associated with recovery of such costs and losses from the Purchaser, including legal costs on a full indemnity basis.
- (f) Whether or not a Quotation is accepted, the Purchaser agrees that the Quotation is confidential and cannot be used for any purpose other than business between the Company and the Purchaser.
- (g) The Purchaser shall not assign its rights or obligations under any Quotation to any third party without the written consent of the Company.
- (h) The prices and/or rates reflected in the Quotation are based on the awarding of the total scope of work being tendered for. In the event of a partial award, the Company reserves the right to revise the price, rates and any other applicable terms and conditions accordingly.

Variations

- (a) The Company shall not be liable to undertake any variations to the Specification as required by the Purchaser.
- (b) The Company may, in its absolute discretion, agree in writing to any such variation requested by the Purchaser.

Delivery of Goods/Services

- (a) The Company shall use reasonable endeavours to deliver the Goods or Services in accordance with the time specified in the Quotation.
- (b) Unless stated otherwise, all delivery of Goods or Services are from the Company's Premises. In the event that delivery is expressed to be elsewhere, the Goods are at the Purchaser's risk from the time that the Goods leave the Company's Premises.
- (c) In the event that the Purchaser requests the Company to transport, test, operate, adjust or otherwise handle the Goods, the Purchaser shall indemnify the Company, its officers, staff and agents from and against all claims and demands whatsoever for loss or damage suffered by any person as a result of any act or omission on the part of such officer, employee or agent, negligent or otherwise, in handling the Goods or the equipment or vehicles incorporating the Goods.

Purchaser's Materials

In the event that the Purchaser delivers its Material to the Company, such Material shall be entirely at the Purchaser's risk and the Company accepts no responsibility for any loss or damage thereto. The Purchaser warrants that it has full title to such Material delivered to the Company and that it has the full authority to authorise the Company to incorporate such Material into the Goods.

Exclusion of Liability

- (a) The Company shall not be liable under any circumstances to the Purchaser for any economic or consequential loss, damage or other expenses suffered by the Purchaser arising out, of or in the consequence of, any fault or defect in the Goods unless such fault or defect was proven to be caused by the negligence of the Company.
- (b) To the extent that they are capable of being excluded, any warranties, guarantees or Conditions established by legislation or common law or equity and deemed to form part of any contract incorporating these Conditions are hereby excluded.
- (c) The Company shall not grant credit for any Goods returned by the Purchaser unless it elects to do so in its absolute discretion.
- (d) The Purchaser may, on giving reasonable notice to the Company, inspect the Goods or Services during work in progress at the Company's Premises.

GST (Goods and Services Tax)

- All prices will be quoted exclusive of GST, however, all goods will be sold on a 'plus GST (if any)' basis.
- Invoices will be issued in the prescribed form as set out in the GST Act
- Any discounts or other terms agreed between the Company and the Purchaser will be calculated on and applied exclusive of GST.
- Payment for GST
 - If GST is imposed on any supply made by the Company to the Purchaser pursuant to these Conditions (the GST Amount), the Buyer must pay the GST Amount to the Company, in addition to any amount payable, and any non-cash consideration provided, for that supply (without any deduction or set-off) by the Purchaser under any other clause in these Conditions). Any GST Amount payable is payable upon demand by the Company whether such demand is by means of any invoice or otherwise.
 - If any part of the Purchase Price is referable to both a Taxable Supply (as defined in the GST Law) and anything that is not a Taxable Supply, the apportionment of the purchase price between those supplies shall be determined by the Company, and GST applied accordingly.

Payment

Unless the Company has notified the Purchaser in writing of the credit terms that the Company has agreed to, payment by the Purchaser must be made in full to the Company on or before the Goods are removed from the Company's Premises .

