



CONDITIONS OF PURCHASE

1. DEFINITIONS

In these conditions:

"Buyer" means Gordon Brothers Industries Pty Ltd (ABN 54 160 126 456);

"Seller" means the person, firm or company to whom the Order is addressed;

"Completion Date" means the completion date (if any) specified in the Order;

"Consequential Loss" includes, without limitation, economic loss, loss of contract, loss of profit or revenue, loss of business opportunity or business, loss of production, production stoppage, loss of customers, loss of goodwill or reputation, loss of value of intellectual property, loss or damage resulting from the loss or damage to goods other than the Goods, loss of data, and any additional cost of goods, services, travel or labour incurred by the Buyer as a result of any relevant breach of these conditions by the Seller;

"Defects Liability Period" means the defects liability period (if any) stated in the Order;

"Goods" means the articles, things, services or any of them to be provided by the Seller as described in the Order, including as they may be repaired in accordance with these conditions and including any replacements provided in accordance with these conditions for such articles, things or services;

"Head Contract" means any head agreement between the Buyer and its customer which relates to the Goods, Services or Works provided by the Seller under this Order.

"OHS Act" means the *Occupational Health and Safety Act 2004* (Vic);

"OHS Regulations" means the *Occupational Health and Safety Regulations 2017* (Vic);

"Order" means the order placed by the Buyer for the supply of the Goods by the Seller and/or installation of the Goods by the Seller;

"Services" means any services to be performed by the Seller as described in the Order.

"Works" means any work, including the installation of the Goods, to be performed by the Seller as described in the Order including the provision of labour, materials and construction plant.

2. STATUS OF CONDITIONS

These conditions are incorporated into and form part of the contract between the Seller and the Buyer. The entire contract between the Seller and the Buyer, save for the terms thereof implied by statute or otherwise by law (to the extent not limited or excluded by these conditions), is set out in the Order and in these conditions and all other terms are hereby excluded.

3. QUALITY AND DESCRIPTION

(i) It is of the essence of this contract that the Goods supplied by the Seller shall:

(A) conform:

(1) as to quantity, quality and description with the particulars stated in the Order; and

(2) in all respects with the requirements of applicable Australian laws, Australian Standards, statutes, rules or orders in force at the date of completion of the Order;

(B) be of sound materials and workmanship;

(C) be equal in all respects to the samples, patterns or specification provided for the purpose of supplying the Goods;

(D) be capable of any standard of performance specified in the Order;

(E) be fit for the particular purpose for which the Buyer requires them; and

(F) not otherwise be materially defective.

(ii) To the extent that more than one standard or requirement of quality, workmanship or quantum is applicable to the Goods, Services or the Works, the higher standard or requirement shall prevail.

4. SERVICES AND WORKS

(i) The Seller must carry out and complete the Services and Works, each as detailed in the Order.

(ii) The Seller:

(A) must carry out the Services and Works with the level of care, diligence and skill reasonably expected of a properly qualified and experienced contractor to the reasonable satisfaction of the Buyer;

(B) must perform the Services and Works in accordance with the requirements of any specification, drawings or other documents referred to in the Order and in compliance with all relevant statutory authorities and all relevant laws;

(C) must, where possible, carry out any Works likely to cause noise, vibration or other disturbance in accordance with the Buyer's directions; and

(D) must ensure that goods or materials supplied incidental to the Works, are new, of merchantable and satisfactory quality and fit for their intended purpose.

(iii) The Seller must ensure that the Services and Works are carried out in accordance with the requirements of the OHS Regulations and OHS Act and all regulations, advisory standards and codes of practice made under the OHS Act. If the Seller fails to do so, the Buyer may have those obligations performed by the Buyer or by others at the Seller's cost.

5. HEAD CONTRACT

(i) If the Buyer has provided the Seller with a copy of a Head Contract, the Seller must comply with and be bound by all provisions of the Head Contract to the extent they relate to the Goods, Services or Works to be performed by the Seller, as if those provisions were set out in this Order.

(ii) The Seller must indemnify the Buyer in respect of any liability arising from a breach of the Head Contract to the extent it is caused or contributed to by the Seller.

