

**PURCHASE ORDER TERMS &
CONDITIONS FOR SUPPLY OF
GOODS & MATERIALS**

By accepting this Purchase Order, the Supplier named in the Schedule agrees to supply the Goods and/or Services subject to the conditions set out below.

TERMS & CONDITIONS

1. Definitions

- 1.1 *"Code"* means the Australia Government "National code of Practice for the Construction Industry 2006" together with the Implementation Guidelines to the Code, or any document(s) replacing or amending them as may be issued from time to time.
- 1.2 *"Goods"* means such articles, products, materials, incomplete or unfinished items or components as are set out or described at Item 3 of the Schedule to this Order.
- 1.3 *"Information"* means all information whether in electronic, documentary, oral, or three-dimensional form supplied or to be supplied to a party to this Order including but not limited to plans, drawings, designs, blueprints, specifications, performance specifications or requirements (however described), component or item lists, price lists, process instructions, instructions, manuals, manufacturing data, trade secrets, know-how, computer programs, models, and any other thing capable of constituting intellectual property.
- 1.4 *"Order"* means this Order and includes these terms and conditions, all Schedules, any other documents referred to in this Order, any Information provided by GWH BUILD PROJECTS PROJECTS in connection with this Order, any supplementary orders, and any variation or instruction given in accordance with this Order.
- 1.5 *"GWH BUILD PROJECTS"* means whichever of GWH Build Projects Pty Ltd (ABN 50-602-439-547). GWH Build Projects Pty Ltd is Australian company having their registered office at 40 Glenwood Drive, Thornton, in the State of New South Wales.
- 1.6 *"Supplier"* means the entity named at Item 2 of the Schedule to this Order.
- 1.7 *"Tools"* means any tool manufactured or supplied, or to be manufactured or supplied, to GWH BUILD PROJECTS by the Supplier in accordance with the terms of this Order.

2 Agreement

- 2.1 Subject to clause 4.1(d), this Order constitutes the entire agreement between GWH BUILD PROJECTS and the Supplier and supersedes all representations, prior arrangements, understandings and negotiations in respect of the matters dealt with in this Order. The parties expressly acknowledge that no representations or warranties have been given by either of them other than those contained in this Order.
- 2.2 The Supplier acknowledges that any condition in any offer or quotation given by the Supplier which is directly or indirectly inconsistent with any term of this Order is void and of no effect, whether given before or after the date of this Order.
- 2.3 This Order may be varied only by further agreement in writing executed by both parties.
- 2.4 After accepting this Order the Supplier may not suspend, rescind or terminate this Agreement other than in accordance with the terms of this Order.
- 2.5 Time shall be of the essence of the Supplier's obligations under this Order.

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- 2.6 The Supplier may not assign or subcontract this Order or any part of it without GWH BUILD PROJECTS's prior written consent, which shall not unreasonably be withheld.

3 Acceptance

- 3.1 The Supplier shall be deemed to have accepted the Order upon:
- (a) signing and returning a copy of the Order to GWH BUILD PROJECTS; or
 - (b) signing and returning any acceptance or acknowledgement slip to GWH BUILD PROJECTS; or
 - (c) indicating in writing or by email that it has accepted the Order; or
 - (d) by supplying, ordering or commencing manufacture of any of the Goods to be supplied under this Order.

4. Warranties by Supplier

- 4.1 The Supplier hereby warrants that, notwithstanding inspection or acceptance by GWH BUILD PROJECTS, any Goods supplied under this Order shall:
- (a) be new unless otherwise specified or permitted under this Order;
 - (b) be of merchantable quality;
 - (c) be fit any purpose for which such goods are usually used, or for any purpose for which a reasonably anticipate that they might be used;
 - (d) be fit for use for such purpose or in such conditions as GWH BUILD PROJECTS has made known to the Supplier (whether specified in this Order or otherwise);
 - (e) correspond to any sample supplied by either GWH BUILD PROJECTS or the Supplier; and
 - (f) be free from all defect (including latent defects) whether in design, performance, manufacture, materials or workmanship;
 - (g) comply in all respects (including design, construction or manufacture, materials (including the source of the materials), quality and packaging) with all relevant statutory requirements and applicable standards.
- 4.2 Unless otherwise stated in writing, the Supplier hereby warrants that neither supply by it of the Goods, or any part or component of them, nor GWH BUILD PROJECTS's use of Goods, for any purpose reasonably contemplated under the Order will not infringe any Intellectual Property Rights owned by a third party.