Credit Terms

- (a) If the Purchaser wishes to purchase Goods on credit from the Company, then it must first apply for such credit with the Company.
- (b) The Company may, in its sole discretion, refuse to grant credit.
- (c) The Company will advise the purchaser if credit terms have been agreed to or refused.
- (d) The Company is not required to provide the Purchaser with any reasons as to why the application for credit has been refused.
- (e) Where the Company agrees to extend credit to the Purchaser, the Company will provide the Purchaser with an invoice for the Goods (or any part thereof) as specified in the Company's Quotation and the Purchaser's Order
- (f) Unless advised to the contrary, payment is required in full within 30 days of the end of the month in which the Company issues its invoice to the Purchaser.
- (g) The Company shall at all times ensure that the total amount outstanding from time to time remains within the pre-determined credit limit set by the Company.
- (h) In the event that the amount owing by the Purchaser exceeds the credit limit that the Company has set, the Company may withhold the delivery of any Goods until such time that the amount owing by the Purchaser falls within the credit limit.
- (i) Should the Purchaser default in the payment of any amount due on a due date, then all monies due to the Company shall immediately become due and payable and shall be paid by the Purchaser within SEVEN (7) days of the date of demand. The Company shall be entitled to charge interest at the rate of 15% per annum on all amounts so due from the date of the due payment until the day of actual payment.
- (j) The Purchaser shall pay to the Company all of the Company's expenses, costs or disbursements (including legal costs determined on a solicitor/own client basis) incurred in recovering any outstanding debt.
- (k) The Company shall be entitled without notice to terminate any credit arrangement that it has granted to the Purchaser in the event of the Purchaser defaulting on any of the Conditions herein contained.
- (l) The Company shall be entitled at any stage to request such security or additional security as the Company shall in its discretion think fit and shall be entitled to withhold supply of any Goods or credit arrangements until such security or additional security has been provided by the Purchaser.
- (m) If the Purchaser requests documentation such as manufacturer's data reports etc, the Company will endeavour to provide this as soon as practical upon completion of the Order.
- (n) The Purchaser shall not withhold payment of any amounts owing pending the provision by the Company of any quality assurance documents.
- (o) If at the completion of a calendar month the Company has outlaid funds relating to materials associated with an Order, it reserves the right to claim in the form of a progress payment for such expenditure from the Purchaser

Retention of Title

- (a) Ownership of the Goods remain with the Company until the Purchaser has paid in full the price of the Goods.
- (b) In the event that the Goods are delivered to the Purchaser, or any other person nominated by the Purchaser, prior to payment by the Purchaser for the Goods, the Purchaser agrees with the Company that the Purchaser:
 - a. Must store the Goods separately from other property; and
 - b. If the Purchaser makes a new object from the Goods, or incorporates or mixes the Goods with other goods, ("the New Goods"), ownership of the New Goods immediately passes to the Company at the moment of the event or operation by which the Goods are converted into incorporated or mixed or become part of the New Goods and the Purchaser must keep the New

Goods as fiduciary owner for the Company and must store the New Goods separately from any other property.

- **Personal Properties Securities Act 2009**

- The Purchaser hereby acknowledges that these Conditions constitute a security agreement which creates a security interest in favour of the Company in all Goods previously supplied by the Company to the Purchaser (if any) and all after acquired Goods supplied by the Company to the Purchaser (or for the Purchaser's account) to secure the Purchaser's payment obligations to the Company from time to time. The Purchaser agrees to grant a "Purchase Money Security Interest" to the Company.
- The Purchaser acknowledges and agrees that by assenting to these terms the Purchaser grants a security interest (by virtue of the retention of title clause in these Conditions) to the Company and all Goods previously supplied by the Company to the Purchaser (or for the Purchaser's account) and these terms shall apply notwithstanding anything express or implied to the contrary contained in the Purchaser's Order.
- The Purchaser undertakes to:
 - sign any further documents and/or provide any further information (which information the Purchaser warrants to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register ("PPSR");
 - not register a financing change statement as defined in section 10 of the PPSA or make a demand to alter the financing statement pursuant to section 178 of the PPSA in respect of the Goods without the prior written consent of the Company;
 - give the Company not less than 14 days' written notice of any proposed change in the Purchaser's name and/or any other changes in the Purchaser's details (including by not limited to changes in the Purchaser's address, facsimile number, email address, trading name or business practice);
 - pay all costs incurred by the Company in registering and maintaining a financing statement (including registering a financing change statement) on the PPSR and/or enforcing or attempting to enforce the security interest created by these Conditions including executing subordination agreements;
 - be responsible for the full costs incurred by the Company (including actual legal fees and disbursements on a solicitor and client basis) in obtaining an order pursuant to section 182 of the PPSA;
 - give the Company free and immediate access to its premises or places within its control to enable the Company to enforce its Security Interests;
 - procure, immediately upon request by the Company from any persons considered by the Company to be relevant to its security position, such agreement and waivers as the Company may at any time require; and
 - the Purchaser waives any rights it may have under sections 115 of the PPSA upon enforcement.
- Pursuant to section 157 of the PPSA, unless otherwise agreed to in writing by the Company, the Purchaser waives the right to receive the verification statement in respect of any financing statement or financing change statement relating to the security interest.
- The Purchaser agrees that immediately on request by the Company the Purchaser will procure from any persons considered by the Company to be relevant to its security position such agreement and waivers as the Company may at any time require.