6. INTELLECTUAL PROPERTY RIGHTS

The Seller warrants that the Goods and documentation provided by the Seller, including but not limited to any design, materials, documents and methods of manufacture or working, each provided by the Seller, shall not infringe any intellectual property right, including any patent, registered design, trademark or name, copyright or other protected right. The Seller shall indemnify and keep indemnified the Buyer against any and all such infringements.

7. DRAWINGS, SPECIFICATIONS, PATTERNS, DIES, ETC.

(i) All drawings, plans, specifications, patterns, dies, moulds or other tooling supplied by the Buyer or prepared or obtained by the Seller for and at the sole cost of the Buyer (together "Buyer Supplied Items"), shall be and remain the property of the Buyer.

(ii) The Seller shall maintain all Buyer Supplied Items in good order and condition and insure them against all risks whilst in its custody and on completion of the Order or as otherwise directed by the Buyer, shall return them to the Buyer in good order and condition. Should the Seller fail so to return them the Buyer may either withhold

payment until they are so returned or withhold such part of the payment due as may be required to replace them or to restore them to good order and condition, whichever may be the less expensive.

(iii) The Seller shall not use Buyer Supplied Items, nor shall it authorise or knowingly permit them to be used by anyone else for, or in connection with any purpose other than the supply of the Goods to the Buyer unless such use is expressly authorised by the Buyer, previously and in writing.

(iv) Where the Order includes manufacture to the Buyer's designs the Seller agrees to inform the Buyer of any invention or improvement in design or method of manufacture arising out of or in connection with the Order, and if such invention be patentable to grant to the Buyer the option to take out such patents in the Buyer's name.

8. ASSIGNMENT AND SUB-CONTRACTING

The Seller shall not, without the prior consent in writing of the Buyer:

(A) assign or transfer the contract or any part of it to any other person;

(B) sublet the contract or any part of it other than for materials, minor details, or for any part of the Goods of which the makers are named in the Order or the specification, but this shall not prevent the Seller sub-letting part of the contract to any company which is a member of the group to which the Seller belongs or a company with whom the Seller is formally associated.

(ii) The Seller will be liable to the Buyer for the acts, defaults and omissions of sub-suppliers or subcontractors as if they were those of the Seller. Neither consent given by the Buyer under this clause nor any assignment or subletting by the Seller shall relieve the Seller of any of its obligations under the contract.

9. INSPECTION

The Buyer reserves the right to inspect the Goods while in the process of manufacture or when ready for despatch and the Seller shall accommodate all such inspections. No such inspection shall relieve the Seller from responsibility or liability, or be interpreted as an acceptance of such Goods.

10. DELIVERY

(i) The Seller shall at its expense deliver the Goods at the time or times specified in the Order. All Goods supplied against the Order must be marked with the Order number, packed to ensure safe transit and delivered by the Seller at, or despatched for delivery to the place or places and in the manner specified in the Order. If the Order requires it, unloading must be carried out at the delivery place by the person nominated in the Order, and upon unloading the Buyer will take delivery of the Goods.

(ii) The Buyer may direct the Seller to change the date for delivery, delivery place or the manner of delivery. If the Seller can reasonably comply with the direction, the Seller shall do so. If the Seller cannot reasonably comply, the Seller shall give the Buyer written notice of the reasons.

11. RISK AND OWNERSHIP OF GOODS

(i) Risk in the Goods shall pass to the Buyer upon the later of 14 days after delivery to the Buyer or installation (if applicable) in accordance with the contract. Unless the Goods are in the Seller's possession, the Buyer shall take reasonable measures to protect the same from loss or damage occurring after delivery but before risk has passed to the Buyer.

(ii) The Seller shall be responsible for and shall bear the cost of fully insuring Goods sent to the Seller by the Buyer for any purpose in connection with the contract against any loss or damage which may occur to them until such time as risk passes to the Buyer in accordance with the contract.

(iii) Ownership of, and unencumbered title in the Goods or any part of them shall pass to the Buyer upon payment for those Goods in accordance with the Order and clause 12 below.

