



## **PURCHASE ORDER TERMS & CONDITIONS**

### **Background**

- A. The Company has requested and the Contractor has agreed to commence, carry out and complete the Works as described in the Purchase Order.
- B. These terms and conditions contain the entire understanding and agreement between the parties as to the subject matter of the Purchase Order, and supersedes any earlier agreements or representations between the parties.
- C. The parties have agreed to observe, perform and abide by the terms and conditions as specified herein.

### **General Conditions**

#### **1. Definitions**

1.0 In this Agreement, except where the context otherwise requires:

**The Agreement** - means these terms and conditions and the Purchase Order, and any agreement executed by the parties expressed, in writing, to be supplemental to this Agreement.

**Business Days** – means normal working days at the Contractors' place of business between Monday to Saturday.

**Company** – means Langdon Building Pty Ltd (ABN 15 115 409 437) of 1 Napier Avenue, Alfredton, Victoria.

**Contractor** – means any individual or company which agrees to commence, carry out and complete the Works as described in the Purchase Order.

**Contract Works Policy** – means a policy of insurance providing indemnity to the Company against any liability for any physical loss, destruction or damage to the Works or Materials and goods upon or adjacent to the Site.

**Defects Liability Period** – means 52 weeks commencing on Practical Completion of the Works under the Agreement.

**Final Completion** - means when the defects liability period under the Agreement has expired.

**G.S.T** – has the meaning given to it by section 195(1) of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Practical Completion** - means the date when both the parties acknowledge in writing that the Works under this Agreement have been completed, save for any minor items of incomplete works or defects that do not prevent the Works from being occupied and used.

**Purchase Order** – means a document sent to the Contractor requesting the Contractor to commence, carry out and complete the Works specified therein at a specified price and/or rate.

**Site** – means the location at which the Works are to be carried out.

**Works** – means the works described in the Purchase Order, including but not limited to the supply of goods or services, or the carrying out of works.

**Variation** - means any additional works, increases or decreases in or omission from the Works, changes in the character or quality of any material or work, or changes in the levels, lines, positions or dimensions of any part of the Works.

## 2. The Contractor's Obligations

- 2.1 The Contractor shall be bound to supply the Works specified in the Purchase Order upon receipt of the Purchase Order from the Company.
- 2.2 The Contractor gives to the Company the following warranties under the Agreement:
  - 2.2.1 The Contractor will carry out the Works in a proper and workmanlike manner and in accordance with the Purchase Order;
  - 2.2.2 Materials supplied by the Contractor for the use in the Works will be good and suitable for the purpose for which they are used and, unless otherwise stated in the Purchase Order, those Materials will be new;
  - 2.2.3 The Contractor will carry out the Works in accordance with all laws and legal requirements including, without limiting the generality of this warranty, the *Building Act 1993* and the regulations made under that Act;
  - 2.2.4 The Contractor will carry out the Works with reasonable care and skill and will achieve Practical Completion by the date (or within the period) specified in the Purchase Order or such extended time agreed to in writing by the Company;
  - 2.2.5 The Contractor will carry out the Works and ensure that the public, and all roads and thoroughfares are protected and maintained in a safe manner at all times.
- 2.3 The Contractor must act honestly and endeavor to promote the best interests of the Company;
- 2.4 The Contractor shall cooperate and assist the Company as and when required;

- 2.5 The Contractor shall use its best endeavours to actively expand and develop the Company's business, and protect and promote the Company's good name and reputation. In particular:
- 2.5.1 The Contractor must at all times in dealings with customers, suppliers and other contractors of the Company conduct itself in a manner that is courteous, attentive and cooperative; and
  - 2.5.2 The Contractor must refrain from acting or giving the appearance of acting contrary to the interests of the Company.
- 2.6 The Contractor shall use its best endeavours and take all proper precautions to prevent the loss, destruction, embezzlement, or damage of or to any of the property of the Company or its customers.