5 Indemnities by Supplier

- 5.1 The Supplier hereby indemnifies GWH BUILD PROJECTS against any liability, claim, demand, loss or damage, including claims for consequential damages, loss of profit, costs and the costs of settling any pending or threatened proceedings) whether arising directly or indirectly from or in connection with:
- (a) any breach of the Order;
 - (b) any loss or damage to property or injury to or death of persons where such loss or damage, injury of death is caused by or contributed to directly or indirectly by any defect in any material provided by the Supplier under this Order and notwithstanding that such material may have been used, resold or incorporated into any other things;
 - (c) any failure by the Supplier to deliver the Goods in accordance with the terms of this Order;
 - (d) the infringement of a third party's Intellectual Property Rights by GWH BUILD PROJECTS's use for a purpose reasonably contemplated by the Order of any such material provided by the Supplier.
- 5.2 Notwithstanding clause 5.1, the Supplier shall not be required to indemnify GWH BUILD PROJECTS to the extent that any liability, claim or demand, loss or damage arises directly from any act, omission or negligence of any of GWH BUILD PROJECTS's officers, employees, contractors or agents.

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6. Delivery, Risk & Property

- 6.1 The Supplier must deliver the Goods or any part of them in accordance with the terms of this Order and at the time(s) and place(s) specified by GWH BUILD PROJECTS.
- 6.2 GWH BUILD PROJECTS may amend the time(s), place(s) and manner of delivery of the Goods at any time by giving notice in writing to the Supplier.
- 6.3 Delivery of the Goods or any portion of them, where the Goods are to be delivered in stages or instalments, shall occur when the Goods or a portion of the Goods has been unloaded within the store or other place for delivery nominated by GWH BUILD PROJECTS and a person authorised by GWH BUILD PROJECTS to receive the Goods has signed a delivery docket acknowledging receipt of the Goods (or that portion of them) and that person has been given a copy of the signed docket.
- 6.4 Except as provide in clause 6.6, risk and property in any Goods delivered to GWH BUILD PROJECTS shall pass irrevocably to GWH BUILD PROJECTS on delivery and shall not be subject to any lien, security, or reservation or retention of title for the benefit of the Supplier or any third party. Any such purported lien, security or reservation or retention of title shall be void and of no effect except to the extent that GWH BUILD PROJECTS shall have specifically agreed to it in writing prior to delivery.
- 6.5 The Supplier shall do all things necessary to ensure that all its subcontractors and suppliers comply with clause 6.4 and that no subcontractor or supplier shall have or assert any lien, security or reservation or retention of title of any goods or things supplied or manufactured by them in connection with the Goods the subject of this Order.
- 6.6 Where this Order requires progress payment or payment prior to delivery:
- (a) on GWH BUILD PROJECTS's making payment with the Order, property in all finished and unfinished Goods and all things acquired, allocated or appointed for the production of the Goods, irrespective of their incorporation in the Goods of their location, shall vest irrevocably in GWH BUILD PROJECTS;
 - (b) the Supplier shall do all things necessary to protect such Goods until the Supplier delivers them to GWH BUILD PROJECTS in accordance with the Order;
 - (c) risk in such Goods shall not pass to GWH BUILD PROJECTS until delivery occurs;
 - (d) the Supplier shall ensure that until delivery such goods are insured for their full replacement value against loss or damage and that GWH BUILD PROJECTS is noted as a beneficiary under the relevant policy in respect of its interest in such goods.

7. Rejection

- 7.1 Notwithstanding delivery, any inspection by GWH BUILD PROJECTS of the Goods or any part of them, or part or full payment by GWH BUILD PROJECTS, and without prejudice to any other rights available to it, where any Goods supplied by the Supplier are defective (including any latent defect) or do not comply in all respects with this Order or with the information (including any information provided after the date of the Order but prior to the date the Supplier ordered or commenced production of the rejected Goods, proof of which latter date shall rest on the Supplier), GWH BUILD PROJECTS may at any time and at its absolute discretion either:
- (a) Reject any or all such Goods; or
 - (b) Accept such Goods
- subject to whichever of clauses 7.2 or 7.3 applies.
- 7.2 Where GWH BUILD PROJECTS rejects any Goods:

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- 7.3 Where GWH BUILD PROJECTS accepts such Goods it shall be entitled to credit or repayment from the Supplier to the extent that the Goods accepted by it are of less value than they would have been had they been free of defects or had complied fully. GWH BUILD PROJECTS shall make a reasonable valuation of any such credit or repayment. Any dispute concerning such valuation shall be dealt with by the Dispute Settlement Procedures under this Order.
- 7.4 In either case, GWH BUILD PROJECTS shall be entitled to recover from the Supplier all damages, losses, costs and expenses arising out of or as a consequence of the supply by the Supplier of Goods to which clause 7.1 applies, including any consequential loss or loss of profits and any costs incurred by GWH BUILD PROJECTS in obtaining replacement Goods. GWH BUILD PROJECTS shall be entitled to recover such amounts as debt due and payable to it by the Supplier.
8. Pricing, Invoicing & Payment
- 8.1 The price noted at Item 4 of the Schedule to this Order is firm and is not subject to rise and fall.
- 8.2 The Supplier shall be entitled to payment only after delivery of the Goods or at the stages specified in this Order, as indicated at Item 5 of the Schedule, and subject to the following:
- (a) the Supplier giving GWH BUILD PROJECTS a claim for payment which clearly specifies the Goods for which payment is claimed together with a Tax Invoice in proper form in accordance with the applicable taxation legislation; and
 - (b) if required to do so by GWH BUILD PROJECTS, the Supplier provides a Statutory Declaration in the form required by GWH BUILD PROJECTS declaring that all of the Supplier's employees and workers and the Supplier's subcontract and suppliers have been paid all monies due and payable to them at the date of the Supplier's claim for payment.
- 8.3 Subject to any other provision of this Order, GWH BUILD PROJECTS shall make payment to the Supplier within 45 days after the end of the calendar month in which the Supplier complied with clause 8.2.
- 8.4 Payment shall be deemed to have been made on the earlier of the date on which the Supplier actually Received payment or the date on which GWH BUILD PROJECTS's cheque was drawn in payment of the Supplier's claim.
9. Insurances
- 9.1 The Supplier shall ensure 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 Supplier or for whom the Supplier is responsible.
- 9.2 The Supplier shall indemnify GWH BUILD PROJECTS against liability to any other person in respect of injury, loss or damage to persons or property arising out of the wilful or negligent act or omission of the Supplier, its employees or agents and shall effect a Public Risk and Product Liability policy for an amount not less than \$20,000,000 or such other amount as may reasonably be required by GWH BUILD PROJECTS.
- 9.3 Where this order requires the Supplier to prepare and review designs, specifications and the like and such work is not trivial or only incidental, the Supplier must effect a policy of Professional Indemnity insurance as indicated at item 6 of the Schedule, the terms of which shall comply with GWH BUILD PROJECTS's requirements as notified in writing at or prior to the placement of this Order. This policy, the levels of cover and the excess deductible shall be maintained for a period of at least 6 years after the last delivery of any Goods provided under this Order.

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- 9.4 Before commencing any work under this Order and at any time thereafter in accordance with GWH BUILD PROJECTS's request, the Supplier shall provide GWH BUILD PROJECTS with evidence to its reasonable satisfaction that all of the above insurances are in place and shall remain valid for the duration of the Agreement.
10. National Code of Practice
- 10.1 Unless otherwise indicated at Item 7 of the Schedule, the Commonwealth Government Code of Practice for the Construction Industry 1997" and the Implementation Guidelines made under the Code as these documents may be amended from time to time or any document which might replace them [collectively "the Commonwealth Code"] apply to this Order.
- 10.2 If the Commonwealth Code applies, the following conditions apply as terms of this Order:
- (a) The Supplier must comply with 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 (the Guidelines), revised September 2005, and reissued June 2006. [Note: copies of the Code and Guidelines are available at www.workplace.gov.au/building.]
 - (b) Compliance with the Code and Guidelines shall not relieve the Supplier from responsibility to perform its obligations in accordance with this Order, or from liability for any defect in the Goods from compliance with the Code and Guidelines.
 - (c) Where a change in the Order is proposed and that change would affect compliance with the Code and Guidelines, the Supplier must submit a report to the Commonwealth specifying the extent to which the Supplier's compliance with the Code and Guidelines will be affected.
 - (d) The Supplier shall maintain adequate records of the compliance with the Code and Guidelines by:
 - (i) the Supplier;
 - (ii) its Subcontractors;
 - (iii) its consultants;
 - (iv) its material suppliers (see Guidelines for meaning including section 2.1 of the Guidelines); and
 - (v) its Related Entities (see Guidelines for meaning including section 2.6 of the Guidelines).
 - (e) If the Supplier does not comply with the requirements of the Code or the Guidelines in the performance of this Contract such that a sanction is applied by the Minister for Employment and Workplace Relations, the Code Monitoring Group or the Commonwealth, without prejudice to any rights that would otherwise accrue, those parties shall be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Supplier or related entity in respect of work funded by the Commonwealth or its agencies.
 - (f) The Supplier must not appoint a subcontractor, consultant or material supplier in relation to the supply of the Goods under this Order where the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations.
 - (g) The Supplier agrees to require that it and its subcontractors, consultants or material suppliers and its related entities provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australia Building and Construction Commissioner, with access to:
 - (i) inspect any work, material, machinery, appliance, article or facility;
 - (ii) inspect and copy any record relevant to the Project and Works the subject of this Contract;and