12. PAYMENT

(i) At the time or times stated in the Order, the Seller shall render an invoice to the Buyer for amounts then due to the Seller pursuant to the contract. Each invoice shall include details of the Goods supplied and delivered or any Services or Works performed. Within the period stated on the Order after receiving an invoice under this clause (or, if no period is stated, 45 days), the Buyer shall pay to the Seller the amount then due to the Seller pursuant to the contract. With such payment, the Buyer shall issue a statement to the Seller setting out the calculations employed to arrive at the amount and, if the amount is less than the invoice rendered by the Seller, the reasons for the difference.

(ii) Notwithstanding anything contained in clause 12(i), the Buyer shall not be obliged to pay for Goods not yet delivered unless stated in the Order and the Seller:

(A) complies with any conditions in specified in the Order in respect of such Goods, including the provision of security if applicable;

(B) satisfies the Buyer that the relevant Goods have been paid for, properly stored and protected, and labelled the property of the Buyer; and

(C) complies with the requirements of clause 14 below.

(iv) Payment shall not be evidence that the Goods comply with the contract.

(v) The Buyer may, without limiting any other right which it may have under the contract or at law but only to the extent permitted by law, deduct from any amount owing to the Seller:

(A) any amount which the Buyer may have paid on behalf of the Seller, whether or not expressly authorised by the contract;

(B) any claim to money the Buyer may have against the Seller whether for damages in connection with the contract or otherwise; or

(C) any amount which is otherwise due and owing to the Buyer by the Seller in connection with the contract or otherwise.

Any amount remaining after such deduction may be recovered by the Buyer as a debt due and owing.

(vi) Unless otherwise stated in the Order, the price is not subject to rise and fall or any other adjustment whatsoever (including in respect of site allowances, superannuation, fluctuations in exchange rates or the costs of labour or materials, sales tax, taxes, fees, rates, or charges or otherwise).

13. MINIMUM CHARGES

The Buyer shall not be liable to the Seller for any minimum order charges unless expressly agreed in writing by the Buyer.

14. PPSA

- (i) In this clause 14, the following terms have the meaning given to them under the *Personal Property Securities Act 2009* (Cth) ("PPSA"): Amendment Demand; Financing Statement; Financing Charge Statement; Security Agreement; and Security Interest.
- (ii) The Seller acknowledges and agrees that, in order to secure the performance by the Seller of all obligations of the Seller under the contract with the Buyer, the Seller grants to the Buyer a Security Interest in any:
- (A) Buyer Supplied Items; and
- (B) Goods for which the Seller seeks any payment from the Buyer prior to their delivery to the Buyer,
- whether such Buyer Supplied Items or Goods are acquired or come into the possession or control of the Seller prior to or after the date of the contract.
- (iii) The Seller consents to the Buyer registering any one or more Financing Statements or Financing Charge Statements in respect of any Security Interest created by or contemplated under the contract, and undertakes to do all things reasonably required by the Buyer to enable the Buyer to do so.
- (iv) The Seller must promptly do anything required by the Buyer to ensure that any Security Interest granted to the Buyer is a perfected Security Interest and has priority over all other Security Interests in any Buyer Supplied Items or Goods.
- (v) The Seller agrees not to cause (directly or indirectly) the registration of a Financing Charge Statement, or the discharge of any registration, in respect of any Buyer Supplied Items or Goods or make any Amendment Demand without the Buyer's prior written consent.
- (vi) The parties acknowledge that this document constitutes a security agreement for the purposes of the PPSA.
- (vii) To the extent permissible by law:
- (A) the Seller waives its rights to receive any notice under any provision of the PPSA (including a notice of a verification statement); and
- (B) the Buyer and the Seller contract out of sections 95, 121(4), 123(2)(a), 125, 129(2), 130(1)(a), 132(3)(d), 132(4), 142 and 143 of the PPSA.
- (viii) Each of the Seller and the Buyer agree not to disclose any information of the kind contemplated by section 275(1) of the PPSA.
- (ix) The Seller agrees that it will not exercise any rights it may have under section 275(7)(c) without the prior written consent of the Buyer.