### **3. The Company's Obligations**

- 3.1 The Company warrants that it will provide payment to the Contractor in accordance with these terms.
- 3.2 The Company warrants that it will allow the Contractor adequate access to the Site, in accordance with the reasonable requirements of the Contractor to enable it to complete the Works by the date for Practical Completion.

### **4. Variations**

- 4.1 If the Company wishes to vary the Works, the Contractor shall carry out any such Variation when requested by the Company only if:
- 4.1.1 The Company gives to the Contractor a Variation request;
  - 4.1.2 Upon receipt of the Variation request from the Company, the Contractor gives to the Company a written notice specifying the additional price of any Variation and any extra time that will be required for completion as a result of carrying out the Variation ("the Variation Notice");
  - 4.1.3 The costs of the quoted or hourly rate plus any additional cost specified in the Variation Notice shall be added to or deducted from the Price; and
  - 4.1.4 The Company gives to the Contractor a Purchase Order to proceed with the Variation.
- 4.2 The Contractor is not obliged to carry out any Variation request by The Company unless it has received a Purchase Order to proceed with the Variation from the Company. The Contractor shall not be entitled to payment for any Variation work unless the Variation work is the subject of a written Purchase Order.
- 4.3 If the Contractor wishes to vary the Works, the Contractor shall not carry out any such Variations unless:
- 4.3.1 The Contractor has given to the Company a written notice that:
    - (a) Describes the Variation; AND
    - (b) States why the Contractor wishes to make the Variation; AND
    - (c) States the effect the Variation will have on the Works; AND
    - (d) States whether or not an amendment to any permit will be required; AND
    - (e) Gives a reasonable estimate of any delay (if any) in reaching Practical Completion the Variation is likely to cause; AND
    - (f) States the cost of the Variation; AND
    - (g) States the effect of that cost on the Contract Price.

- 4.3.2 The Company has given the Contractor a written Purchase Order to proceed with the Variation.
- 4.4 The Contractor MUST not carry out any such Variation requested and/or directed by any other third party, including but not limited to the Owner of the Site, that is not the Company.
- 4.5 If the following circumstances apply:
- 4.5.1 A building surveyor or other authorised person under the *Building Act* 1993 issues a building notice or order under that Act requiring a Variation to be made; AND
- 4.5.2 the Variation arose as a result of circumstances beyond the control of the Contractor –
- the Contractor shall not carry out any such Variations unless it has complied with the procedure required by Clause 4.3.

## 5. Payments

- 5.1 The Contractor will give to the Company written payment claims within fourteen (14) days after the Works reach Practical Completion.
- 5.2 The Contractor shall submit payment claims to the Company via:
- 5.2.1 Post to the address 1 Napier Avenue, Alfredton, Victoria 3350; or
- 5.2.2 Email to the address specified on the Purchase Order.
- 5.3 Each payment claim submitted by the Contractor to the Company will show the following details:
- 5.3.1 The Purchase Order number;
- 5.3.2 The name of the Contractor and ABN number;
- 5.3.3 The Site address;
- 5.3.4 The sum paid or to be paid by the Company under the Purchase Order and all Stages completed to date including:
- (a) The date and time of attendances;
- (b) The breakdown of labour and material cost; and
- (c) An indication whether the labour has been charged at normal or after hours' rates.
- 5.3.5 The amount of all completed Variations to date, together with a schedule of all such Variations;
- 5.3.6 The total sum of 5.3.4 and 5.3.4 above;
- 5.3.7 The total sum of payments already made by the Company to the Contractor, together with a schedule of all such payments;
- 5.3.8 The amount claimed by the Contractor taking into account all payments already made by the Company to the Contractor under the Purchase Order; and
- 5.3.9 All Safe Work Method Statements or Job Safety Analysis forms (if applicable).
- 5.4 The Company will only make payments to the Contractor in accordance with the payment claims submitted to the Company pursuant to this clause 5 of the Agreement.
- 5.5 The Company shall pay the Contractor's payment claims made pursuant to clause 5 of the Agreement within the thirty (30) days after the end of the month when a payment claim is submitted.