- **Security Interest**

- The Purchaser gives the Company a Security Interest in all of the Purchaser's present and after-acquired property in which Goods or materials supplied or financed by the Company have been attached or incorporated.

Default

In the event that:

- (a) The Purchaser breaches any of its obligations comprised in these Conditions and does not remedy such default within SEVEN (7) days of written notice by the Company requiring rectification of the default; or
- (b) The Purchaser is insolvent or suffers bankruptcy proceedings to be instituted;
- (c) The Purchaser become subject to any external administration under the Corporations Law; or
- (d) A change occurs in the Purchaser's circumstances, which in the reasonable opinion of the Company, may have a material adverse affect on the ability of the Purchaser to perform its obligations hereunder;

The Company may, without prejudice to any other rights or remedies it might have;

- (a) Cancel the provision of credit to the Purchaser without notice;
- (b) Demand immediate payment of the sum equal to the price of all Goods then unpaid, together with costs and expenses referred to herein;
- (c) Forfeit any cash deposit paid to the Company;
- (d) Enter into any premises in respect of which the Purchaser has any degree of possession or control in order to recover and re-sell the Goods or the New Goods, and apply the proceeds to the payment of all monies owing to the Company by the Purchaser, whether under an agreement containing these conditions or any other agreement entered into between the Company and the Purchaser;
- (e) Suspend and/or terminate performance of any other contracts which the Company has with the Purchaser.

A document signed by an officer of the Company as the amount owing by the Purchaser is conclusive evidence of that amount, except in the case of manifest error.

Costs

In the event that payment is not made by the Purchaser in accordance with these conditions, the Purchaser must pay the Company all costs and other expenses of whatsoever nature (including all debt collection fees and commissions, and legal fees and disbursements on a solicitor/client basis) which may be incurred by the Company in recovering any sums due to it by the Purchaser.

Intellectual Property Rights

The Purchaser warrants that any design or instruction furnished to the Company shall not be such as will cause the Company to infringe any intellectual property rights (including patents, registered designs, trademarks, copyright, confidential information and the like) in the execution of the Purchaser's Order and the Buyer agrees to indemnify the Company against any infringement or unauthorised use of the intellectual property rights arising out of the manufacture of the Goods

It is especially agreed that the sale and purchase of Goods does not confer on the Purchaser any licence or rights under any intellectual property rights which is the property of the Company.

The Purchaser acknowledges and agrees that Company and/or its affiliates are the sole and exclusive owners of all trademarks, trade dress and trade names used by the Company and its affiliates in connection with the Goods and any local language variants thereof (the "Trademarks"). Any use of the Trademarks by the Purchaser shall be made only with the Company's prior written approval.

In no event shall the Purchaser or its affiliates file any application to register a trademark or a domain name or use any trademark, domain name, business name or trade style that incorporates or is confusingly similar to any of the Trademarks.

If the Purchaser files any application of any kind that incorporates or is confusingly similar to any Trademark, it shall immediately transfer such application or any rights derived therefrom to the Company or an affiliate as designated by the Company.

Governing Law

These conditions shall be governed by and construed in accordance with the laws of Western Australia and the Purchaser agrees to submit to the exclusive jurisdiction of the Courts of Western Australia..

General

- (a) If any of the Conditions is or becomes for any reason wholly or partly invalid, that Condition is to the extent of the invalidity severed without prejudice to the continuing force and validity of the remainder of the Conditions.
- (b) Any notice to be given to the Purchaser is deemed to be received by the Purchaser upon it being posted, emailed or sent by facsimile to the trading or registered address of the Purchaser addressed in the Quotation
- (c) If the Purchaser is the trustee of any trust ("the Trust") at any time, the Purchaser is nevertheless personally liable for the performance of the obligations contained in these Conditions and agrees that the Company shall be entitled to have recourse to the assets of the Trust in order to satisfy the Purchaser's obligations under these Conditions.

Entire Agreement

These Conditions contain all the terms of the agreement between the parties and supersede all prior discussions and arrangements. In the event that there is any conflict between the provisions of these Conditions and the Purchaser's Order or any record of any other agreement that the Company may have with the Purchaser, then the provisions of these Conditions shall prevail.

Notices

Any notice to be given by the Purchaser to the Company must be in writing and shall be sent to the Company's address which, until notified otherwise is 118 Dowd Street, Welshpool, WA, 6106. No notice shall be deemed to have been given until it is actually received at this address.