15. TIME

- (i) Unless otherwise stated in the Order, time is of the essence to the contract, and subject only to clause 15(ii) the Seller shall be solely and entirely responsible for and assume the risk of delivering and installing the Goods at the time or times specified in the Order notwithstanding the occurrence of events beyond the Seller's control which may delay delivery.
- (ii) If and to the extent that delivery by the date or dates for delivery specified in the Order or completion by the Completion Date will be delayed due to an act, default or omission of the Buyer or its agents or contractors (not being engaged by the Seller), and provided that written notice and full particulars of such delay and its consequences on the date or dates for delivery or completion are given to the Buyer within 10 days after the cause of the delay commences to operate or arose, the Buyer shall grant a fair and reasonable extension of time. The giving of notice and particulars to the Buyer as required by this clause shall be a condition precedent to the Seller's entitlement to an extension of time to the date or dates for delivery or the Completion Date.
- (iii) Notwithstanding that the Seller has not claimed or is not entitled to an extension of time to the date or dates for delivery or the Completion Date, the Buyer may at any time and from time to time grant an extension of time in its sole and absolute discretion, but shall not be obliged to exercise that discretion for the benefit of the Seller.
- (iv) The Seller will not be entitled to payment of any additional costs arising from any delay howsoever caused.

16. VARIATION

- (i) The Buyer may give to the Seller and the Seller must comply with a written instruction to vary the Works at any time prior to completion of the Services or the Works.
- (ii) The cost of the variation will be an amount as agreed by the Buyer and the Seller.

17. DELAY IN COMPLETION

If the Seller fails to complete the Works by the Completion Date, the Seller shall be liable to pay or allow the Buyer by way of liquidated and pre-ascertained damages a sum calculated in accordance with the rate stated in the Order for every day of delay until the earlier date that the Services or Works are complete, or this contract is terminated by the Buyer.

18. DEFECTS

The Seller must, before the end of the Defects Liability Period, make good any defects in the Works at its own cost. If the Seller does not promptly comply with the Buyer's direction to make good defects in the Works, the Buyer may have that work carried out by others and the cost thereby incurred by the Buyer will be a debt due and payable by the Seller to the Buyer.

19. DEFAULT AND TERMINATION

- (i) If the Seller breaches (including repudiates) the contract, nothing in this clause shall prejudice the right of the Buyer to recover damages or exercise any other right or remedy.
- (ii) If any of the Goods supplied or installed or any part thereof fail to comply with clause 3 or 4 (either upon delivery or installation, at any time during the Defects Liability Period or at any time during any longer compliance period reasonably expected by the Buyer) and whether or not the Goods or any part of the Goods shall have been accepted by the Buyer, the Buyer shall be entitled to:
- (A) the prompt replacement by the Seller of the Goods or any part thereof which in the Buyer's opinion do not conform with the contract; or
- (B) return to the Seller any Goods or any instalment of Goods or part thereof notwithstanding that title therein may have passed to the Buyer (with all costs incurred in so doing to be reimbursed by the Seller to the Buyer) and the Buyer shall not be liable to pay the price of Goods so returned but shall be entitled to the prompt return of monies paid, and to either cancel or insist on fulfilment of the remainder of the Order, if any; or
- (C) terminate the contract with immediate effect by written notice to the Seller, and to recover by way of indemnity such damages, loss and/or expense as the Buyer may have suffered in consequence of the failure to comply, including without limitation any Consequential Loss.
- (iii) Subject to clause 15(ii) above, if the Goods or any part thereof have not been delivered or installed within the time or times specified in the Order (as may be extended in accordance with clause 15(ii) or (vi)) the Buyer shall be entitled to:

- (A) return to the Seller any Goods or any instalment of Goods or part thereof notwithstanding that title therein may have passed to the Buyer (with all costs incurred in so doing to be reimbursed by the Seller to the Buyer) and the Buyer shall not be liable to pay the price of Goods so returned but shall be entitled to the prompt return of monies paid, and either cancel or insist on fulfilment of the remainder of the Order, if any; or
- (B) recover by way of indemnity such damages, loss and/or expense as the Buyer may have suffered in consequence of the failure to deliver, including without limitation any Consequential Loss; or
- (C) terminate the contract with immediate effect by written notice to the Seller.