- 5.6 On Practical Completion, the Contractor shall give to the Company:
- 5.6.1 A Job Report; AND
  - 5.6.2 A written notice:
    - (a) Stating that the Works are complete and the date on which the Works reached Practical Completion; AND
    - (b) Requesting a final inspection of the Works by the Company at a date and time specified in the notice.
- 5.7 For the purposes of this clause, 'Job Report' should include at least 4 photographs evidencing the quality and workmanship of the Contractor's work, including at least 1 photograph of the front of the site and a before and after photograph of the Works.
- 5.8 If at the final inspection of the Works the Company agrees that no defects exist and the Works have reached Practical Completion, then the Company shall pay the Final Claim to the Contractor in accordance with clause 5.

## **6. Insurance**

- 6.1 The Contractor will comply with all laws relevant to worker compensation applicable to all workers engaged in the Works.
- 6.2 The Contractor shall insure against personal accident and any legal liability, loss, claim or proceeding whatsoever arising at Common Law or by virtue of any statute relating to workers' compensation to or by any person employed by the Contractor or for whom the Contractor is responsible.
- 6.3 The Contractor must take out prior to commencing, and maintain until completion of the Works, public liability insurance for an amount of cover not less than that directed by the Company.
- 6.4 The Contractor's public liability insurance policy must indemnify the Company against liability for:
- 6.4.1 the personal injury or death of any person caused by accident; and
  - 6.4.2 loss or damage to the property –
    - arising out of the Works from the Commencement Date until Completion of the Works.
- 6.5 The Contractor shall before commencement of these Works furnish to the Company written evidence that such insurances are valid and shall remain valid for the duration of the Agreement.

## **7. Indemnity**

- 7.1 The Contractor indemnifies the Company against:
- 7.1.1 loss or damage to property (including the Works); and/or
  - 7.1.2 claims in respect of personal injury or death; and/or
  - 7.1.3 any liability that the Contractor may suffer or incur under a statutory warranty in connection with the Works;
- arising out of, connected to or as a consequence of the Contractor carrying out or failing to carry out the Works or breaching this Agreement.

7.2 The Contractor shall not be liable to indemnify the Company if the loss, claim or liability arises as a result of the acts or omissions of the Company or any person or entity for whom the Company is responsible.

## **8. Assignment/Subletting**

8.1 The Works to be carried by the Contractor or its employees and delegates are Works pursuant to the Contractor's regular trade and will not be sublet or assigned without the Company's prior written consent.

8.2 If the Company gives the Contractor written consent to sublet or assign the Works, the Contractor is free to sublet or assign the Works to an employee of the Contractor. The Contractor is liable and responsible for the payment of its employees and delegates in regard to the subletting or assignment of the Works.

## **9. Trade Waste/Site Clean**

9.1 The Contractor shall take reasonable steps to keep the site where the Works are being carried out in a reasonably neat and tidy condition during the carrying of the Works.

9.2 All trade waste from the Contractor's own work and materials supplied shall be removed to the areas nominated by the Company or offsite.

9.3 Any untidiness resulting from such Work shall be made good by the Contractor at its own cost.

9.4 If the Contractor fails to comply with its obligations under this Clause 9 of the Agreement, the Company may rectify the Contractor's breach and back-charge the Contractor accordingly.

## **10. Defects**

10.1 At any time during the Defects Liability Period or prior to Practical Completion, the Company may claim that defects exist in the Works.

10.2 If the Company claims any defects exist, or the Works are in any way incomplete or not in accordance with the Purchase Order, then the Company shall give to the Contractor a written list specifying such items ("notification").

10.3 The Contractor must commence to rectify any necessary outstanding items listed on the defects list within ten (10) business days of such notification or if any necessary Materials are unavailable, such other period as agreed between the parties.

10.4 The Contractor shall rectify and make good any necessary outstanding items listed in a defects list at its own expense.

10.5 Upon completion of all necessary outstanding items stated in a defects list given under clause 10.2 the Company will pay the Final Claim to the Contractor in accordance with clause 5.