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(iii) interview any person
as is necessary to demonstrate its compliance with the Code and Guidelines.

(h) Additionally, the Supplier agrees that the Supplier and its related entities will agree to a request from 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, to produce a specified document within a specified period, in person, by fax or by post.

(i) For the avoidance of doubt, Clause (h) applies in relation to the Supplier's new privately funded work.

(j) The Supplier shall ensure that all subcontracts impose obligations on the subcontractors equivalent to the obligations under these clauses 10.2(a) to (h).

11. Dispute Resolution

11.1 In the event that a party to this Order is in dispute with the other concerning any matter under this Order, the party may give the other party a Notice in writing setting out briefly the nature of the matters in dispute [the "Notice of Dispute"].

11.2 Within 7 calendar days of the party receiving the Notice of Dispute, the parties shall meet to try to resolve the dispute or, if this is not possible, to agree on a mediator or expert to assist them in resolving the dispute by mediation or expert determination, whichever the parties may agree is appropriate.

11.3 If within a further 7 calendar days the parties cannot reach agreement on the issues referred to in clause 11.2, the dispute shall be and hereby is referred to expert determination by an expert nominated by the President for the time being of the NSW Chapter of the Institute of Arbitrators and Mediators Australia. Either party may request the nomination of an expert.

11.4 The expert shall act as an expert not as an arbitrator and shall conduct the determination in accordance with the Institute's Expert Determination Rules. The expert's determination shall be final and binding.

12. General

12.1 The following shall apply to the interpretation of this Agreement:

- (a) Words denoting the singular include the plural and vice versa where the context so requires; words denoting one gender include the other; words denoting individuals include corporations and unincorporated organisations, and vice versa; and
- (b) headings and notes are provided for assistance only and do not form part of this Order.

12.2 This Order is governed by and is to be construed in accordance with the laws from time to time in force in the State of New South Wales and unless otherwise agreed in writing, the parties irrevocably submit to the exclusive jurisdiction of the Courts and Tribunals of that State and any Courts or Tribunals competent to hear appeals from those Courts.

12.3 If any provision of this Order is held to be invalid or unenforceable for any reason, it shall be severable and shall not affect the remaining provisions of the Order.

12.4 Failure or omission by GWH BUILD PROJECTS at any time to enforce or require strict or timely compliance with any provision of this Order shall not affect or impair that provision in any way or GWH BUILD PROJECTS's rights to avail itself of the remedies it may have in respect of any breach of any such provision.

12.5 Any notice or other communication under this Order shall (unless otherwise specified) be in writing

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and delivered personally or given by ordinary pre-paid post or facsimile to a party at the address of the party shown in this Agreement or such other address as the party may from time to time notify to the other in writing. The following shall apply:

- (a) notices or correspondence sent by ordinary post shall be deemed to have been received on the third day after posting, subject to proof of the date of actual receipt. Proof of posting shall be on the sender.
- (b) facsimile shall be deemed to have been received on the date shown on a transmission confirmation slip produced by the sending machine. Proof of receipt on a date other than the date shown on such a transmission confirmation slip shall be on the party disputing the date.