- (iv) The Buyer may terminate the contract with immediate effect by written notice to the Seller if the Seller, being a natural person or persons commit any kind of bankruptcy, or being a corporation passes a resolution for winding-up or liquidation (other than for the purposes of reorganisation or reconstruction) or administration or enters into any composition or arrangement with creditors or if a receiver or manager or administrator or controller is appointed for any property or assets of the Seller or becomes liable to be wound-up by reason of insolvency or if any petition is presented for its winding-up, or if a liquidator or administrator is appointed.
- (v) The Buyer may terminate the contract with immediate effect by written notice to the Seller if, in the reasonable opinion of the Buyer, the Seller has failed to undertake the Services or Works in accordance with the Order, or may cause the Buyer to breach the Head Contract.
- (vi) If the contract is terminated pursuant to clauses 19(ii)(C), 19(iii)(C), 19(iv) or 19(v) above, the parties' remedies, rights and liabilities are the same as they would have been under the law governing the contract had the Seller repudiated the contract and the Buyer elected to treat the contract as at an end and recover damages, and the parties acknowledge that such damages may include, without limitation, any Consequential Loss.

20. INTERRUPTION OF BUSINESS

- (i) If during the currency of the Order the Buyer's business is stopped, interrupted or restricted due to industrial disputes or any causes outside the Buyer's control then the Order may, at the Buyer's option, be partially or wholly suspended as the case may require and the time for completion of the Order shall be correspondingly extended. The costs of any suspension under this clause shall be at the Seller's risk.

- (ii) Without prejudice to any of the Buyer's other rights and powers under the contract, the Buyer may, at any time, including in the absence of the Seller's breach or insolvency and in the Buyer's sole discretion, terminate the contract for its convenience. Such termination must be communicated to the Seller in writing and must expressly state that the contract is terminated pursuant to this clause 20(ii). If the Buyer terminates the contract under this clause 20(ii), then, subject to the obligation of the Seller to mitigate its costs and expenses, the Seller shall be entitled to be paid the cost of goods or materials reasonably ordered by the Seller for the fulfilment of the Order with the Buyer, which the Seller is contractually liable to accept, but only if the goods or materials become the property of the Buyer upon payment. The Buyer's liability to pay the Buyer under this clause shall be capped at the price stated in the Order. The Seller's right to payment as aforesaid shall be its sole and exclusive remedy arising out of or in connection with a termination by the Buyer under this clause 20(ii).

21. INSURANCE

- (i) The Seller must effect and maintain the following insurances until the end of the Defects Liability Period:
- (A) workers' compensation or like insurance required by law for its workers and deemed workers as required by law;
- (B) public and products liability insurance for not less than the amount stated in the Order;
- (C) comprehensive motor vehicle insurance; and
- (C) where the Seller personally performs work on site, personal accident and disability insurance for the Seller affording cover at least equivalent to that afforded to an employees by a policy of the type referred to in clause 21(i)(A).
- (ii) The Seller must provide evidence of currency of its insurances prior to commencing Works.

22. INDEMNITY

To the maximum extent permitted by law, the Seller shall indemnify and keep indemnified the Buyer against all claims which may be made against the Buyer, and the Buyer's directors, officers, employees and agents, from and against any action, claim, demand, cost or expense arising under, out of, or in connection with personal injury or death to persons or damage to property of the Buyer or third parties to the extent that the injury, death or damage results from the performance or non-performance by the Seller, its servants or agents of this contract or the manufacture of the Goods.

23. LIABILITY FOR LOSS AND DAMAGE

The Seller is liable for and must remedy or compensate the Buyer and any affected third party for, damage, injury or death caused or contributed to by the Seller in connection with the performance of the Services or the Works.

24. SEVERANCE

If any provision in these conditions is or becomes void or unenforceable, it may be severed without any effect on the validity or enforceability of the remaining conditions and the Buyer's rights, remedies or recourses will not in any way be prejudiced or adversely affected by such severance.

25. GOVERNING LAW

All Orders and contracts to which these terms apply shall be governed by the law of Victoria, Australia (but excluding the United Nations Convention on Contracts for the International Sale of Goods 1980) and the parties submit to the exclusive jurisdiction of the courts of Victoria in connection with all matters concerning these terms or the transactions contemplated by them.