10.6 If after written notification from the Company the Contractor does not commence

to rectify the defects within 10 business days, or such other period agreed between the parties, the Company may rectify the defects or engage others to do so. The cost of such rectification will be a debt due and payable by the Contractor to the Company.

10.7 The Company shall be entitled to set off any monies owed by it to the Contractor against any monies whatsoever owed or likely to be owed to it by the Contractor.

## **11. Extensions of Time / Program of Works**

11.1 If the progress of the Works is delayed by:

11.1.1 Any Variations under the Agreement; OR

11.1.2 Any disruptions or delays caused by the actions of the Company, the Company's agents or contractors, or the Owner of the Site; OR

11.1.3 Any other cause beyond the reasonable control of the Contractor including any act or omission by any person engaged by the Company or the Owner of the Site relating to the Works - the Contractor must within five (5) business days by notice in writing advise the Company of the cause and the reasonable estimated length of delay.

11.2 After receiving a clause 11.1 notice from the Contractor, the Company may within 10 days of receiving the request from the Contractor dispute or reject the estimated length of the delay stated in the Contractor's notice.

11.3 If the Company does not agree to the Contractor's request for an extension of time, the parties shall meet to attempt resolve the difference pursuant to clause 15.

11.4 If requested by the Company, the Contractor shall provide a program showing expected start and finish dates for all stages between commencement and Practical Completion, but such program may be adjusted pursuant to any approved extension of time.

11.5 If the Contractor does not within five (5) business days give notice in writing to advise the Company of a delay, then the Contractor is not entitled to claim an extension of time to reach Practical Completion.

11.6 If the Works have not reached Practical Completion by the date for Practical Completion, or any extended date for Practical Completion following the granting of extension(s) of time, then the Contractor shall pay liquidated damages to the Company at the rate specified at \$200 per week.

11.7 If the reason for a delay pursuant to clause 11.5 is agreed to be not within the control or responsibility of the Contractor, the Contractor shall not be liable to pay liquidated damages in regard to the period of that delay.

## **12. Interpretation of Documents**

12.1 If the Contractor discovers any inconsistency, ambiguity or discrepancy in or between the plans and the specifications, the Contractor must notify the Company in writing. The parties agree to consult with each other to attempt to

resolve the discrepancy or ambiguity, and such consultation shall occur as soon as practicable to ensure resolution in a timely way.

### **13. Default By The Contractor**

#### 13.1 If the Contractor:

- 13.1.1 becomes insolvent or bankrupt, enters into administration; or
- 13.1.2 assigns or sublets all or any part of this Agreement without the written consent of the Company; or
- 13.1.3 breaches any of its obligations pursuant to clause 3; or
- 13.1.4 refuses or persistently neglects to comply with this Agreement; or
- 13.1.5 fails without reasonable cause to complete the Works by the date for Practical Completion or without reasonable cause wholly suspends the Works before Practical Completion or abandons the Works - then the Contractor shall be deemed to be in default.

13.2 If clause 13.1 applies, the Company shall be entitled to serve a Notice of Default on the Contractor specifying the default(s) and requiring the Contractor to remedy the default(s) within 5 business days of service of the Notice.

13.3 If the Contractor does not remedy the default(s) to the Company's satisfaction within such time, the Company shall be entitled by further written Notice ("Notice of Termination") to terminate the Agreement.

13.4 The Company shall be entitled to terminate the Agreement immediately without notice if the Contractor has become insolvent, bankrupt or enters into administration, liquidation or receivership.

13.5 Should the Company serve a Notice of Termination in accordance with this Agreement, the Company shall be entitled to recover from the Contractor all loss, expense and damage caused to the Company resulting therefrom as if the Contractor had wrongfully repudiated this Agreement. This shall include but not be limited to damages for any cost over-run occasioned by having to engage alternative contractors to complete the Works.

### **14. Liquidated Damages**

14.1 If the Contractor fails to bring the Works to Practical Completion by the date for Practical Completion, the Contractor will pay or allow to the Company by way of pre-estimated and Liquidated Damages, a sum calculated at the rate of \$200 per week for the period from the date for Completion until the Works reach Practical Completion.

14.2 The amount of any Liquidated Damages may be deducted by the Company from the Final Payment only and any deficiency may be recovered by the Company as a debt due to the Company by the Contractor.

### **15. Dispute Resolution**

15.1 In the event of a dispute arising between the parties, either party may serve a written Notice of Dispute on the other requiring representatives of the parties to meet in conference within 5 business days to attempt to settle the dispute.



- 15.2 If the dispute remains unresolved after the parties have met pursuant to clause 15.1, either party may refer the dispute to Mediation by a Mediator agreed to by the parties within 28 days of the Notice of Dispute.
- 15.3 Either party may refer the dispute to litigation, expert adjudication or arbitration immediately if it appears to them that the other party is not making reasonable attempts to settle the dispute, or if mediation has not resulted in a settlement.

## 16. Confidentiality

- 16.1 The Contractor agrees to respect the confidentiality of information and documents to which the Contractor has been given access to by the Company in the course of or arising from this Agreement with the Company or any of its related entities.
- 16.2 “Confidential information” includes all information and data disclosed to the Contractor by the Company or any of its related bodies corporate in the course of this Agreement, including without limitation:
- 16.2.1 designs, plans, drawings, specifications and models;
  - 16.2.2 financial, technological, strategic or business information;
  - 16.2.3 trade secrets, know-how, processes, techniques, source and object codes, software or computer records;
  - 16.2.4 business and marketing plans and projections;
  - 16.2.5 details of agreements and arrangements with third parties;
  - 16.2.6 the terms of this Agreement;
  - 16.2.7 customer information and lists; and/or
  - 16.2.8 any other information obtained by the Contractor or obtained in the course of this Agreement with the Company, that is by its nature confidential.
- 16.3 The Contractor must not during the course of or after the termination of the Agreement, directly or indirectly use or disclose (or attempt to use or disclose) any Confidential information for any unauthorised purpose including any benefit to the Contractor or any other person except in the following circumstances:
- 16.3.1 the disclosure is to a director, an employee, an agent, a contractor, an adviser, a financier, an officer or representative of the Contractor who requires it for or in relation to the Works pursuant to this Agreement;
  - 16.3.2 the disclosure is to a third party where the Company consents in writing to the disclosure to that person; or
  - 16.3.3 the disclosure is required by law.
- 16.4 The Contractor agrees to use its best endeavours to secure custody of confidential information in its control or possession and to prevent the use or disclosure of Confidential information by any person. The Contractor undertakes to use a standard of care no less rigorous than that which the Contractor uses to keep its own Confidential information secure, in order to keep the Company’s Confidential information secure.
- 16.5 When requested by the Company, the Contractor must deliver to the Company all forms of any Confidential Information under the Contractor’s possession, power or control within 14 days of the written request by the Company.

- 16.6 The Contractor acknowledges that the Confidential Information and all intellectual property rights in the Confidential information are and must remain the exclusive property of the Company.
- 16.7 The Contractor's Confidential Information obligations under this Agreement continue to apply even if this Agreement ends or is terminated.
- 16.8 The Contractor indemnifies, and must keep indemnified, the Company and any of its related bodies corporate against any loss or claim to the extent that the loss or claim arises from or is connected in any way with:
- 16.8.1 a failure of the Contractor to meet any of its obligations with respect to confidentiality under this Agreement;
  - 16.8.2 a failure by any third party to whom Confidential Information is disclosed by the Contractor under clause 16.3.2 of this Agreement, to keep the Confidential Information confidential as though that person were a party to this Agreement in place of the Contractor.
- 16.9 The Contractor acknowledges that monetary damages may not be a sufficient remedy for any breach of clause 16 of this Agreement and that the Company is entitled to equitable relief in addition to all other remedies.

## **17. Occupational, Health and Safety**

- 17.1 The Contractor shall comply with all necessary Occupational, Health and Safety requirements and its representatives shall ensure that in carrying out the Works, no person (whether employed by it or otherwise) is exposed to a reasonably foreseeable risk to their health, safety and wellbeing.
- 17.2 The Contractor shall ensure their employees are inducted into the Company's OHS Induction programme prior to commencing work on any of the Company's construction sites and participate in annual refresher training into the Company's Induction Programme via SafeWork ID™.
- 17.3 The Contractor shall provide task specific Safe Work Method Statements for its representatives on site for high risk construction work, including but not limited to
- 17.3.1 Where there is a risk of a person falling more than 2 metres.
  - 17.3.2 Work that involves, or is likely to involve structural alterations that require temporary support to prevent collapse.
  - 17.3.3 Work that is carried out in or near a shaft or trench with an excavated depth greater than 1.5 metres.
  - 17.3.4 Work that is carried out on or near pressurised gas distribution mains or piping.
  - 17.3.5 Work that is carried out on or near energised electrical installations or services.
  - 17.3.6 Work that is carried out on or adjacent to roadways, railways or other traffic corridor that is used by traffic other than pedestrians.
  - 17.3.7 Work that is carried out in an area at workplaces where there is any movement of powered mobile plant.
- 17.4 Where the Contractor cannot provide a Safe Work Method Statement for high risk construction work, or when the Company deems the Safe Work Method Statement is inadequate for the task, the Contractor shall either amend the Safe Work Method Statement to suit the working environment or ensure representatives on site have access to the Company's Safe Work Method Statements for such high risk construction work via SafeWork ID™.
- 17.5 The Contractor shall ensure that their employees are inducted into, review and sign-off on task specific Safe Work Method Statement (for high risk construction work) and the Pre-start Job Safety Analysis where applicable; and have adequate

- training, skills and competencies to perform the task.
- 17.6 The Contractor shall ensure there is adequate supervision provided at all times while on site.
- 17.7 The Contractor shall ensure that their employees conduct a Pre-start Job Safety Analysis where site specific safety hazards are identified that are not covered in the Safe Work Method Statement, prior to commencing work on that day.
- 17.8 The Contractor shall ensure employees have access to the Company's OHSMS and licensed version of SafeWork ID™ at all times while working on the Company's construction sites.
- 17.9 The Contractor shall ensure that their Supervisor on site has access to a Smart Phone and/or Tablet to enable access to SafeWork ID™.
- 17.10 The Contractor shall ensure there is a person suitably trained in First Aid (Level 2 minimum) and that a First Aid Kit and suitable fire extinguisher is on site at all times when their employees are performing work on that site.
- 17.11 The Contractor shall ensure all representatives comply with the requirements of the Company's OHS Policy, OHS Management System, relevant Occupational, Health and Safety related Acts, Regulations and Codes of Practice while working on any of the Company's construction sites.

## **18. Miscellaneous**

- 18.1 The Contractor shall not permit the Owner of the Site access to the Site unless:
- 18.1.1 The Company has given to the Contractor written authorisation to permit the Owner of the Site to access the Site; AND
- 18.1.2 A Company representative accompanies the Owner of the Site to view any part of the Works.
- 18.2 The Contractor shall indemnify the Company in relation to loss, damage or claims arising as a result of any breaches by the Contractor of the legislation relating to occupational, health and safety or industrial relations, including but not limited to monetary claims and claims for extensions of time.
- 18.3 The Contractor's agreed Price as confirmed in Purchase Order includes all allowances for labour and material costs within the scope of the Works and no additional costs for overtime rates for weekend or after hours labour shall be claimable against the Company.
- 18.4 If any clause or provision of this Agreement is found by any court or tribunal to be void, ineffective or unenforceable, that clause or provision shall be severed from this Agreement and the remaining provisions and clauses of the Agreement shall remain effective and enforceable.
- 18.5 The laws of the State of Victoria shall govern this Agreement.